



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON

B-36636

September 14, 1943

Colonel R. H. Bradshaw, F. D., U. S. Army,
Through Chief of Finance,
War Department.

Dear Colonel Bradshaw:

I have your letter of August 20, 1943, transmitting four vouchers, each in the amount of \$851.58, stated in favor of Henry E. Keyes, attorney in fact for Janet Newlands Johnston, et al., for rent for the months of February, March, April, and May, 1943, for space occupied by the Army in the Call Building in San Francisco, under lease No. # 59 qm-899, dated February 28, 1941, as renewed, and requesting decision as to your authority to make payment on the vouchers.

The lease referred to was executed by John C. Newlands, as attorney in fact (referred to in the lease as "Power of Attorney") for Janet Newlands Johnston, Edith Newlands Johnston, Eva McAllister Pritchett, and Edward L. Hillyer, as owners of the property. It was for a term commencing March 1, 1941, and ending June 30, 1941, at a rental of \$937.52 a month with an option to the Government to renew from year to year until June 30, 1946, at the same rental to June 30, 1942, and thereafter at a rental of \$851.58 per month. It appears to have been renewed by notice to John C. Newlands for the fiscal year ending June 30, 1942, and by notice of May 29, 1942, to Henry E. Keyes

for the fiscal year ending June 30, 1943.

It appears from the records of this office relating to claims for rental prior to the period here involved that John C. Newlands died, apparently prior to December 18, 1941, and also that Edith McAllister Newlands died, apparently prior to February 17, 1942, and Eva McAllister Pritchett was appointed administratrix with the will annexed of the estate of Edith McAllister Newlands. It further appears that thereafter the three surviving owners and Eva McAllister Pritchett, as administratrix with the will annexed of the estate of Edith McAllister Newlands, deceased, executed powers of attorney to Rodney Radom, giving him authority to manage the Call Building, similar to the powers of attorney previously held by Mr. Newlands, and including the authority to receive rents. The power of attorney executed by the administratrix appears to have been given by her pursuant to an order of February 17, 1942, of the Superior Court of the State of California in and for the City and County of San Francisco, entered in the administration proceedings in the estate of Edith McAllister Newlands, deceased, in that court. The record further indicates that on or about May 16, 1942, the powers of attorney given to Rodney Radom were revoked and that the three surviving owners and the administratrix, on May 16, 18, and 21, 1942, executed similar powers of attorney to Henry E. Keyes, the power of attorney executed by the administratrix having been given pursuant to an order of May 8, 1942, of the court above named in said administration proceedings.

The several powers of attorney given to Henry E. Keyes appointed

him attorney with authority, similarly to the prior powers of attorney given to Mr. Newlands and Mr. Radom, generally to manage the Call Building on behalf of the several owners, including the power "to negotiate, execute, sign, acknowledge, and deliver a lease or leases of the whole, or portions thereof, together with the usual covenants, conditions and provisions; to demand, sue for, receive and give effectual discharges of all rents and amounts now due or which shall become due in respect to the said premises."

Ordinarily, where a lease is made to the Government by an owner of property, as lessor, or who by separate power of attorney appoints an agent to receive payment of rent, the procedure is to draw checks in favor of the lessor to be sent in care of the attorney in fact. However, it has been held that where a lease of property to the Government is made by and in the name of the owners' agent as lessor, rent may be paid to the agent and in such case, that is, where the lease was made by an agent as lessor, it has also been held that rent may be paid to a successor agent. See 5 Comp. Gen. 749; 6 id. 737. As indicated above, the original lease in this case was made by the attorney in fact as lessor and the renewal for the fiscal year ending June 30, 1942, was made by notice of renewal to him, and for the final year 1943 by notice to Henry E. Keyes. Under such circumstances, and in view of the broad and specific terms of the powers of attorney to Mr. Keyes, payment of rent to him as attorney in fact for the owners would appear to constitute a valid acquittance to the Government therefor, provided the powers of attorney to him

are still in force and effect.

In connection with the power of attorney to Mr. Keyes from the administratrix with the will annexed of the estate of Edith McAllister Newlands, deceased, there appears for consideration, in determining whether it is still in effect, the matter of whether the authority given her by the court order of May 8, 1942, referred to above, remains in effect. The general rule that rent accruing subsequent to the death of a lessor of realty is ordinarily payable to the heirs of the deceased lessor in the case of intestacy and to the devisee in the case of testacy unless, in the case of testacy, some other disposition is required by the will, appears to have been modified in California by sections 581 and 582 of the Probate Code of that State, the former of which provides:

"The executor or administrator is entitled to the possession of all the real and personal property of the decedent, and to receive the rents, issues and profits thereof until the estate is settled or until delivered over by order of the court to the heirs, devisees or legatees. He must keep in good tenantable repair all houses, buildings and fixtures thereon which are under his control. After the time to file or present claims has expired he is not entitled to recover the possession of any property of the estate from any heir who has succeeded to the property in his possession, or from any devisee or legatee to whom the property has been devised or bequeathed, or from the assignee of any such heir, devisee or legatee, unless he proves that the same is necessary for the payment of debts or legacies, or of expenses of administration already accrued, or for distribution to some other heir, devisee or legatee entitled thereto. The heirs or devisees may themselves, or jointly with the executor or administrator, maintain an action for the possession of the real property, or for the purpose of quieting title to the same against anyone except the executor or administrator; but they are not required so to do."

Section 582 provides:

"When the time to file or present claims has expired, the

executor or administrator must deliver possession of the real property to the heirs or devisees, unless the income therefrom for a longer period or a sale thereof is required for the payment of the debts of the decedent."

Under those provisions of said Probate Code, it appears that an executor or administrator is entitled to the realty of the deceased and to receive the rents therefrom until the estate is settled or until the realty is delivered over to the heirs or devisee, and further, that when the time to file or present claims has expired-- which under section 700 of the same code appears to be six months after the first publication of notice to creditors--he must deliver possession of the real property to the heirs or devisees unless the income therefrom is required for a longer period or a sale thereof is required for payment of the decedent's debts. Presumably at the time the court order of May 8, 1942, referred to above, the administratrix was entitled to receive, by reason of the above quoted statutory provisions, the rents from the interest of her decedent in the property. However, the present record fails to show whether her authority in that respect still exists, or even whether it existed during the period covered by the vouchers submitted by you. If her authority in that respect has terminated, it would seem to follow that the power of attorney from her as such administratrix would then no longer be in effect.

Accordingly, the present record is not sufficient upon which to determine whether payment on the vouchers submitted is authorized, but they will be retained in this office for development of the facts

and for direct settlement as a claim.

You also ask whether, in the interest of expediting payments to the lessor, this office would be required to object to payment being made locally by finance officers "after the rights of an administrator or executor had been fully determined and settlement approved on the initial claim by your office." With reference thereto, it may be said that, under the law, a disbursing officer is entitled to a decision in advance of payment only on a question arising with respect to a properly certified voucher actually before him for payment. 25 Comp. Dec. 653; 1 Comp. Gen. 376; 3 *id.* 400. Therefore, as to the general question not submitted in connection with a voucher presented for payment and by you submitted here for decision, a decision with respect thereto is not authorized. However, it may be said that if the lease here involved is still in effect and was again renewed for the present fiscal year by notice to Mr. Keyes, there would appear no legal objection to payment of rent, if otherwise proper, to him as attorney in fact for the parties, on properly executed and certified vouchers, provided the powers of attorney given him are in effect at the time of such payments.

Respectfully,

(Signed) Frank L. Yates

Acting Comptroller General
of the United States