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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

[Lease Transactions in Korea By Peace Corps Officers] ~~9861~~ 9868

FILE: B-192282

DATE: APR 18 1979

MATTER OF: Obligation of Funds for "Chonsegwon" Leases  
in Korea

DIGEST: The United States Peace Corps leases property in Korea on terms which require initial payments to the lessors of approximately 50 percent of the assessed valuation of the property, returnable at the close of lease term. No rent is requested. Peace Corps may not account for initial payment as resulting in a receivable, without recording an obligation. Lease is an obligation of the United States. Initial payment corresponds to liquidation of obligation, chargeable to appropriation available for period in which obligation was incurred. Return of initial payment is to be covered into Treasury as miscellaneous receipts.

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This is in response to a request from the Assistant Director, Office of Administration and Finance, ACTION, for an opinion on the proper method of accounting for transactions pertaining to certain unusual leases executed in Korea by officers of the United States Peace Corps, Korea (PC/K) for PC/K offices and staff living quarters.

The leases in question (hereafter referred to as Leases) are called Chonsegwon, or Chonsei Kwon (Right of Registered Lease). They are recognized by Korean law, specifically articles 186 and 303 through 319 of Book II of the Korean Civil Code, Laws of the Republic of Korea (Korean Legal Center, Seoul, 3d unofficial ed., 1975).

Instead of requiring installment rental payments, as is customary for leases within the United States, the Korean lessors require an initial payment, usually of the order of fifty percent of the assessed valuation of the property. Ordinarily there are no periodic payments to the lessor in addition to the initial payment. Under the terms of the typical lease, as well as under article 317 of Book II of the Korean Civil Code, supra, the lessor is required to return the initial payment to the lessee at the expiration of the lease term. Thus, the lessor has the use of the initial payment for the duration of the lease term, and presumably derives his profit from investment at the local interest

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rate, which, we understand, is as high as 40 percent. Frequently, the initial payment is augmented when the Lease is renewed.

In return, the lessee receives possession of the demised premises throughout the lease term. If the lessor fails to return the initial payment promptly at the conclusion of the lease term, the lessee has a right to continued possession of the premises (article 320) and the right to request an official auction (article 318) of the building and the land on which it is situated (article 305).

From an accounting standpoint, ACTION has not been recording the initial Lease payment as an obligation. Instead, it has recorded the disbursement of the initial payment as an account receivable, by virtue of an advance to the lessor. Under those procedures, when the payment is returned, "the receivable is liquidated and the money is returned to the Treasury fund account from which the advance was made." The transaction is not reflected in ACTION's budgetary accounts under current practice, and hence has not been considered as reducing the amount of ACTION funds available for obligation. The propriety of this accounting treatment is the question raised in the ACTION submission.

The essential issue is whether the Leases are obligations of the United States, to be recorded as such in ACTION's budgetary accounts, with the initial payment under a Lease to be treated as an expenditure of the funds so obligated, or whether the initial payment is an advance, which need not be recorded as an obligation. For the reasons discussed below, we are of the opinion that:

- (1) A lease of the type described above is an obligation of the United States when executed;
- (2) Upon execution of the Lease, the amount agreed in the Lease to be paid to the lessor is to be recorded as an obligation in ACTION budgetary accounts;
- (3) The obligation is to be charged against the current ACTION appropriation available for this purpose at the time the Lease is entered into;
- (4) The disbursement of the initial payment constitutes a liquidation of the obligation, and therefore an expenditure of funds of the fiscal year in which the obligation was incurred; and

- (5) The recovery of all or part of the initial payment at the end of the lease term should be treated as a collection and covered into the Treasury as miscellaneous receipts.

Section 15(d) of the Peace Corps Act, 22 U.S.C. § 2514(d) (1976), provides:

"Funds available for the purposes of this Act shall be available for --

\* \* \* \* \*

- (9) rent or lease abroad for not to exceed five years of offices, \* \* \* living quarters, and payments therefor in advance; \* \* \*

This provision provides sufficient specific authority for the application in advance of fiscal year Peace Corps funds to an initial Lease payment for a term of up to 5 years, notwithstanding the fact that the lease term extends beyond the fiscal year in which the Lease is executed.

The requirements for recording an obligation of the United States are set forth in 31 U.S.C. § 200(a) (1976), as follows:

"\* \* \* [N]o amount shall be recorded as an obligation of the Government of the United States unless it is supported by documentary evidence of --

- (1) a binding agreement in writing between the parties thereto, including Government agencies, in a manner and form and for a purpose authorized by law, executed before the expiration of the period of availability for obligation of the appropriation or fund concerned for \* \* \* real property to be \* \* \* leased \* \* \* "

This Office has generally avoided a universally applicable legal definition of the term "obligation", and has instead analyzed the nature of the particular transaction at issue to determine whether an obligation has been incurred. See B-116795 (June 18, 1954). However, it has been held that the basic concept of an obligation of appropriated funds is that a binding commitment has been made by the United States to the other party in the transaction. B-82368 (July 20, 1954).

In a Lease, the United States is obligated to pay a specified sum to the lessor in return for which it receives the use of the property for a term of years. Clearly the Lease is a binding commitment, in which the parties make mutual promises; if the United States failed

to pay the initial payment, it would be in default and would not be entitled to possession of the property. The fact that the money may later be returnable does not make the contractual commitment any less binding. In other words, there is no uncertainty as to the time of performance or the amount to be disbursed under a Lease. PC/K could not obtain (or retain) possession of the leased premises unless it fulfilled its commitment to make the required initial payment at the commencement of the leasehold. Only the time and the amount of recovery of the initial payment are to any degree uncertain. Consequently, we think that treating the initial payment in the same manner as, for example, a travel advance which has to be based on estimated expenditures (and which does result in an obligation when the travel is contracted for) is not appropriate.

Therefore, each Lease would constitute a valid obligation of the United States to pay the agreed-upon sum to the lessor. ACTION suggests that the initial payment is an advance, rather than the liquidation of an obligation, and that no obligation need be recorded because the transaction will not result in an expenditure. It points out that after the payment has been recovered, the leasehold is "free" to the agency. We disagree with this view.

Even if one were to assume that the initial payment is always recovered in full, the public funds which were disbursed to the lessor are to be valued at least at the interest cost of a domestic borrowing by the Treasury, on notes whose maturity coincided with the lease term and which were issued at the time the Lease was executed. At least one PC/K Director recognized that the initial Lease payments involved the cost associated with tied-up capital. In an April 23, 1970, memorandum analyzing Chonsegwon Leases the PC/K Director assumed that the cost to the agency of capital tied up in Leases could be estimated at four percent per annum.

Moreover, the full amount of the initial payment is not always recovered, primarily for two reasons: currency fluctuations, and lessors' defaults.

As to currency fluctuations, the ACTION submission indicates that the exchange rate applicable when the Lease payment is returned will be the same as the rate applicable when the initial payment was made. We find no such provision in any of the Leases or amendments provided to us by ACTION, and we have been informally advised by ACTION personnel that in practice the amount of the initial payment returned will be based on the exchange rate prevailing at the time of that return. In fact, the PC/K Director explicitly assumed in the 1970 memorandum referred to above that the exchange rate fluctuation was an operating cost to be estimated at ten percent per annum.

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On two occasions, the lessor failed to make timely return of the initial payment. According to the November 29, 1978, report of the PC/K Administrative Officer, one of these cases (RE-37) was settled by negotiation on September 11, 1978, at a cost of \$2,593 deducted from the return of the initial payment. The return had been due on October 31, 1976. In the other case (RE-80), according to the same report, two attempts to recover the initial payment by court-supervised auction have failed and a third is contemplated. There have been associated counsel fees and court expenses.

The possibility also exists that the initial payment would not be recovered in the event of default by the United States. If, for example, the property were negligently damaged by the United States, it appears that the lessor could apply the initial payment as compensation to the extent of the loss. Korean Civil Code, supra, Book II, Art. 315. This factor developed in RE-37, where the lessor alleged damage to his property by PC/K.

With respect to the proper appropriation to be charged, 22 U. S. C. § 2514(d)(9), as discussed above, makes Peace Corps appropriations available for leases of up to 5 years and permits lease payments to be made in advance, even though the appropriations for the fiscal years in which the Leases were executed are one-year appropriations. However, the proper fiscal year to which the initial payment should be charged is the fiscal year in which the Lease is executed. When the initial payment is returned to the PC/K at the end of the lease term, it should be deposited in the General Fund of the Treasury as miscellaneous receipts. 31 U. S. C. § 484.

~~Denny~~ R. F. KELLER  
Comptroller General  
of the United States