

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

FILE: B-182781

DATE: August 4, 1975

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MATTER OF: Jung Won Kim

DIGEST:

Decision Jung Won Kim, B-182781, January 22, 1975, affirming denial of claim for expenses incurred in constructing private venture steam bath on Army base for nonappropriated fund activity, in part, because claimant did not meet requisites for payment on quantum meruit or quantum valebant basis is affirmed since Army has refused to ratify unauthorized construction project and extent of benefit to Government might very well be questionable.

By letter dated February 14, 1975, Jung Won Kim requested reconsideration of our decision Jung Won Kim, B-182781, January 22, 1975. In that decision, we affirmed the denial of Mr. Kim's claim for \$80,054 by the Transportation and Claims Division of our Office for expenses allegedly incurred in constructing a steam bath at Camp Adenir, a United States military base in South Vietnam for use in a nonappropriated fund activity.

We considered the suggestion that the claim be recognized on a theory of quantum meruit (the reasonable value of work and labor), or quantum valebant (the reasonable value of the goods sold and delivered). We found nothing in the record to indicate that the requisites for a right to payment under these theories had been met. That is, it must be shown that the Government has received a benefit, and that the unauthorized action has been expressly or impliedly ratified by authorized contracting officials of the Government. B-166439, May 2, 1969.

Mr. Kim contends that the Government benefited from the construction project by using the facility between May 1971 and February 1973 as barracks for United States troops returning from combat.

Other than statements made by Mr. Kim, the record contains no information pertaining to the use of the facility between May 1971 and February 1973. Therefore, we have no confirming information on Mr. Kim's statements to enable us to ascertain whether

United States troops actually occupied the facility. Since the building was in existence prior to Mr. Kim's construction project, the extent of benefit to the Government might very well be questionable even if the Army did utilize the building.

Moreover, as mentioned above, the issue of whether a benefit has been received is not the determinative factor here since it also must be shown that the unauthorized action has been expressly or impliedly ratified by authorized contracting officials of the Government before a right to payment based on quantum meruit or quantum valebant can be recognized. See B-164087, July 1, 1968; and B-176039, July 13, 1972. The record indicates that the Army consistently refused to ratify the unauthorized construction project. In this regard, the Chief, Procurement Division, Deputy Chief of Staff, Logistics, Headquarters, United States Army, Pacific, denied Mr. Kim's claim based, in part, on the following finding: "Your undertaking the rehabilitation of a US Government-owned building to establish a steam bath was to be at no cost to the US Government, but rather was an assumed business risk on your part." Furthermore, in transmitting the claim for settlement to our Office, a cognizant Army contracting officer expressly recommended that Mr. Kim's claim be denied.

Accordingly, our decision of January 22, 1975, is affirmed.


Deputy Comptroller General
of the United States