372

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

B-168287

FEB 12 1970

Peterson, Axley, Brynelson & Herrick
Attorneys and Counsellors
The Power and Light Building
Madison, Wisconsin 53703

Attention: Eugene O. Gehl, Esquire

Gentlemen:

Reference is made to your letter of December 30, 1969, in which you request review of the settlement dated December 23, 1969, of our Claims Division which disallowed your claim for $3,692.22 on behalf of the Madison Metropolitan Sewerage District representing a benefit assessment charge against the Forest Products Laboratory, Department of Agriculture, for pro rata construction costs of an interceptor sanitary sewer.

The Madison Metropolitan Sewerage District, an instrumentality of the State of Wisconsin, assessed lands throughout the area served by the West Interceptor sanitary sewer. That area includes the site of the Forest Products Laboratory. The levy was nonrecurrent and on a square footage basis ($3.82 per thousand feet), and was authorized by section 66.206(1) of the Wisconsin statutes, which permits commissions of a metropolitan sewerage district "to make a special assessment against property which is served by an intercepting sewer, or a main sewer * * *." It is assumed that the proceeds are used only for the payment of additions to the West Interceptor and that the benefits accrue only to those lands assessed. The assessment against the Government amounted to $3,692.22.

It is well settled that lands owned by the United States cannot be taxed by a State or any of the political subdivisions of a State. Van Brocklin v. Tennessee, 117 U.S. 151 (1886); United States v. Power County, Idaho, 21 F. Supp. 684 (1937). This rule applies with equal force where the tax is a special tax or assessment for local improvements as well as in the case of a general property tax against lands owned by the United States. Lee v. Osceola and Little River Road Improvement District, 268 U.S. 643 (1925); Fallon Benevolent Corporation v. United States, 290 U.S. 89 (1933).

jmr

B-169909/087511

B-168207

A special assessment is a tax within the rule precluding a State from taxing lands owned by the United States, because it is an exercise of the sovereign power of taxation and, like other taxes, is an involuntary exaction. See United States v. Anderson Cottonwood Irrigation District, 19 F. Supp. 740 (1937); Hagar v. Reclamation District, 111 U.S. 701 (1884). The special assessment as a tax against the United States is treated in 90 A.L.R. 1137 at 1140, where it is stated: "In the absence of an act of Congress allowing the lands of the United States to become subject to assessment, it has been uniformly held that such lands are not liable for special assessments for local improvements." Such assessments are allowable only if based on the quantum of use by the Federal facility.

The principles stated above do not deny the benefits specifically conferred by local improvements, which, however, differ only in degree from the many other benefits contributed by local governments throughout the country, wherever Federal property is located, and may in fact be said to be reciprocated at least in part by the special services to the community at large which the Federal activities there render in carrying out the purposes of their establishment. 18 Comp. Gen. 562, 564 (1938).

In the present case the "special assessment against property," under section 66.206(1), on a square footage, rather than a usage, basis must be considered as a tax exacted against the Federal property herein involved. Thus for the reasons stated the disallowance of your claim was correct and is hereby sustained.

Sincerely yours,

Lawrence J. Powers

For the Comptroller General
of the United States

SEWERS
Construction
Assessment charges

PROPERTY
Public
Assessment by state, etc. for improvements

TAXES
State
Constitutionality
Assessment v. service charge