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

B-175732 October 1, 1973 40004

The Honorable
The Secretary of the Army

Dear Mr. Secretary:

By letter dated January 26, 1973, the then Acting Secretary of the Army requested our decision on a legal question arising with respect to a proposal to install and operate local-service telephones in Army barracks at Government expense. The Acting Secretary's letter reads in part:

> "During the past year, the Army has conducted a test at Fort Carson on the value to the all volunteer Army objectives of providing free telephone service in the barracks for both official and personal use. The test results indicate that implementation of such a service would significantly enhance the objectives of an all volunteer force.
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> "Accordingly, the Army is considering the provision of non-pay, on-post and local civilian community telephone service in barracks for both official purposes and the convenience of troops. The service proposed would restrict the placing of long distance toll calls from the barracks and restrict the receipt of incoming collect toll calls, but would permit completion of prepaid incoming toll calls.
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> "Telephones in the barracks are primarily intended for communications incident to service. They would provide communications between the company orderly room or battalion headquarters and the soldier for the conduct of business; direct and immediate access from the barracks to emergency base facilities, such as medical, fire and military police; direct and immediate means for a family to notify a soldier of family tragedies, such as death, serious illness or accident; and a direct and immediate pipeline between the barracks and HELP Centers (operated on a 24-hour per day basis) for consultation and assistance in matters relating to major personal problems, such as drug or alcohol abuse. While all of the above uses are considered 'official' in the normal sense

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of the word, these telephones would not be restricted to 'official only' calls. Such a restriction does not appear realistic in light of the automation of local telephone service by the telephone companies and general communication practices in government and industry for controlling local telephone calls.

"Installation of such phones would provide the second, incidental, advantage for our soldiers. Provision of such service would materially enhance the Modern Volunteer Army concept by improving the morale, and efficiency of the modern-day soldier, and it would therefore enhance the ability of the Army to attract the type of personnel it needs."

The legal question posed by the Acting Secretary is whether 31 U.S.C. 679 applies to prohibit the proposal described above. This section, derived from section 7 of the Legislative, Executive and Judicial Appropriation Act, 1912, approved August 23, 1912, ch. 350, 37 Stat. 360, 414, as amended, provides in pertinent part:

"Except as otherwise provided by law, no money appropriated by any Act shall be expended for telephone service installed in any private residence or private apartment or for tolls or other charges for telephone service from private residences or private apartments, except for long-distance telephone tolls required strictly for the public business, and so shown by vouchers duly sworn to and approved by the head of the department, division, bureau, or office in which the official using such telephone or incurring the expense of such tolls shall be employed * * *."

The foregoing provision of law has been applied strictly, as required by its terms, in numerous decisions of our Office. See, e.g., 35 Comp. Gen. 28, 30 (1955), wherein we stated:

"The language of this section is plain and comprehensive and constitutes a mandatory prohibition against the payment from appropriated funds of any part of the expense of furnishing telephone service to a Government officer or employee in a private residence or apartment irrespective of the desirability or necessity of such service from an official standpoint, and has so been held in a long line of decisions. * * *" (Citations omitted.)

If such provision applies by its terms in the instant matter, the prohibition must be given effect irrespective of any considerations of official desirability or necessity. Accordingly, the initial question is whether an Army barracks constitutes a "private residence or private apartment" within the meaning of the statutory provision.

Resolution of the foregoing question requires reference to several decisions of the Comptroller of the Treasury shortly after original enactment of this provision. The most relevant decision is 19 Comp. Dec. 198 (1912), which addressed the question whether Government-owned buildings used as residences could be considered private residences for purposes of this provision of law. The decision held that they could, reasoning as follows:

> "* * * the fact that said buildings are public property does not make them any less private residences when they are turned over for the private personal use of Government officials, and the prohibition of the act quoted is against expenditures for telephone service installed in a private residence or apartment. In my view, a residence or apartment is 'private' within the meaning of the act in question when it is set apart for the exclusive personal use of any one person, or of such person and his family." Id. at 199.

Most significant for present purposes is that the language "private residence or private apartment" is defined as meaning a facility, whether publicly or privately owned, set apart for the exclusive personal use of one person or family. This definition comports with common understanding, and also the general legal context. Thus the Acting Secretary's letter points out that the similar term "private dwelling" has been defined as a place or home in which a person or family lives in an individual or private state. 33A Words and Phrases 412. Clearly an Army barracks does not qualify as a private residence or apartment under this test. As the Acting Secretary points out:

> "* * * A person living in a private residence or apartment lives in an individual or private state since he may choose his own quarters, determine who else may live with him and, most importantly, control who will or will not be permitted to enter the premises. Obviously, an enlisted man living in an Army barracks has none of these prerogatives and certainly cannot be considered as living in an individual or private state. * * *"

Accordingly, we do not believe that an Army barracks need be considered within the literal application of 31 U.S.C. 679 and thus subject to the mandatory prohibition set forth therein. However, consideration must also be given to the general purposes and objectives underlying this statutory provision. Relevant in this regard is an unpublished decision of the Comptroller of the Treasury dated November 12, 1912, 63 Manuscript Decisions 575. The decision held that 31 U.S.C. 679 did not prohibit installation of telephones in Government buildings provided to forest rangers as residences but which also served for official purposes. In support of this conclusion, it was stated:

"Section 7 of the Legislative, Executive and Judicial Appropriation Act, set out in your letter, was not passed as I understand for the purpose of requiring government employees to bear the expense of telephone messages on public business, but on the contrary, its plain intent was that the Government should not be chargeable with the cost of private and personal messages of such employees. The provision in question was passed to secure the latter purpose and grew out of the fact that a large number of public officers here in the District of Columbia had installed in their private residences telephones at Government expense under the guise of their use for public purposes, when in truth the Government had provided them with sufficient telephones in their public offices to transact all the public business.

"Under such circumstances as exist here at the seat of Government the clause in question needs no interpretation, but where a forest ranger must necessarily use a telephone on official business and use it from his station in the forest, which happens also to be the place where he lives, I think it would be a perversion of the intent of the law to hold that those in charge of this service are without authority to install a telephone for such public use in such a building because of the said provision of law. If, however, the official desires to use said instrument for his own personal convenience at any time, the service should be charged for at so much per message, which would insure that the Government would not be paying for the private telephoning of such individual.

"It is not intended to hold herein that telephones may be installed and operated at Government expense in all residences which an official happens also to use as an office

> or official headquarters. The intent of Congress, as above set out, must be kept in mind in all cases, and no opportunity made for an official, under the guise of public business, to have a telephone for his private use paid out of public funds, but on the contrary this rule should not be so rigid as to compel an officer or employee to pay for public telephoning from his private purse."

Several additional decisions have also permitted the installation of telephones in Government-owned facilities used both as residences and for official purposes. See 4 Comp. Gen. 891 (1925); 19 Comp. Dec. 350 (1912); 19 id. 212 (1912).

Under the approach adopted by the foregoing decisions, 31 U.S.C. 679 reflects a general policy against the provision at Government expense of telephone service for the personal benefit of employees. As applied to privately owned residences or Government-owned facilities set apart for the exclusive personal use of employees, the degree of personal use of telephones as opposed to likely official need is considered so great that a mandatory prohibition was imposed. On the other hand, where a Government-owned residence facility cannot be considered as set aside for exclusive personal use, some flexibility is afforded so that the policy underlying the statute need not be applied where sufficient official use for telephones exists.

The context presented by the instant submission falls within the latter category. As the Acting Secretary observes, "the soldier residing in the barracks has no separate office; his office, in effect, is the barracks." It is stated that such telephones are intended primarily for communications incident to service; and a number of potential official uses are set forth. It is further stated that restricting such telephones to official use would be unrealistic. Finally, the submission indicates that provision of barracks telephones would serve an incidental official benefit by materially enhancing the Modern Volunteer Army concept by improving the morale and efficiency of the modern-day soldier and thus enhance the Army's efforts to attract personnel.

We accede to the Acting Secretary's determination that barracks telephones would serve an official purpose in terms of direct official use. The fact that such telephones would also be available for personal use does not diminish that determination, even though there would apparently be no basis for apportioning costs between official and personal calls. Moreover, the operation and maintenance appropriation, Army, is available for the welfare and recreation of military personnel.

In view of the foregoing, it is our opinion that 31 U.S.C. 679 does not prohibit the use of appropriations otherwise available to install and operate telephones in Army barracks, as distinguished from private residences or private apartments, under the circumstances set forth in the Acting Secretary's letter.

Sincerely yours,

Paul G. Dembling

Acting Comptroller General
of the United States