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

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B-178983 August 6, 1973

Mrs. Lila B. Hannebrink
Authorized Certifying Officer
Bureau of Land Management
Department of the Interior
Denver Federal Center, Building 50
Denver, Colorado 80225

Dear Mrs. Hannebrink:

Reference is made to your letter of June 22, 1973, your reference 1376(D-832), asking if you properly may pay a bill—which you enclosed—in the amount of $143.43 submitted by the Missoula County Airport Commission, Missoula, Montana. The amount involved represents landing fees assessed in connection with aircraft owned and operated by the Bureau of Land Management.

Question as to the payment of such fees arises in that the airport involved received Federal assistance pursuant to the Federal Airport Act, approved May 13, 1946, ch. 251, 60 Stat. 170. Section 11(4) of such act provides, in effect, that approval for such assistance shall be given only upon assurance by the sponsor that—

> all the facilities of the airport developed with Federal aid and all those usable for the landing and take-off of aircraft will be available to the United States for use by military and naval aircraft in common with other aircraft at all times without charge, except, if the use by military and naval aircraft shall be substantial, a reasonable share, proportional to such use, of the cost of operating and maintaining the facilities so used.

While the above language could be viewed as exempting all Government Aircraft from the payment of landing fees except when the use of such airport by military aircraft was excessive, we believe that, based on the legislative history of section 11(4), it must be concluded that under such provision only military aircraft are entitled to such exemption and then only if their use of the airport is not substantial.

Examination of the legislative history of the above provisions discloses that S. 2, the bill subsequently enacted as the Federal Airport Act,

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as originally passed by the Senate contained language in section 15(a)(4) thereof, similar to that as finally enacted as section 11(4).

The House, however, deleted such language and substituted therefor the following provision (section 10(4)):

> (4) all the facilities of such airport developed with Federal aid and all those usable for the landing and take-off of aircraft will be available to the United States for use by Government aircraft at all times without charge other than (a) a charge sufficient to defray the cost of repairing damage done by such aircraft, and (b) if the use by military or naval aircraft shall be substantial, a charge which is reasonable in consideration of the character and extent of such use.

However, the Committee of Conference recommended language similar to that as passed by the Senate and, as indicated above, such recommended language was enacted into law.

Under the House version of S. 2, there is no question that the exemption would have applied to all Government aircraft. However, since such language ultimately was rejected and language similar to that first passed by the Senate was finally adopted, we think it clear that only military aircraft are exempt from the payment of landing fees at such federally assisted airports by the 1946 act.

Any possible question in this regard is completely dispelled when considered in the light of the Airport and Airway Development Act of 1970, approved May 21, 1970, Public Law 91-258, 84 Stat. 219. This act, insofar as pertinent here, repealed and replaced the Federal Airport Act. Language identical to that of section 11(4) of the earlier act was contained in section 18(4) of the House-passed bill, H.R. 14465. However, the Committee of Conference recommended the language which subsequently was enacted as section 18(5) of Public Law 91-258 (49 U.S.C. 1718(5)) and which reads as follows:

> (5) Government use; charge.
>
> all of the facilities of the airport developed with Federal financial assistance and all those usable for landing and takeoff of aircraft will be available to the United States for use by Government aircraft in common with other aircraft at all times without charge, except, if the use by Government aircraft is substantial, a charge may be made for a reasonable share, proportional to such use, of the cost of operating and maintaining the facilities used.

Such provisions are explained by the Committee of Conference, at page 42 of House Report No. 91-1074, as follows:

> Section 10(5) of the House bill provided that, as a condition precedent to his approval of an airport development project, the Secretary of Transportation must receive assurances in writing, satisfactory to him, that all of the facilities of the airport developed with Federal financial assistance and all those usable for landing and takeoff of aircraft would be available to the United States for use by military aircraft in common with other aircraft at all times without charge, except, if the use by military aircraft is substantial, a charge may be made for a reasonable share, proportional to such use, of the cost of operating and maintaining the facilities used.
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> Section 208(5) of the Senate amendment contained a similar provision except that it used the term "Government aircraft" in lieu of the term "military aircraft." The term "Government aircraft" is broader than the term "military aircraft" and is defined in section 11(7) of the conference agreement to mean aircraft owned and operated by the United States. This would include not only military aircraft but also aircraft owned and operated by civilian agencies.
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> Section 18(5) of the conference agreement follows the Senate version.

Accordingly, and since the airport here involved has received no Federal assistance under Public Law 91-258 it appears, as indicated earlier, that landing fees properly were assessed against the aircraft operated by the Bureau of Land Management and, if otherwise proper, are payable by the Bureau.

The bill forwarded with your letter is returned herewith.

Sincerely yours,

PAUL G. DEMBLING

For the Comptroller General
of the United States

Enclosure