

FRANCIS A. GUNN

FEBRUARY 6, 1951.—Committed to the Committee of the Whole House and ordered to be printed

Mr. BYRNE of New York, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 1583]

The Committee on the Judiciary, to whom was referred the bill (H. R. 1583) for the relief of Francis A. Gunn, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

An identical bill was favorably reported and passed the House during the Eighty-first Congress, but no action was taken by the Senate.

The facts will be found fully set forth in House Report No. 1650, Eighty-first Congress, which is appended hereto and made a part of this record.

[H. Rept. No. 1650, 81st Cong., 2d sess.]

The purpose of the proposed legislation is to pay the sum of \$6,984.82 to Francis A. Gunn, of South Weymouth, Mass. Such sum represents reimbursement for actual additional costs incurred by the said Francis A. Gunn in constructing a building to be used as quarters by the South Weymouth branch of the Boston post office, such additional costs being caused by delay in the granting of the Civilian Production Administration authorization necessary for such construction.

STATEMENT OF FACTS

It appears that Mr. Gunn had a contract with the Post Office Department to construct a building to be used as quarters by the South Weymouth branch of the Boston post office. During March 1946 the Congress passed a veterans' housing program, Order No. 1, wherein all construction required the approval of the Civilian Production Administration, and by this act there was set up another agency of the Government which subsequently interfered and prevented this contractor from performing the contract within the time covered by the said contract and delayed his period of performance until such later time that the cost of doing the work had substantially increased, and during this period Mr. Gunn states that he was under threat and duress of the Post Office Department to perform his contract or suffer great penalty and loss for his failure to do so.

Mr. Gunn further states that the Civilian Production Administration prohibited and prevented him from performing his contract until such time as he had suffered great and substantial loss.

In Mr. Gunn's statement he says the Post Office Department assured him that there would be no difficulty getting permission to build, and that they would get the permit themselves from the CPA. Their responsibility in this regard is witnessed by the fact that they did make the first application for the permit. Mr. Rapp, the inspector in charge at the Boston post office, furnished Mr. Gunn with the required blank application forms from the Boston CPA office, and between the architect, the contractor, and himself they filled it out and gave it back to him for submittal. It was Mr. Gunn's understanding that the executed form went to the Washington office of the Post Office and was submitted from there.

He states he knew nothing further about it until he discovered on August 16, 1946, from the Boston office of the CPA that the permit to build had been denied on August 6. The denial was sent to Fourth Assistant Postmaster General Myers by the Boston CPA on August 8, and there was further correspondence with him by the CPA on August 12 regarding it. Meanwhile, on August 8, his contractor had started construction with the understanding that the permit was coming through and in ignorance of the fact that it had already been denied.

It was not until after considerable effort by the Post Office Department to get favorable action from the CPA that the obligation of getting the permit was thrown back on Mr. Gunn by the Post Office Department. During the process of trying to get this permit, they requested Mr. Gunn to submit one himself through the Boston office, giving assurance that it would receive favorable action. The application was filed with the CPA on August 29 and denied by them on October 4, 1946. Finally, a further application filed by Mr. Gunn on January 3, 1947, was approved on January 21.

Meanwhile, the OPA control of prices and materials had been released, and prices and costs of construction had risen rapidly. Also the protracted delay and the uncertainty of when they could get a permit forced the closing down of the construction job entirely and the disruption of their organization to build. After permission was granted on January 21, 1947, they had to start over again the whole process of lining up material, labor, and subcontractors, and it was not practicable to start construction again until about March 6. From then until the middle of July their plans were held up due to the unwillingness of the bank to finance the construction because the rental income was not commensurate with the cost of construction, and the Post Office rigidly refused to allow any consideration for the increased cost forced upon Mr. Gunn.

Construction was finally started under the threat of the Post Office Department that if they did not build it themselves, they would put contractors in there at their expense. The construction was reopened on August 8 and the work was completed December 17. The effect of the delay forced upon Mr. Gunn by the Government in not allowing him to proceed with the contract from August 1946 until August 1947 resulted in approximately 20 percent increase, or \$6,000. The actual cost of construction was \$25,695, with incidental expenses bringing it to over \$36,000.

Whereas in August 1946 the contract called for a cost not to exceed \$30,000, the delay resulted in the above cost. This actual increase in cost was directly in line with authoritative indexes of the increase in construction cost during that period. For example, the index of construction costs published by E. H. Boeck Associates of Cincinnati showed that the index for August 1946 was 159.4, and in September 1947 was 189.9. Applying this increase in cost to the contract price of \$30,000 in August 1946 results in an increased cost of \$5,721.

Mr. Gunn's contention is that this increased cost was forced upon him entirely by the action of the United States Government wherein the CPA interfered with his contract with the Post Office Department and prevented him from carrying out his contract in accordance with the original proposal to furnish the quarters at an annual rental of \$3,000, and that this action resulted in a direct loss to him of approximately \$6,000.

Therefore, your committee, after careful consideration, is of the opinion that Mr. Gunn should be reimbursed for this additional cost incurred in the construction of this building, and recommends favorable consideration to the bill.

OFFICE OF THE POSTMASTER GENERAL,
Washington 25, D. C., November 7, 1949.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CHAIRMAN: Further reference is made to your request for a report on H. R. 5274, a bill for the relief of Francis A. Gunn.

The measure provides for payment of the sum of \$6,984.82 to Francis A. Gunn as reimbursement for actual additional costs incurred by him in connection with the construction of a building to be used as quarters by the South Weymouth branch of the post office at Boston, Mass., "such additional costs being caused by delay in the granting of the Civilian Production Administration authorization necessary for such construction."

Pursuant to your request there are submitted copies of the papers that are material to the facts.

A brief summary of the evidence is as follows:

On October 11, 1945, the Department accepted the proposal of Mr. Francis A. Gunn to lease quarters for the South Weymouth branch of the post office at Boston for a term of 10 years, said contract involving the provision of 2,016 square feet on first-floor space and 2,016 square feet of cellar space with an annual rental of \$2,400, including heat. Construction of the building did not begin immediately following the award of the contract, possibly because of construction cost increases. Subsequently, it developed that additional space was required due to changed service conditions, and on June 25, 1946, the Department awarded a new contract to Mr. Gunn for a 10-year term, involving the provision of 2,400 square feet of first-floor space and 900 square feet of cellar space at an annual rental of \$3,000, no service items included. Prior to the award of this new contract, and effective March 24, 1946, Veterans' Housing Program Order 1 was issued requiring authority to be obtained from the Civilian Production Administration for such construction. Accordingly, Mr. Gunn signed application with Civilian Production Administration for authority to proceed with construction, on Form CPA-4423, dated May 24, 1946, which indicated an anticipated construction cost of \$36,000, and the case was submitted to the Civilian Production Administration for consideration on July 18, 1946. The application for authority to begin construction was denied by the Civilian Production Administration on August 8 and October 4, 1946, but a renewed application was granted on January 21, 1947. Construction of the building appears to have been commenced during the latter part of September 1947, and was completed in approximately 3 months at a cost, according to Mr. Gunn, of "over \$36,000."

This matter has already been the subject of considerable correspondence. The basic facts are set forth in more detail in the attached copy of a letter, dated February 25, 1948, to the Comptroller General of the United States. Attention also is invited to the attached copy of a decision of the Comptroller General of the United States, dated March 26, 1948, denying relief to the lessor under his contract on legal grounds therein set forth.

From the evidence it appears that any increased costs to which Mr. Gunn was subjected because of a rising construction price trend were due to his own failure to proceed promptly with the carrying out of the basic contract which was awarded to him on October 11, 1945. The fact that the Department later did, for service reasons, negotiate with him for additional space would seem to have no bearing on the question at issue, since those negotiations could have been undertaken at any time during the contract term had he proceeded promptly with the construction contemplated by the contract which was awarded to him on October 11, 1945. Furthermore, Mr. Gunn continued to procrastinate for months after he had obtained Civilian Production Administration approval of the project. During this entire period there was a substantial advance in the building-cost index. However, it is also true that there was only a very small increase in basic costs during the approximate period of 3 months, subsequent to October 1945, which it should have taken to complete the structure had Mr. Gunn elected to proceed promptly with the work following the award of the basic contract on October 11, 1945.

In view of the foregoing, this Department does not recommend the enactment of this measure.

This Department has been advised by the Bureau of the Budget that there would be no objection to the presentation of this report to your committee.

Sincerely yours,

J. M. DONALDSON,
Postmaster General.

CLAIM OF FRANCIS A. GUNN FOR REIMBURSEMENT FOR ADDITIONAL COST IN CONSTRUCTING QUARTERS FOR THE SOUTH WEYMOUTH BRANCH OF THE BOSTON POST OFFICE, CAUSED BY DELAY IN GRANTING CIVILIAN PRODUCTION ADMINISTRATION AUTHORIZATION

(Submitted by Francis A. Gunn, 82 Pleasant Street, South Weymouth 90, Mass.)

To the Honorable Members of the Congress of the United States:

In support of my request for relief from my pecuniary loss resulting from the interference and delay put upon me by the Civilian Production Administration, wherein they interfered with and prevented the carrying out of my contract with the Post Office Department to build quarters for the South Weymouth branch of the Boston post office, I hereby submit the chronological record of the facts, together with sworn affidavits establishing the truth of my statements and substantiating the justice of my claim for remuneration for the unusual and great loss resulting therefrom.

A. CHRONOLOGICAL DATA

1. June 7, 1945: Advertisement for proposals to lease post-office quarters for the South Weymouth branch of the Boston post office, wherein proposals were solicited by D. J. Rapp, post office inspector in charge of lease investigation, Boston post office.
2. July 6, 1945: Date of my original proposal to construct building for these quarters at South Weymouth for the United States Post Office.
3. October 11, 1945: Date of acceptance of original contract.
4. June 25, 1946: Date of acceptance of revised proposal substituting for original contract and providing enlarged quarters, submitted by me May 8, 1946 at the request of the Post Office Department, stipulating occupancy by the Post Office Department on or before December 1, 1946. Accepted—specifically in lieu of existing contract—June 25, 1946.
5. March 26, 1946: Effective date of Veterans Housing Program Order No. 1. By virtue of this act, the subsequent construction required approval by CPA.
6. May 24, 1946: My original application for authority to begin construction was filed by me with the CPA through the Post Office Department in Washington on this date.
7. August 8, 1946: This application was denied by notice to the Fourth Assistant Postmaster General.
8. August 16, 1946: First information received by me of this denial, which I obtained by inquiry at the Boston CPA office.
9. October 4, 1946: Second application for authority to build, filed with CPA on August 30, 1946, was denied.
10. January 3, 1947: Final application for authority to build was filed with CPA.
11. January 21, 1947: Final application approved.

Proceeding under verbal assurance from the Civilian Production Administration that the permit would be granted, excavation was started on or about August 8, 1946. Information on denial was not received until August 16. A partial authority to construct the foundation only was applied for and granted by the CPA on August 19, 1946. The contractor was kept on the site until December 25, 1946, when due to the closing in of winter and the repeated denials of CPA to continue with the work, suspension was forced.

Resumption of work was delayed due to lack of authority and the affecting circumstances until September 17, 1947. Therefore, construction of the superstructure was delayed 1 year by the refusal of the CPA to grant authority to carry out my contract between September 1946 and 1947. Final completion of the construction was on December 16, 1947.

(The affecting circumstances referred to above cover the inclement weather at the time final approval was granted, the further fact that the contractor who was engaged to build the post office was otherwise engaged, and the further fact that the increased costs had thrown out of balance the proportion of the contractual rental income as compared to the cost of construction, to the extent that banks were unwilling to advance construction loans, all of which resulted in delay in the actual start of construction.)

The above data proves definitely that I had a contract from the post office branch of the United States Government to construct a building for the South Weymouth branch post office, and further that I was ready, willing, and active in attempting to perform the contract, but finally was prevented from such performance by the action of the Civilian Production Administration until the cost was greatly increased.

B. DATA AS TO COST OF CONSTRUCTION AND THE AMOUNT OF LOSS RESULTING FROM CPA INTERFERENCE WITH MY CONTRACT WITH THE POST OFFICE DEPARTMENT

(1) My proposal to furnish the Post Office Department quarters for \$3,000 rental a year, under date of May 8, 1946, was based on a 10-percent gross rental return on the total over-all cost of construction, namely, \$30,000.

(2) On August 17, 1946, I executed an agreement with the company of John Hamre & Son of 55 Buckingham Road, Quincy, Mass., to act as the contractor to construct the building, and this agreement was based on an over-all cost of \$30,000.

(3) The total actual cost of the construction was \$36,983.82, covering the following payments:

John Hamre & Son.....	\$34, 585. 85
E. T. Dwyer Co., subcontractor under Hamre.....	1, 056. 00
Other costs and expenses covering architect, surveys, and interest on construction loans.....	1, 341. 97
Actual construction cost.....	36, 983. 82

(4) Summary:

Actual construction cost (period was from September 1947 to December 1947).....	\$36, 983. 82
Contract estimate of cost from August 1946 to December 1946.....	30, 000. 00
Increased cost due to delay.....	6, 983. 82

(5) Reliable indexes of construction costs covering the period involved show that there was an increase in construction costs consistent with the results experienced by us under actual construction.

Example.—The index of construction published by E. H. Boeckh Associates, Cincinnati:

Index for September 1947.....	189. 9
Index for August 1946.....	159. 4
Increase (19.13 percent).....	30. 5

This increase of 19.13 percent applied to the cost effective in 1946 when my contract was stopped indicates a theoretical increase of \$5,739 over my prospective cost of \$30,000.

(6) *Operating statement of my contract for the year of 1948*

Gross income (12 times \$250).....	\$3, 000. 00
Expenses:	
Heat.....	\$34. 10
Sewage disposal.....	45. 40
Blind for window.....	22. 00
Snow and rubbish removal.....	89. 40
Light.....	4. 82
Rent of right-of-way.....	200. 00
Repairs:	
Plumbing.....	4. 25
Oil burner.....	4. 50
Driveway.....	6. 57
Door glass.....	10. 15
Door lock.....	3. 00
Fee, building engineer.....	16. 09
Insurance.....	245. 18
Management (5 percent).....	150. 00
Depreciation (2½ percent).....	863. 56
Tax.....	426. 00
Total expenses.....	2, 130. 02
Net income on contract for year 1948.....	869. 98
Less 5 percent interest on loan of \$30,000.....	1, 500. 00
Net loss on contract for year 1948.....	630. 02
Loss to be expected over period of contract, using 1948 as an average.....	6, 300. 20

D. APPEAL FOR INDEMNIFICATION

Summation.—Whereas the facts set out above, which are attested to in sworn affidavits submitted herewith, show that I had a contract with the United States Government from October 11, 1945, which I was compelled under threat of heavy penalties by the Post Office Department to perform in the building of South Weymouth quarters for the Post Office Department, an agency of the United States Government, this contract being subsequently revised to provide larger quarters in a substituting contract as of June 25, 1946; and

Whereas during this period of time, namely March 26, 1946, the Congress of the United States issued a Veterans' Housing Program Order No. 1, wherein all construction required the approval of the Civilian Production Administration, and that by this act there was set up another agency of the United States Government which subsequently interfered and prevented me from performing my contract within the time covered by the contract, and delayed my period of performance until such later time that the cost of doing the work had substantially increased; and

Whereas during this period I was under threat and duress of the first agency of the Government, namely the Post Office Department, to perform my contract or suffer great penalty and loss as a result of my failure to do so; and

Whereas the second agency of the Government prohibited and prevented me from performing my contract until such time that I did suffer great and substantial loss,

I do now, therefore, respectfully petition the Congress of the United States to indemnify me by special act and appropriation for the loss which I suffered, which has been established in the foregoing data as being actually \$6,983, and by so doing rectify an injustice caused by two agencies of the United States Government with conflicting powers and exercising authority over me to my detriment.

I hereby submit my own personal affidavit by sworn testimony of the facts as enumerated in this petition.

(Signed) FRANCIS A. GUNN,
82 Pleasant Street, South Weymouth 90, Mass.

Francis A. Gunn, being duly sworn, on his oath deposes and says that he is the person who subscribed his name to the foregoing statement, and that the matters and facts set forth in said statement are true.

STATE OF MASSACHUSETTS,

County of Norfolk, ss:

Subscribed and sworn to before me this 15th day of July 1949.

[SEAL]

DANIEL L. O'DONNELL,
Notary Public in and for Norfolk County, State of Massachusetts.

My commission expires December 12, 1949.

John A. Hamre, Jr., being duly sworn, on his oath says that he is a partner with his father, John Hamre, Sr., of the company of John Hamre & Son, located at 55 Buckingham Road, Quincy, Mass., and that his firm was the general contractor in charge of the construction of the South Weymouth branch of the Boston post office, and that he makes this affidavit for and on behalf of said company, and his statement is as follows:

That on or about August 8, 1946, he was requested to submit an estimate for the construction cost of a branch post office to be erected at 86 Pleasant Street, South Weymouth, Mass., by Francis A. Gunn, of South Weymouth, who furnished plans and specifications for the proposed building, and that he did figure the plans and that his estimate, based on the assumption that construction could be started immediately, was that the total construction cost would be \$28,000, and that if the work had been allowed to proceed without interruption, it could have been built for that amount;

And further that he was advised by Francis A. Gunn that an application for a permit had been filed with the CPA through the Post Office Department, and that verbal assurances had been received from the Boston office of the CPA that the permit would be granted; therefore, proceeding on these facts and assumptions, excavation for the building was started on August 12, 1946, but on August 16, Mr. Gunn received information that the permit had been denied by the CPA and the work was halted until permission could be obtained to continue it;

And further that on August 29, 1946, Mr. Hamre, Mr. Gunn, and Inspector C. S. Wibel, inspector in charge of lease investigation, went to the Boston office of the CPA and consulted with officials there regarding the issuance of a permit, and they received verbal assurances that a new application would receive favorable consideration, and thereupon Mr. Gunn did submit a new application for the construction of the building at an estimated cost of \$28,000. At that time, Mr. Gunn received permission to build the foundation, and work proceeded, and the foundation was completed;

And John A. Hamre, Jr., further certifies that on or about October 6, 1946, Mr. Gunn was advised that his second application had been denied by the CPA, and subsequent attempts to have this ruling reversed failed, so the foundation was covered over to protect it from the weather and the job was closed down until a permit could be obtained to complete it. This suspension was in the week of December 25, 1946;

And further that work was resumed September 17, 1947, and the contract was finished on December 16, 1947, and that during this period of delay in construction there was approximately 30 percent increase in construction costs, but due to the fact that he had accumulated some materials and had commitments on various subcontracts, the total cost of the building was held to \$34,585.85, inclusive of payments to himself and subcontractors.

(Signed) JOHN A. HAMRE, Jr.

STATE OF MASSACHUSETTS,
County of Norfolk, ss:

The above-named John A. Hamre, Jr., personally known, appeared before me this day and acknowledged the above signature to be his free act and deed and took oath to the truth of the above statements to the best of his knowledge and belief.

[SEAL]

(Signed) DANIEL L. O'DONNELL,
Notary Public.

Date: July 15, 1949.

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And further that on August 29, 1947, Mr. Harbo, Mr. Quinn, and Inspector C. S. Whelan, Inspector in charge in assistance, went to the construction site of the CPA and consulted with the architect there regarding the nature of a permit and they received verbal assurance that a new application would receive favorable consideration and that Mr. Quinn did submit a new application for the construction of the building at an estimated cost of \$125,000. At that time Mr. Quinn received permission to build the foundation and work proceeded, and the foundation was completed.

And John A. Harbo, Jr. further certifies that on or about October 6, 1947, Mr. Quinn was advised that his second application had been denied by the CPA and subsequent attempts to enter the building reversed failed, so the foundation was covered over to prevent it from the weather and the job was closed down until a permit could be obtained to complete it. This suspension was in the year of December 27, 1947.

And further that work was resumed September 17, 1947, and the contract was retained on December 18, 1947, and that during the period of delay in construction there was approximately 50 percent increase in construction cost, but due to the fact that he had accumulated some savings and had commitments on various endorsements, the total cost of the building was held to \$175,851, inclusive of payments to furnish and subcontractors.

(Signed) John A. Harbo, Jr.

State of Massachusetts,

County of Norfolk, ss:

The above-named John A. Harbo, Jr. personally known, appeared before me this day and acknowledged the above statements to be his free act and deed and took oath to the truth of the above statements to the best of his knowledge and belief.

(Signed) Daniel L. O'Donnell,
Notary Public

Date: July 16, 1948.