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GSA Inspector General Evaluation of Old Post Office Building Lease Finds Agency Improperly Ignored Constitution

The Office of Inspector General of the General Services Administration today issued its “Evaluation of GSA’s Management and Administration of the Old Post Office Building Lease.”

The Old Post Office (OPO) building, located on Pennsylvania Avenue in Washington, D.C., was erected in the 1890s. In 2008, Congress directed the General Services Administration (GSA) to redevelop the property, which had become costly to maintain. GSA selected Trump Old Post Office LLC as the developer in 2012, and executed a lease of the building with that entity as Tenant in 2013. The Trump International Hotel officially opened there in October 2016. The next month, Donald J. Trump was elected President of the United States.

The Inspector General report concludes that, following the 2016 election, it was necessary for GSA to consider whether President-elect Trump’s business interest in the OPO lease might cause a breach of the lease upon his becoming President. The evaluation found that GSA, through its Office of General Counsel (OGC) and its Public Buildings Service, recognized that the President’s business interest in the lease raised issues under the Foreign Emoluments and Presidential Emoluments Clauses of the U.S. Constitution that might cause a breach, but decided not to address those issues. The report also found that the decision to exclude the emoluments issues from GSA’s consideration of the lease was improper because GSA, like all government agencies, has an obligation to uphold and enforce the Constitution, and because the lease, itself, requires that consideration. In addition, GSA’s unwillingness to address the constitutional issues affected its analysis of Section 37.19 of the lease, a provision addressing participation by elected officials. This analysis led to GSA’s conclusion that Tenant’s business structure satisfied the terms and conditions of the lease. As a result, GSA foreclosed an early resolution of these issues and the uncertainty over the lease remains unresolved.

Agency lawyers acknowledged that if a constitutional violation is later found, they will have to revisit the issue of a potential breach of Section 37.19. In addition, because GSA continues to use the language of Section 37.19 in other leases, the Office of Inspector General (OIG) recommends that the agency determine the purpose of that provision, conduct a formal legal review that includes consideration of the Foreign and Presidential Emoluments Clauses, and revise the language to avoid ambiguity. GSA has agreed with this recommendation and has committed to implement it.

The evaluation focused on GSA’s decision-making process for determining whether the President’s election caused a breach of the lease upon the President’s inauguration. The OIG did not seek to determine whether the President’s interest in the hotel violates either the Emoluments Clauses

or Section 37.19 of the lease. The OIG also did not seek to determine whether any violation caused a breach of the terms and conditions of the lease.

“The GSA Office of General Counsel recognized that the President’s business interest in the lease raised issues under the U.S. Constitution that might cause a breach of the lease, yet chose not to address those issues,” said Inspector General Carol F. Ochoa. “As a result, GSA foreclosed an opportunity for an early resolution of these issues and instead certified compliance with a lease that is under a constitutional cloud.”

The full evaluation report, with some information redacted due to agency assertions of privilege, is posted on the GSA OIG website at: <https://www.gsaig.gov/Inspection-and-Evaluation-Report>

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