offended by respondent's regulation of appellant's construction of the Los Padres National Forest headquarters.

Promissory Estoppel

The issue of whether the trial court erred in ruling against appellant's 'cause of action' for promissory estoppel is waived on appeal because the matter was not properly before the trial court.

Appellant arguably pled facts sufficient to constitute a claim for promissory estoppel in his original complaint. This complaint, however, was never served. Appellant's first amended complaint did not incorporate the allegations relating to this theory contained in his original complaint. He requested declaratory relief that the building to be constructed was exempt from respondent's permit process and declaratory and other forms of relief in relation to the imposed fees for off site road improvements. The only possible reference to a claim for promissory estoppel was the bare factual allegation that respondent withdrew its exemption from the permit
[*17] process after appellant had relied on respondent's advice that the construction was exempt. This allegation alone is insufficient to put into issue the doctrine of equitable estoppel. (See Strong v. County of Santa Cruz (1975) 15 Cal.3d 720, 725 [125 Cal.Rptr. 896, 543 P.2d 264].)

The trial court's conclusion, following respondent's pretrial objection to the promissory estoppel claim, that everyone was put on notice that the claim was being asserted because it was inherent in the situation surrounding the delayed construction, is erroneous. Although a complaint need not anticipate any defense or new matter affirmatively pled in the answer, when estoppel is an element of the cause of action it must be specially pled. (Estate of Pieper (1964) 224 Cal.App.2d 670, 691 [37 Cal.Rptr. 46]; Williams v. Galloway (1962) 211 Cal.App.2d 302, 305 [27 Cal.Rptr. 438].) All essential elements of estoppel must be alleged and from such facts estoppel must be clearly deducible therefrom. (Fleishbein v. Western Auto S. Agency (1937) 19 Cal.App.2d 424, 427-428 [65 P.2d 928].)

Since the claim of promissory estoppel was not raised in the trial of the action by respondent's
[*18] answer, we must abide by the general principle, in the interests of fairness to the opposing party and the orderly administration of justice, that a question not raised in the trial court will not be considered on appeal. (See Williams v. Galloway, supra , 211 Cal.App.2d 302.)

The judgment is affirmed.

Gilbert, J., and Abbe, J., concurred.

JUSTMENT.

y Buildings Act of 1959 (40 U.S.C. 606) is
ng at the end the following new subsection:
JUSTMENT.—Any dollar amount referred
tion 4(b) of this Act may be adjusted by the
o reflect a percentage increase or decrease
ing the preceding calendar year, as deter-
index of construction costs of the Depart-
such adjustment shall be expeditiously
e on Environment and Public Works of the
e on Public Works and Transportation of
ives.".

ATION; SPECIAL RULES FOR LEASED BUILD

ct of 1959 (40 U.S.C. 601-616) is amended
of the following new sections:

RATION OF CRIMINAL AND HEALTH AND

other provision of law, the Administrator
nistrator considers it desirable, assign to a
alth, territory, or possession of the United
uthority of the United States to administer
and safety laws with respect to lands or
he control of the Administrator located in
h, territory, or possession. Assignment of
may be accomplished by filing with the
ch State, commonwealth, territory, or
nment to take effect upon acceptance
anner as may be prescribed by the laws of
, territory, or possession in which such
are located.

R LEASED BUILDINGS.

Notwithstanding the provisions of section
operty and Administrative Services Act of
hall not make any agreement or undertake
ill result in the construction of any build-
cted for lease to, and for predominant use
cil the Administrator has established de-
ments for such building.

SURES.—The Administrator may acquire a
building which is constructed for lease to,
by, the United States only by the use of
quired by section 303 of the Federal Prop-
ervices Act of 1949 (41 U.S.C. 253).
Administrator shall inspect every building
se to, and for predominant use by, the
construction of such building in order to
ications established for such building are

TION EVALUATION.—Upon completion of a
for lease to, and for predominant use by,
Administrator shall evaluate such build-

ing for the purpose of determining the extent, if any, of failure to comply with the specifications referred to in subsection (a).

"(2) CONTRACT CLAUSE.—The Administrator shall ensure that any contract entered into for a building described in paragraph (1) shall contain provisions permitting a reduction of rent during any period when such building is not in compliance with such specifications.".

SEC. 4. COMPLIANCE WITH NATIONALLY RECOGNIZED CODES.

(a) IN GENERAL.—The Public Buildings Act of 1959 (40 U.S.C. 601-618) is further amended by adding at the end the following new section:

"SEC. 21. COMPLIANCE WITH NATIONALLY RECOGNIZED CODES. Public health and safety. 40 USC 619.

"(a) BUILDING CODES.—Each building constructed or altered by the General Services Administration or any other Federal agency shall be constructed or altered, to the maximum extent feasible as determined by the Administrator or the head of such Federal agency, in compliance with one of the nationally recognized model building codes and with other applicable nationally recognized codes. Such other codes shall include, but not be limited to, electrical codes, fire and life safety codes, and plumbing codes, as determined appropriate by the Administrator. In carrying out this subsection, the Administrator or the head of the Federal agency authorized to construct or alter the building shall use the latest edition of the nationally recognized codes referred to in this subsection.

"(b) ZONING LAWS.—Each building constructed or altered by the General Services Administration or any other Federal agency shall be constructed or altered only after consideration of all requirements (other than procedural requirements) of— State and local governments.

"(1) zoning laws, and

"(2) laws relating to landscaping, open space, minimum distance of a building from the property line, maximum height of a building, historic preservation, and esthetic qualities of a building, and other similar laws,

of a State or a political subdivision of a State which would apply to the building if it were not a building constructed or altered by a Federal agency.

"(c) SPECIAL RULES.—

"(1) STATE AND LOCAL GOVERNMENT CONSULTATION, REVIEW, AND INSPECTIONS.—For purposes of meeting the requirements of subsections (a) and (b) with respect to a building, the Administrator or the head of the Federal agency authorized to construct or alter the building shall—

"(A) in preparing plans for the building, consult with appropriate officials of the State or political subdivision, or both, in which the building will be located;

"(B) upon request, submit such plans in a timely manner to such officials for review by such officials for a reasonable period of time not exceeding 30 days; and

"(C) permit inspection by such officials during construction or alteration of the building, in accordance with the customary schedule of inspections for construction or alteration of buildings in the locality, if such officials provide to the Administrator or the head of the Federal agency, as the case may be—

"(i) a copy of such schedule before construction of the building is begun; and

"(ii) reasonable notice of their intention to conduct any inspection before conducting such inspection.

"(2) LIMITATION ON STATE RESPONSIBILITIES.—Nothing in this section shall impose an obligation on any State or political subdivision to take any action under paragraph (1).

"(d) STATE AND LOCAL GOVERNMENT RECOMMENDATIONS.—Appropriate officials of a State or a political subdivision of a State may make recommendations to the Administrator or the head of the Federal agency authorized to construct or alter a building concerning measures necessary to meet the requirements of subsections (a) and (b). Such officials may also make recommendations to the Administrator or the head of the Federal agency concerning measures which should be taken in the construction or alteration of the building to take into account local conditions. The Administrator or the head of the Federal agency shall give due consideration to any such recommendations.

"(e) EFFECT OF NONCOMPLIANCE.—No action may be brought against the United States and no fine or penalty may be imposed against the United States for failure to meet the requirements of subsection (a), (b), or (c) of this section or for failure to carry out any recommendation under subsection (d).

"(f) LIMITATION ON LIABILITY.—The United States and its contractors shall not be required to pay any amount for any action taken by a State or a political subdivision of a State to carry out this section (including reviewing plans, carrying out on-site inspections, issuing building permits, and making recommendations).

"(g) APPLICABILITY TO CERTAIN BUILDINGS.—This section applies to any project for construction or alteration of a building for which funds are first appropriated for a fiscal year beginning after September 30, 1989.

"(h) NATIONAL SECURITY WAIVER.—This section shall not apply with respect to any building if the Administrator or the head of the Federal agency authorized to construct or alter the building determines that the application of this section to the building would adversely affect national security. A determination under this subsection shall not be subject to administrative or judicial review.".

40 USC §19 note.

(b) NOTIFICATION OF FEDERAL AGENCIES.—Not later than 180 days after the date of the enactment of this section, the Administrator of General Services shall notify the heads of all Federal agencies of the requirements of section 21 of the Public Buildings Act of 1959.

SEC. 7. LIMITATION ON MAXIMUM RENTAL RATE.

Section 322 of the Act of June 30, 1932 (47 Stat. 412; 40 U.S.C. 278a), is repealed.

SEC. 8. PROTECTION OF FEDERAL PROPERTY.

(a) REFERENCE TO GSA.—The Act of June 1, 1948 (62 Stat. 281; 40 U.S.C. 315–315d) is amended—

(1) by striking out "Federal Works Agency" each place it appears and inserting in lieu thereof "General Services Administration"; and

(2) by striking out "Federal Works Administrator" each place it appears and inserting in lieu thereof "Administrator of General Services".

ATTN: MR BRANT

UNITED STATES POSTAL SERVICE
EASTERN REGION
P.O. BOX 8001
PHILADELPHIA, PENNSYLVANIA 19101-8001

REPLY TO ATTN OF: EA20-JTFarrell:Mar-0120

DATE: February 22, 1982

SUBJECT:

TO:

William Matthews
Real Estate Office
Field Real Estate & Buildings
P. O. Box 701
Columbia, MD 21045-0701

In accordance with our telephone conversation, I am forwarding to you an exposition of the Postal Service's legal position regarding its exemption, as an establishment of the executive branch of the Government of the United States, from local and state requirements for building permits and the like.

The United States Postal Service is an "independent establishment of the executive branch of the Government of the United States." 39 U.S. Code 201, P.L. 91-375.

The basis of all actions of the Postal Service is the constitutional mandate for the Congress... "to establish Post Offices and Post Roads." Article I, Sec. 8, Clause 3 of the Constitution.

This constitutional mandate is carried forward in Title 39, USC 101. "The United States Postal Service shall be operated as a basic and fundamental service provided to the people by the Government of the United States, authorized by the Constitution, created by Act of Congress, and supported by the people..."

Title 39, USC 401 provides, inter alia, that the Postal Service shall have the power:

> 5. "to acquire, in any lawful manner, such personal or real property, or any interest therein, as it deems necessary or convenient in the transaction of its business; to hold, maintain, sell, lease, or otherwise dispose of such property or any interest therein; and to provide services in connection therewith and charges therefor;

cc: Bob
Doug

6. "to construct, operate, lease and maintain buildings, facilities, equipment, and other improvements on any property owned or controlled by it, including, without limitation, any property or interest therein transferred to it under Section 2002 of this title."

It has been a time honored provision that a state or its subdivisions may not, by statute, ordinance or regulation, interfere with the operation of the United States or its agencies. Paris v. Metropolitan Life Ins. Co., 167 F2d 824, cert. den. 335 US 827; Mayo v. United States, 319 US 436 (1943); McCulloch v. Maryland, 4 Wheat 316, 327; Ohio v. Thomas, 173 US 664; Johnson v. Maryland, 254 US 51; Arizona v. California, 283 US 423, 451.

The principle was clearly enunciated in Mayo v. United States, supra, at 415. "Since the United States is a government of delegated powers, none of which may be exercised throughout the Nation by any one state, it is necessary for uniformity that the laws of the United States be dominant over those of any state. Such dominancy is required also to avoid a breakdown of administration through possible conflicts arising from inconsistent requirements. The supremacy clause of the Constitution states this essential principle. (Article VI) A corollary of this principle is that the activities of the Federal Government are free from regulation by any state. No other adjustment of competing enactments or legal principles is possible." (Emphasis supplied)

It applies to Taxation - Mayo v. United States, supra, Appeal of Mesta Machinery Co., 32 A2d 236.

Land Use and Zoning Regulations - Grinalle v. Board of Adjustment (1960), 183 F.Supp. 626 (N.J.); Ann Arbor Twp. v. United States (1950), 93 F.Supp. 341 (Mich.); Nicholas Engineering v. State (1952), 59 So. 2d 874 (Fla.); Curtis v. Toledo Metropolitan Housing Authority (1947), 78 NE2d 676 (Ohio); Thanet Corp. v. Board of Adjustment of Princeton (1969), 260 A2d 1 (N.J.); City of North Miami v. Grant-Shalk Construction Co. (D. Fla. 1960), 237 F.Supp. 575; Town of Groton v. Laird (D.Ct. 1972), 353 F.Supp. 344; Washington and Old Dominion Railroad Co. v. City of Alexandria, 191 VA 185.

In the Crinello case, the Court stated at pg. 829 "... if the Postmaster General contemplates the erection of a post office on the proposed site, his authority may not be restricted by local ordinance..."

Building Permits - United States v. City of Philadelphia, 56 F.Supp. 862 (1944)(PA); United States v. City of Chester, 144 F2d 415 (1944) (3rd Cir.)(PA).

Both of these cases strongly assert the right of the United States acting under the Constitution to be free from local ordinance or regulation.

The Postal Service has been involved in a series of litigation involving the effect of local ordinances on its operations. In each of these cases, the principles enunciated in this memorandum have been upheld. Grover City v. U. S. Postal Service, (W.D. Cal. 1975), 391 F.Supp. 982; Parsons v. United States Postal Service, (D. N.J. 1974), 380 F.Supp. 815. In Maryland National Capital Park and Planning Commission v. U. S. Postal Service, 487 F2d 1029, there is an analysis of the Postal Service's obligations under local requirements.

I trust that the above will serve as a sufficient explanation of the Postal Service position.

You may furnish a copy of this memorandum to whomever you think is appropriate.

John T. Ferrell, Jr.
Regional Counsel
Law Division

BUILDING PERMITS

Federal and state courts long have held that a Federal agency may not be compelled by State or municipal authorities to obtain a building permit where a municipal ordinance provides for the issuance or withholding of such permits as part of a comprehensive scheme to enforce municipal building and construction standards. Arizona v. California, 283 U.S. 423 (1931); De Kalb County, Georgia v. Henry C. Beck Co., 382 F.2d 992 (5 Cir. 1967); United States v. Philadelphia, 56 F.Supp. 862 (E.D. Pa. 1944), affirmed 147 F.2d 291 (3 Cir. 1945); United States v. City of Chester, 144 F.2d 415 (3 Cir. 1944); Thanet Corporation v. Board of Adjustment of Township of Princeton, 108 N.J. Super. 65, 249 A.2d 31, affirmed 260 A.2d 1 (1969). See also, Leslie Miller, Inc. v. Arkansas, 352 U.S. 187 (1956); Johnson v. Maryland, 254 U.S. 51 (1920); City of Birmingham v. Thompson, et al., 200 F.2d 505 (5 Cir. 1952); Oklahoma City et al. v. Sanders, 94 F.2d 323 (10 Cir. 1938). Cf., James Stewart & Co. v. Sadrakula, Administratrix, 309 U.S. 94 (1940); Public Housing Administration v. Bristol Township, Bucks County, Pennsylvania, 140 F.Supp. 859 (E.D. Pa. 1956).

The application by a Federal agency for a municipal building permit in such circumstances would submit the Government's process to municipal regulation and control including approval of the site and building plans and specifications, periodic inspections, and the risk of work suspension and the withholding of an occupancy permit. Such municipal regulation could cause interruptions and delays that might interfere with the agency's timely and adequate performance of its governmental functions, and could subject the agency to municipal directives that are inconsistent, or even directly conflicting, with the agency's congressionally mandated requirements. See for example, 39 USC 101(g), which directs the Postal Service in planning and building new postal facilities to "...emphasize the need for facilities and equipment designed to create desirable working conditions for its officers and employees, a maximum degree of convenience for efficient postal services, proper access to existing and future air and surface transportation facilities, and control of costs to the Postal Service." See also, 39 USC 403(b)(3).

The Postal Service adheres as a matter of policy to the substantive requirements of applicable municipal building codes except where national codes are more stringent, in which event the latter are followed. Municipal enforcement and procedural regulation, however, would provide a basis for the full play of local

personality, business, and political considerations to be brought to bear on our projects. With numerous building projects in all 50 states, the Postal Service would be subjected to a multitude of local variations and biases. Furthermore, since Federally owned properties are not subject to State and municipal real estate taxation, postal construction frequently is not welcomed by municipal authorities.

Two recent decisions of the United States Supreme Court, dealing with issues much more clouded than the building permit issue, emphasized that the Supremacy Clause of the United States Constitution (Art. VI, cl. 2) prevents state regulation of Federal activities in the absence of a clear and unambiguous congressional mandate that such regulation is authorized. Hancock v. Train, No. 74-220, June 7, 1976, 44 Law Week 4767; EPA v. California, No. 74-1435, June 7, 1976, 44 Law Week 4781.

In these two cases, the Supreme Court interpreted substantially identical provisions of the Clean Air Act and the Federal Water Pollution Control Act Amendments of 1972 which require Federal agencies to "comply with Federal, State, interstate, and local requirements respecting control and abatement of [air] pollution to the same extent that any person is subject to such requirements." The Court held that the above-quoted provisions stopped short of subjecting Federal agencies to State permit requirements and similar State regulations and controls, although the provisions did require Federal agencies to comply with substantive requirements of EPA-approved State implementation plans such as effluent and emission standards and compliance schedules.

The High Court's reasons appear to apply, a fortiori, to the building permit issue, inasmuch as there is no congressional mandate that Federal agencies comply with either the substantive or the regulatory and enforcement provisions of municipal building codes.

UNITED STATES POSTAL SERVICE

COLUMBUS OH DISTRICT OFFICE

FACSIMILE COVER LETTER

PLEASE DELIVER THE FOLLOWING PAGES

TO:	FROM:
DOUG WENZEL, INSPECTOR	EVELYN L LAMBERT ADMINISTRATIVE SERVICES
VILLAGE OF POWELL	U S POST OFFICE
P O BOX 1028	1383 DUBLIN RD
POWELL OH 43065-1028	COLUMBUS OH 43215-1007
FAX NO. (614) 885-5339	FAX NO. (614) 486-0759

DATE: 09/04/97

NUMBER OF PAGES (INCLUDING COVER): 7

COMMENT: Please acknowledge that you received fax. Any questions or comments, let me know. Thanks.

UNITED STATES
POSTAL SERVICE

SEPTEMBER 4, 1997

BOB SCHULTZ
CHIEF

DOUG WENZEL, INSPECTOR
VILLAGE OF POWELL
P O BOX 1028
POWELL OH 43065-1028

SUBJECT: Powell OH Renovations

Dear Mr. Wenzel,

Enclosed is a copy of the applicable documentation from the United States Postal Service Regional Attorney on the Postal Service's legal position regarding its exemption from local and state requirements for building permits and codes. All renovations at the Powell Ohio Post Office will remain the property of the postal service for the duration of the occupancy and upon lease termination, the Postal Service is contractually required to restore the leased area within the building.

It is the policy of our office, however, to cooperate with local officials and invite their comments and suggestions, as applicable, on our construction projects.

I have informed the participating parties in this project of your concerns. They will be contacting you shortly.

If I can be of further assistance to you in resolving this issue, please do not hesitate to call.

Sincerely,

Evelyn L. Lambert

Evelyn L. Lambert
Manager
Administrative Services Office
1383 Dublin Rd
Columbus OH 43215-1007

Attachments

cc: Marco Plumbing and Heating Co.
Thomas E Schick, Facilities Engineer