UNITED STATES GENERAL ACCOUNTING OFFICE
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STATEMENT OF

ELMER B. STAATS

COMPTROLLER GENERAL OF THE UNITED STATES

BEFORE THE

SUBCOMMITTEE ON REPORTS, ACCOUNTING, AND SEN01505
MANAGEMENT OF THE COMMITTEE ON GOVERNMENT OPERATIONS
UNITED STATES SENATE, [ON S. 2268,] 94th CONGRESS

Mr. Chairman, and Members of the Government Operations Committee, I appreciate this opportunity to discuss our thoughts on S. 2268, a bill to revise and restate certain functions and duties of the Comptroller General of the United States, S. 2206, a bill providing for Congressional appointment of the Comptroller General, S. 2353, a bill providing for General Accounting Office audits of the Internal Revenue Service and the Bureau of Alcohol, Tabacco and Firearms, and S. 2418, a bill providing for General Accounting Office audits of the Federal Reserve Board, the Federal Reserve Banks, the Internal Revenue Service, the Comptroller of the Currency, and the Office of Alien Property. Because I feel that each bill involves unique considerations and should be studied separately, I have prepared separate statements on each bill. The first statement deals with S. 2268--the so-called GAO bill which is of major concern to this Office.

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As you know, the text of S. 2268 was drafted and submitted by our Office. Provisions substantially identical to Titles I and II were contained in S. 4432, 91st Congress, which was passed by the Senate on October 9, 1970. I have attached as an appendix to my statement an analysis of the major differences in those provisions of the two bills. We consider S. 2268 a most important and significant bill because it will enable us to do a better job in performing the statutory functions assigned us by Congress.

With your permission, I would like briefly to discuss each of the five titles in the bill.

Title I - Enforcement of Decisions and Settlements

A major objective of this bill is to provide a means to resolve the potential impasse that arises when the Attorney General and the Comptroller General differ concerning the legality of the proposed use of appropriated funds.

Section 101 of Title I would add new sections to the Budget and Accounting Act, 1921, as amended, that would provide the Comptroller General procedural remedies through court action to resolve disputes between the Comptroller General and the Attorney General concerning the obligation or expenditure of funds. It provides for declaratory relief when the Comptroller General has reasonable cause to believe that any officer or employee of the Executive Branch is about to expend, obligate, or authorize the expenditure or obligation of public funds in an illegal manner.

Subsection (a) states that the authority provided by this section shall be exercised only in connection with accounts over which the Comptroller General has settlement authority pursuant to 31 U.S.C. § 74. In addition, it provides that this section shall be construed as creating a procedural

remedy in aid of the statutory authority of the Comptroller General and is not intended to otherwise enlarge the jurisdiction established by 31 U.S.C. § 74.

Subsection (b) authorizes the Comptroller General to institute a civil action for such relief in the United States District Court for the District of Columbia; it authorizes the Attorney General to represent the defendant official in such action if he disagrees with the Comptroller General; it provides that other parties may intervene or be impleaded; and it provides that service or process may be made by certified mail beyond the territorial limits of the District of Columbia.

Subsection (c) provides that in the event a suit brought under this title delays a payment for goods or services beyond its due date, the payment when made by the agency involved shall include interest thereon at the rate of 6 percent per annum from the time it was withheld, and that otherwise no court shall have jurisdiction to award damages against the United States as a result of any delay occasioned by the institution of a suit under this section.

We believe that this power to enforce our decisions is fundamental to our ability to carry out our statutory responsibilities with maximum effectiveness.

As you know, Mr. Chairman, our enabling legislation, the Budget and Accounting Act of 1921, charge the Comptroller General with "settling and adjusting" all Government accounts, with certain exceptions. The Act further provides that balances certified by the Comptroller General shall be final and conclusive upon the Executive Branch. Congress, in enacting the Budget and Accounting Act, recognized and acted on the need to vest this very important account settlement function in a Comptroller General independent of political influence from any source.

By and large, the Comptroller General's independent judgment and objectivity in performing his account settlement function has been recognized by all. However, it is inevitable that some differences of opinion will arise from time to time between the independent Comptroller General and the Attorney General representing the views of the Executive Branch, especially regarding important and controversial matters. Such differences have been rare, but they bring to question the finality of the Comptroller General's rulings on the Executive Branch as provided in the Budget and Accounting Act. Under the present system, the Attorney General generally has the final word, since unlike the Attorney General, the Comptroller General has no present authority to appeal to to the courts to resolve the dispute--the issue can reach the courts only when and if the Attorney General brings a suit to recover amounts illegally paid. I have attached as an appendix to my statement a summary of such disagreements in the past that may be of interest to the Committee.

This situation gives rise to the need for statutory authority in the Comptroller General or his representatives to appear in court to obtain a judicial determination of issues involved in conflicting Attorney General and Comptroller General positions. Adverse rulings of the Comptroller General have a decided impact upon programs of the Government at whatever stage in the program they are rendered. When this impact is felt in the early or planning stages, the agency involved usually has the facility for necessary reprogramming, substitution, or redirection. This impact is more keenly felt when a program is under way, contracts have been let, and commitments with the private sector made. In those situations it is essential that final resolution be obtained quickly.

The President, in a statement issued on December 22, 1969, recognized very clearly the problems that can arise in such circumstances. He said, in part:

> "When rulings differ, however, when the chief legal officer of the executive branch and the chief watchdog of the Congress end up with opposing views on the same matter of law, the place for resolution of such differences, is the courts--just as it is the resolution of differences between private citizens."

The President was speaking of an amendment which the Senate had attached to a bill for the purpose of enforcing a ruling by the Comproller General against a contrary opinion by the Attorney General as to the legality of certain expenditures. The President took the position that legislation on this subject should:

> "* * * permit prompt court review of any difference between legal opinions of the Comptroller General and those of the Executive, and * * * permit the Comptroller General to have his own counsel (rather than the Attorney General) to represent him in such cases."

Finally, in speaking of the independence of the Comptroller General the President stated:

> "I wish to assure the Congress and the public of this Nation that I consider the independence of the Comptroller General of the United States of the utmost importance in the separation of powers in our Federal system. The amendment now under discussion by the Congress will not and should not be permitted to bring this principle into any doubt."

Title I is included in the bill precisely for the purpose stated by the President "to permit prompt court review of any difference between legal opinions of the Comptroller General and those of the Executive, and to permit the Comptroller General to have his own counsel (rather than the Attorney General) to represent him in such cases." As previously indicated, there is no present mechanism by which the Comptroller General, unlike the Attorney General, or even a private

citizen, can present these disputes to a court for resolution. This authority has already been provided the Comptroller General in connection with his functions pursuant to the Congressional Budget and Impoundment Control Act of 1974 and the Federal Elections Act of 1971 prior to its amendment in 1974.

Title I is not intended to alter or substantively affect any existing provisions of law, such as those governing the legality of public contracts, obligations, or expenditures, and the finality of administrative determinations. It will enable the Comptroller General to obtain a speedy judicial resolution of any future disputes between the Comptroller General and the Attorney General.

Title II - Enforcement of Access to Records of Non-Federal Persons and Organizations

A second major objective of this bill is to obtain information from private sector organizations already subject to GAO audit by permitting the Comptroller General to the use of subpoenas. More than 48 departments and agencies of the Federal Government now have authority to subpoena records; however, this power has never been provided to the GAO. This authority would be used in those situations where it becomes difficult or impossible to obtain, otherwise, the necessary information from those doing business with the Government.

Section 201 would authorize the Comptroller General to sign and issue subpoenas requiring the production of negotiated contract and subcontract records and records of other non-Federal persons or organizations to which he already has a right of access by law or agreement. This authority includes books, accounts, and other

records of contractors or subcontractors having negotiated Government contracts and of various other non-Federal persons or organizations, most of which have received Federal grants or other financial assistance.

Section 202 would provide that in case of disobedience to a subpoena, the appropriate district court may issue an order requiring compliance with the subpoena and any failure to obey such order shall be punished by the court as a contempt thereof.

The procurement statutes now require negotiated Government contracts of over $2,500 to contain a clause by which the contractor agrees to allow the Comptroller General access to "any books, documents, papers, and records of the contractor, that directly pertain to, and involve transactions relating to the contract or subcontracts." In view of this contractual clause, it might be questioned that the Comptroller General needs subpoena power. In the simplest terms, (1) the subpoena would enable the Comptroller General to obtain much quicker resolution in the courts of any dispute over his authority and (2) the power to issue a subpoena would, by its very existence, eliminate many disputes which may be raised merely to create delays.

The Comptroller General from time to time has been denied access to records to which he was entitled by law or agreement to have access and considerable delays have been encountered in resolving the issue. In one case which had to be litigated, 5 1/4 years elapsed before a final judgment was obtained confirming the Comptroller General's authority under the access to records clause of

the contract as it pertained to the specific records in question. Through issuance of his own subpoena, the Comptroller General could avoid the delays inherent in requesting another agency the Department of Justice, to bring an action and relying on attorneys employed by the Department of Justice, and also the Comptroller General could receive the expedited consideration the courts give to subpoena enforcement.

Other cases of refusal could be cited which, although not pursued to judicial determinations, caused lengthly and unwarranted delays and otherwise caused adverse effects on GAO audits. Other instances frequently occur when repeated delays are occasioned by slowdown tactics on the part of contractor personnel -- not outright refusals of records but obvious efforts to impede the audit. There is presently no effective mechanism to respond to these delays. It is very likely that if the Comptroller General had subpoena power available, many of these delays would not occur.

How frequently the Comptroller General would have to actually issue subpoenas is a matter of conjecture at this time, of course. However, the ability to issue a subpoena would be an effective tool in itself, and if the Comptroller General had subpoena power, many of the access problems would not even arise.

Finally, I want to emphasize that Title II relates only to records to which we otherwise have a right of access by law or agreement.

Title III - Enforcement of Access to Records of Federal Departments and Establishments

A third major objective of the bill is to provide means of enforcing the Comptroller General's right of access to information in the possession of the Executive Branch.

Title III would amend generally section 313 of the Budget and Accounting Act, 1921, so as to provide a means of enforcing the Comptroller General's existing right of access to the documentation needed to audit adequately Federal and Federally assisted programs.

The title would authorize the Comptroller General to institute an action to compel production of documents in cases where an executive department or establishment fails to comply with a request for information, books, documents, papers, or records. In addition, it authorizes the Attorney General to represent the defendant official in such actions.

Title III does not expand our statutory authority relating to access to records of Federal agencies, contractors, and recipients of Federal assistance. It merely establishes a strengthened procedure for obtaining the records to which we are entitled by law.

One of the most important duties of GAO is to make independent audits of agency operations and programs and to report to the Congress on the manner in which Federal departments and agencies carry out their responsibilities. The Congress, in establishing GAO, recognized that the Office would need to have complete access to the records of the Federal agencies.

The more important factors underlying the law, the intent of the Congress, and the GAO's policy of insisting on generally unrestricted access to pertinent records of agencies and contractors in making audits are:

1. An adequate, independent, and objective examination contemplates obtaining a comprehensive understanding

of all important factors underlying the decisions and actions of the agency or contractor management relating to the subject of GAO examinations.

2. Enlightened management direction and execution of a program necessarily must consider the opinions, conclusions, and recommendations of persons directly engaged in programs that are an essential and integral part of operations. Similarly, knowledge of this type is just as important and essential to us in making an independent review and evaluation as it is to management in making basic decisions.

3. Agency internal audits and other evaluative studies are absolutely necessary. They are important tools by which management can keep informed of how large and complex activities are being carried out. Knowledge of the effectiveness with which internal review activities are carried out and the effectiveness with which corrective action where needed is taken is absolutely necessary to GAO in the performance of its responsibilities.

4. Availability of internal audit and other evaluative documents to GAO enables us to concentrate a greater part of our efforts in determining whether action has been promptly and properly taken by agency officials to correct identified weaknesses, and help eliminate duplication and overlapping in audit efforts.

For this discussion, I believe it is self-evident that the GAO in its role as an oversight arm of the Congress, cannot be effective if it does not have full access to records, information, and documents pertaining to the subject matter of an audit or review. The intent of the various laws assigning authority and responsibility to the GAO is clear on this point. The right of generally unrestricted access to records is based not only on laws enacted by the Congress but is a necessary adjunct to the duties and responsibilities of the Comptroller General. I have attached as an appendix to my statement a summary of some examples of the numerous and longstanding problems GAO has had in obtaining records of Federal agencies.

Title IV - Profits Study

Finally, title IV would afford the Comptroller General authority to make selective studies of the profits of Government contractors and subcontractors whose Government business, in their most recent fiscal year, aggregated one million dollars or more. These studies would be made with a view toward comparing profits on Government business with profits on commercial business.

Subsection (b) requires that, when requested by the Comptroller General or his representatives, contractors will submit such information maintained in the normal course of business as the Comptroller General determines is necessary or appropriate to conduct his studies under subsection (a).

Subsection (c) authorizes the Comptroller General and his representatives to audit and inspect and to make copies of any books, accounts, or other records which the Comptroller General determines are necessary to permit calculation of the profits of any contractor.

This subsection specifically precludes the Comptroller General from disclosing any information obtained solely under the authority of section 401 that might reveal a contractor's profits or is of a proprietary nature, as certified by the contractor, on any individual commercial contract or on any individual contract entered into pursuant to formally advertised competitive bidding.

Subsection (d) defines for the purpose of the title the terms "contractor," "services and materials," "Government contracts," and "commercial contracts."

By section 408 of the Act approved November 19, 1969, Pub. L. No. 91-121, 83 Stat. 204, 208, the Comptroller General was authorized and directed to conduct a one-time study of the profits of representative defense contractors and subcontractors. The Comptroller General's report on this study, B-159896, was submitted to the Congress on March 17, 1971. Title IV would provide permanent authority for such studies. We believe it would be better to have such permanent authority providing for such studies on a periodic basis, rather than to risk the added controversy that could result from the studies being proposed from time to time.

Finally, I believe that an independent study by GAO on profits is a greater value to the Congress than studies performed by the contracting agencies in the Executive Branch.

In addition, I would like to point out that the general provision of S. 2268 provides that in actions brought under this Act the Comptroller General shall be represented by attorneys of the General Accounting Office or by additional counsel of his choosing who may be employed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and the provisions

of chapter 51 and subchapter III and VI of chapter 53 of such title relating to classification and General Schedule pay rates. This is similar to the authority provided in the Congressional Budget and Impoundment Control Act of 1974. In addition, this provision states that any action brought under this Act shall be expedited in every way.

We believe that GAO serves as a vital resource of the Congress by obtaining, analyzing and presenting through its audit, review and reporting activities information necessary to enable the Congress to legislate more effectively. In addition, GAO is required, except where otherwise specifically provided by law, to settle and adjust claims by and against the Government including the settlement of accounts of accountable officers, and to determine the legality of expenditures or proposed expenditures of appropriated funds.

In our opinion S. 2268 if enacted, will provide our Office with needed authority to strengthen and update its powers and functions so as to enable us to more effectively carry out our general responsibilities. We look forward to providing our fullest cooperation in connection with consideration of this legislation.

Appendix I

COMPARISON OF TITLES I, II AND THE GENERAL PROVISIONS OF S.2268 WITH TITLES VI AND VII OF S.4432, 91st CONGRESS, THE PROPOSED BUDGET AND ACCOUNTING IMPROVEMENT ACT OF 1970, AS PASSED BY THE SENATE ON OCTOBER 9, 1970

1. Comparison of Title I - ENFORCEMENT OF DECISIONS AND SETTLEMENTS AND THE GENERAL PROVISIONS, §2268, with Title VII - ENFORCEMENT OF DECISIONS AND SETTLEMENTS, S.4432.

S.4432 provides for declaratory and injunctive relief whereas S.2268 provides for declaratory relief only.

S.4432 requires the Attorney General to certify that he is in disagreement with the Comptroller General in order for the Attorney General to represent the defendant. S.2268 does not impose this requirement.

S.4432 provides that an action shall be heard by a three-judge district court. S.2268 does not contain this provision.

S.4432 provides that no action may be instituted, nor any court appearance made by the Comptroller General until the expiration of 60 calendar days from the date on which the Comptroller General gives notice to the House and Senate Committees on Government Operations of his intention to file such a suit or make such appearance. During this period Congress may prevent such action by the passage of a concurrent resolution disapproving it. In computing the 60-day period, days on which either House is not in session because of adjournment of more than three days to a day certain, or an adjournment sine die, are excluded. S.2268 does not contain this provision.

2. Comparison of Title II - ENFORCEMENT OF ACCESS TO RECORDS OF NON-FEDERAL PERSONS AND ORGANIZATIONS, S.2268 with Title VI - SUBPENA POWER, S.4432.

These two titles are substantially identical.

SUMMARIES OF DISPUTES BETWEEN THE COMPTROLLER GENERAL AND THE ATTORNEY GENERAL

(1)

Citation

2 Comp. Gen. 6 (1922)
A-7408, January 29, 1923
2 Comp. Gen. 784 (1923)

Nature of Dispute

The Comptroller General and the Employees Compensation Commission differed in their interpretation of the statutory prerequisites for recovery of personal injury compensation awards. The Acting Attorney General ruled that the Employees Compensation Commission had the sole power to construe the terms of the Compensation Act and that "any construction so rendered is final and beyond interference by other Government officials". 33 Op. Atty Gen. 476 (1923).

The Comptroller General wrote the President stating that the Attorney General's opinion was merely advisory and was not controlling on the Comptroller General, and also, that it afforded no sanction to the Compensation Commission to disregard the Comptroller General's decisions. 2 Comp. Gen. 784 (1923).

(2)

Citation

2 Comp. Gen. 832 (1922)

Nature of Dispute

The Secretary of War sought the Attorney General's opinion on whether the War Department had to abide by General Accounting Office General Regulations No. 13, which required that claims and demands of common carriers against the United States be settled by the GAO. The Attorney General issued an opinion that the GAO order to Executive departments was a question of law for determination of the Attorney General. The Attorney General held that the War Department could disregard the GAO regulation. 33 Op. Atty Gen. 383 (1924).

The Secretary of War accepted the Attorney General's opinion. The Comptroller General, in a letter to the President, stated that such disregard of the regulation resulted in overpayments and unnecessary work. 2 Comp. Gen. 784 (1922).

(3)

Nature of Dispute

The Attorney General rendered an opinion regarding whether, after order by the Secretary of the Navy setting aside a court martial conviction and forfeiture of pay, Naval enlisted personnel were entitled to receive all pay they would otherwise have been entitled to. The Attorney General said that this was not a matter "exclusively within the control of the Comptroller General, and that sections 356, 357 and 361 of the Revised Statutes gave the Attorney General authority to give an opinion on any question of law arising in the administration of an executive department. 34 Op. Atty Gen. 162 (1924).

The Attorney General held that the amount of pay actually due was left to the determination of the Comptroller General.

(4)

Nature of Dispute

The Attorney General held that there was no specific statutory grant of authority to the Comptroller General to conduct a review of the amount of duties collected on imported merchandise. 34 Op. Atty Gen. 311 (1924).

(5)

Citation

14 Comp. Gen. 648 (1935)

Nature of Dispute

The Secretary of the Navy disagreed with the GAO's denial of a claim of a Naval employee for transportation of dependents incident to changes of station, and asked the Attorney General for his opinion. The Attorney General stated that sections 356 and 357 of the Revised Statutes gave the Attorney General authority to render an opinion on any question of law arising in the administration of an Executive department. The Attorney General then ruled favorably for the Secretary of the Navy. 34 Op. Atty Gen. 346 (1924).

The Secretary of the Navy told the Comptroller General that notwithstanding his decisions, the Navy would follow decisions of the Attorney General and the Court of Claims. The Comptroller General stated that accountable officers would be held strictly responsible for payments contrary to GAO decisions. 14 Comp. Gen. 648 (1935).

(6)

Citation

5 Comp. Gen. 301 (1925) - 5 Comp. Gen. 688 (1926).

Nature of Dispute

The Comptroller General held that section 9 of the Federal Compensation Act requiring the United States to furnish disabled employees with "reasonable medical * * * services and supplies" did not include authority to furnish artificial limbs and artificial eyes. 5 Comp. Gen. 301 (1925).

In 35 Op. Atty Gen. 36 (1926), the Attorney General rendered an opinion that such artificial devices were included within the statutory language.

On reconsideration the Comptroller General reaffirmed his prior decision and stated that the Attorney General had no authority to determine the legality of Federal expenditures. 5 Comp. Gen. 688 (1926).

(7)

Citation

8 Comp. Gen. 695 (1928)

Nature of Dispute

The Secretary of War wanted to cancel a clause which the Comptroller General included in the standard form transportation contract.

The Attorney General held that promulgation of the clause interfered with the authority of the Secretary of War and to that extent it was invalid. 36 Op. Atty Gen. 289 (1930)

(8)

Citation

A-40698, June 14, 1933.

Nature of Dispute

The Attorney General advised the Secretary of Agriculture that expenditures which the Secretary made were not subject to restrictions imposed by statute upon Federal expenditures. 37 Op. Atty Gen. 1 (1932).

The Comptroller General informed the Secretary of Agriculture that his failure to account to General Accounting Office for funds spent pursuant to the Act could not be justified; that the Attorney General's decisions were only advisory; but that the Comptroller General's decisions were conclusive on executive branch. A-40698, July 14, 1933.

(9)

Citation

11 Comp. Gen. 275 (1932)

Nature of Dispute

The Comptroller General held that there was no statutory authority for enlisted men in the Philippine Scouts to retire after 30 years of service.

In subsequent legal action, the Attorney General argued the opposing views of the War Department.

The Supreme Court found that there was a clear statutory duty to pay the claim, but that mandamus would not lie against the Comptroller General. Miguel v. McCarl, 291 U.S. 442 (1934).

(10)

Citation

A-43746, August 26, 1932

Nature of Dispute

The Comptroller General objected to several proposed instructions concerning travel and transportation of military personnel to be issued by the Secretary of War. The Secretary asked the Attorney General whether, as a result of the Comptroller General's opinion, a per diem in excess of 30 days could be paid.

The Attorney General advised the Secretary of War that in the absence of statutory authority, the Comptroller General could not bind the Secretary. The Attorney General also advised the Secretary that only the Secretary and the President had authority to make regulations in this area; but that it was up to the Comptroller General to determine the amount of money actually due. 37 Op. Atty Gen. 219 (1933).

(11)

Citation

13 Comp. Gen. 186 (1934)
13 Comp. Gen. 197 (1934)
13 Comp. Gen. 222 (1934)

Nature of Dispute

The Attorney General and the Comptroller General differed on construction of the Classification Act, centering on the term "adjustment" as used in Executive Order No. 6440, which prescribed rates of compensation payable to employees in emergency agencies not subject to the Classification Act.

The Attorney General stated that "the question involved is one of law clearly without the jurisdiction of the Comptroller General and within that of the Attorney General. The opinions of the Attorney General as the chief law officer of the Government should be respected and followed in the administration of the executive branch of the Government." The Attorney General instructed executive agencies to follow his interpretation and not that of the Comptroller General. 37 Op. Atty Gen. 562, 563 (1934).

(12)

Citation

A-51607, April 4, 1934

Nature of Dispute

The Secretary of War questioned the authority of the Comptroller General to issue certain regulations.

The Attorney General advised the Secretary of the Navy that certain paragraphs of the regulations were invalid because they were in conflict with the Economy Act of June 30, 1932, and he instructed the Secretary to disregard those portions of the regulations. 37 Op. Atty Gen. 559 (1934).

(13)

Citation

A-56761, July 27, 1934, August 9, 1934, August 31, 1934

Nature of Dispute

The Comptroller General held that an Executive order which allowed for payment of losses sustained by Government employees and military personnel in foreign countries due to appreciation of foreign currencies in their relation to the American dollar was not applicable to losses sustained in the Soviet Union.

In letter to the President, the Attorney General disagreed with the Comptroller General's position and held that losses sustained in the Soviet Union were covered by the Executive order. The Attorney General stated that:

> "* * * The question as to what constitues losses within the meaning of the statute is a matter solely for the determination of the President * * *. Hence the Comptroller General is without jurisdiction to determine whether losses for which the President has authorized reimbursement are allowable under the terms of the statute."

The Attorney General recommended to the President that he issue an Executive order specifically authorizing the reimbursement of such losses as those in question in order to insure compliance by the Comptroller General. 38 Op. Atty. Gen. 71 (1934).

(14)

Citation

A-25746, January 30, 1929; A-44741, October 3, 1932

Nature of Dispute

The Comptroller General held that a military officer who was ordered from a station within the United States to his home to await further orders did not make a permanent change of station within the meaning of section 12 of the Act of May 18, 1920, 41 Stat. 604, as amended by the Act of June 10, 1922, 42 Stat. 631.

In response to a query by the Secretary of the Navy, the Attorney General held that such an order does constitute a permanent change of station within the meaning of the statute. 38 Op. Atty Gen. 176 (1933); See also, 34 Op. Atty Gen. 346 (1924); Bullard v. United States, 66 Ct. Cl. 264 (1928).

The Attorney General instructed the Secretary of the Navy to accept his opinion as controlling, stating that:

> "* * * the Comptroller General, who is clearly an administrative officer of the Government, is likewise bound as a matter of law by the construction placed upon the statute by the Attorney General and the Court of Claims." 38 Op. Atty Gen. 176, 179 (1935).

(15)

Citation

14 Comp. Gen. 443 (1934)

Nature of Dispute

The Comptroller General held that in the absence of a statutory authorization, the Federal Government could not pay cash to an employee of the Panama Canal Service upon separation from the Service, in lieu of leave accrued but not taken.

The Attorney General disagreed with the Comptroller General's decision, stating that an Executive order allowing such cash payments was a valid exercise of Presidential authority. 38 Op. Atty Gen. 300.

On February 20, 1936, the Comptroller General reaffirmed his prior decision. A-57620, February 20, 1936.

(16)

Citation

A-68974, February 12, 1936, May 16, 1936

Nature of Dispute

The Comptroller General advised the Secretary of War that he could not use appropriated funds for payment under a contract since the Secretary of War had wrongly rejected a bid as not being responsive to the invitation.

The Attorney General stated that the award made by the Secretary of War was proper and legal, and that the Comptroller General's decision had no basis in law. 38 Op. Atty Gen. 555 (1937).

Original award made by Secretary of War was eventually upheld. Graybar Electric Co., Inc. v. United States, 90 Ct. Cl. 232 (1940).

(17)

Citation

A-67068, February 19, 1936, June 13, 1936

Nature of Dispute

The Comptroller General held that award of a contract by the Department of War to Douglas Aircraft Company was unlawful since there had been insufficient competition as to price. The Secretary of War requested the Attorney General's opinion after Douglas had fully performed its part of the contract.

The Attorney General stated that since the contractor had fully and satisfactorily performed the contract, it would be manifestly unfair and unjust to hold the contract invalid. 39 Op. Atty Gen. 23 (1937).

(18)

Citation

A-44016, July 5, 1938

Nature of Dispute

The Acting Comptroller General held that the Treasury Department practice of disposing of useless papers was not in accord with existing law.

The Attorney General advised the Secretary of the Treasury that the Acting Comptroller General was in error, because the practice of the Treasury Department was in accord with existing law. 39 Op. Atty Gen. 249 (1939).

(19)

Citation

18 Comp. Gen. 508 (1938)

Nature of Dispute

The Acting Comptroller General held that loan agreements entered into by the Department of Agriculture with cooperative associations at rural rehabilitation projects were not authorized by existing statutes.

Attorney General disagreed with Acting Comptroller General, holding that the loan agreements were legal and that a properly designated officer of the Farm Security Administration could continue to countersign properly drawn checks. 39 Op. Atty Gen. 254 (1939).

(20)

Citation

B-23881, March 5, 1942

Nature of Dispute

The Comptroller General declared illegal loans made by Farm Security Administration from funds appropriated for rural rehabilitation to corporations for purpose of financing purchases of land on which farm families were to be relocated after having been displaced due to the acquisitions of land for defense purposes. The Attorney General stated that the expenditures were authorized by statute and otherwise legal. 40 Op. Atty Gen. 193 (1942).

(21)

Citation

B-143777, December 8, 1960

Nature of Dispute

The Comptroller General, at the request of a congressional subcommittee, advised the Secretary of State that unless certain documents were furnished to the subcommittee, pursuant to section 533(A)(d) of the Mutual Security Act of 1954, as amended, funds would no longer be available for expenses of the Office of the Inspector General and Comptroller.

The Attorney General concluded that the Comptroller General's view that section 533(A)(d) operated to cut off funds was an erroneous interpretation of the statute. But, if the Comptroller General's view was correct, the proviso was unconstitutional. Furthermore, according to the Attorney General, despite the Comptroller General's letter giving notice of the cutoff in funds, Mutual Security Funds were still available for expenditure. 41 Op. Atty Gen. 507 (1960).

In response to the Attorney General's opinion, Comptroller General again wrote the Secretary of State (May 16, 1961), stating that he found no sound basis for altering his initial conclusion. However, by then, a compromise had been worked out between the State Department and the subcommittee.

(22)

Citation

B-156192, December 8, 1966

Nature of Dispute

The Comptroller General directed that a claim be returned to the Armed Services Board of Contract Appeals to determine the amount due a claimant in connection with a contract.

The Attorney General informed the Secretary of the Air Force that he was not required to comply with the Comptroller's request. The Attorney General stated that the question raised "fundamental issues as to the legal relationship between GAO and executive branch agencies in resolution of disputes arising under Government procurement contracts. I therefore consider the question appropriate for an opinion of the Attorney General." 42 Op. Atty Gen. No. 33 (1969)

(23)

Citation

49 Comp. Gen. 59 (1969)

Nature of Dispute

The Comptroller General advised the Secretary of Labor that the revised Philadelphia Plan, requiring contractors to commit themselves to making race a factor for consideration in hiring employees, was contrary to law.

The Attorney General concluded that Philadelphia Plan was legal. His summary stated in part that:

> "Views expressed in formal opinion of the Attorney General may be relied on by executive departments and agencies and their accountable officers, notwithstanding contrary views expressed by the Comptroller General." 42 Op. Atty Gen. No. 37 (1969)

The Federal courts upheld the validity of the plan. Contractors Association of Eastern Pennsylvania v. Secretary of Labor, 311 F. Supp. 1002 (E.D.Pa. 1970), aff'd 442 F.2d 159; cert. denied 404 U.S. 854 (1971).

(24)

Citation

B-169687, May 4, 1970

Nature of Dispute

The Comptroller General advised the House Subcommittee on Executive Reorganization that part of Executive Reorganization Plan No. 2 of 1970 did not comply with the requirements of 5 U.S.C. 904(2). The Attorney General's opinion to the Subcommittee was that 5 U.S.C. 904(2) had no application to the position in question (Executive Director of the Domestic Council).

(25)

Citation

B-159687, July 17, 1970

Nature of Dispute

The Comptroller General expressed doubt about the Atomic Energy Commission's authority to adopt revised criteria which contemplated recovery of more than full cost of uranium enrichment services over a period of time. The Acting Assistant Attorney General took the position that the proposed AEC action was valid. The matter was resolved by enactment of section 8 of Pub. L. No. 91-560, December 19, 1970, 84 Stat. 1474, authorizing recovery of full cost.

ACCESS TO RECORDS OF FEDERAL ORGANIZATIONS

1. ACCESS TO FULL RECORDS OF FEDERAL DEPOSIT INSURANCE CORPORATION

From 1950 through January 14, 1965, GAO has made various requests to the Chairman of the Board of Directors, Federal Deposit Insurance Corporation, for complete and unrestricted access to all of the corporation's records deemed necessary to carry out GAO's audit responsibility. The Chairman of the Board of Directors has refused these requests. The Corporation has taken the position that GAO's right to access of its records is limited to those administrative or housekeeping records pertaining to its financial transactions.

2. ACCESS TO REPORT OF INSPECTOR GENERAL OF THE AIR FORCE

On June 5, 1967, GAO requested from the Deputy Secretary of Defense, reports resulting from internal reviews of administrative practices and activities made by the Inspector General. The Deputy Secretary of Defense refused this request on November 16, 1967. DOD has taken a long standing position that GAO will be given complete factual summaries of Inspector General Reports, but may not have access to the reports themselves, on the grounds that the reports include frank statements and the release of the reports would discourage candor.

3. ACCESS TO RECORDS OF INTERNAL REVENUE SERVICE NECESSARY TO PERFORM FULL REVIEW

On November 16, 1967, the Comptroller General requested from the Commissioner of IRS, records necessary to permit an effective review of IRS operations and activities. This request was refused by the Chief Counsel of IRS on May 20, 1968, and transmitted to GAO on June 6, 1968. IRS took the position that GAO could not be given access to records for the purpose of reviewing administration of the internal revenue laws.

On November 1, 1968, GAO requested the records mentioned above from the Secretary of the Treasury. In its request, GAO disputed the IRS position that it could not, under the law, grant GAO access to records. The Secretary of the Treasury refused this request on December 5, 1968. The Secretary endorsed the position taken by IRS noted above.

4. ACCESS TO RECORDS RELATING TO OCCUPATION COSTS IN BERLIN

On May 25, 1970, the Deputy Director, International Division, GAO, requested from Assistant Secretary of State, Bureau of European Affairs, records relating to United States occupation costs in Berlin. On March 18, 1971, the Assistant Secretary of State refused this request. The reasons for his refusal are contained in a classified letter dated March 18, 1971.

5. PERMISSION TO VISIT VIETNAM TO OBSERVE DISTRIBUTION OF U.S. MILITARY EQUIPMENT TO THAI AND KOREAN TROOPS

On September 21, 1970, GAO made a verbal request to the Commander, U.S. Military Assistance Command, Vietnam to visit the Thai and Korean camps in Vietnam. In addition, on December 16, 1970, the Comptroller General sent a letter to the Secretary of State pointing out that such inspections are essential if GAO is to carry out its responsibilities for evaluating the effectiveness and improving the management of United States programs. United States military and embassy officials in Bangkok and Siagon denied the request on the basis that GAO should have no need to consult host country officials or agencies. Subsequent to the above (in November and December 1970), messages were sent from the Departments of Defense and State stating that GAO representatives should be discouraged from consulting host country officials or agencies.

On February 5, 1971, the Saigon office, GAO, requested permission to visit the Korean Base Camp at Qui Nhon, Vietnam. The Secretary of Defense disapproved this request on March 6, 1971.

6. STUDIES AND INFORMATION WHICH SUPPORTED TESTIMONY OF DOD DIRECTOR OF RESEARCH AND ENGINEERING CONCERNING SOVIET UNION R&D EXPENDITURES

On April 9, 1971, GAO requested from the intelligence community (specific identification is classified), studies and other information that had been used by DOD as a basis for testimony by the Director of Defense Research and Engineering regarding the levels of Soviet

Union research and development expenditures. On May 5, 1971, this request was refused. GAO was later informed that the records were not being made available as it would establish a precedent. GAO finally did obtain a copy of one of the reports requested.

7. FILES CONCERNING CUSTOMS BUREAU COMPLAINTS OR INVESTIGATIONS WHICH MAY OR MAY NOT HAVE RESULTED IN THE IMPOSITION OF A COUNTERVAILING DUTY

On April 7, 1972, GAO requested from the Secretary of the Treasury, files concerning complaints or investigations which did not result in the imposition of a counterveiling duty or were still under consideration and files pertaining to countervailing duties that were imposed. The Assistant Secretary of the Treasury denied this request on May 12, 1972. Treasury took the position that the participation by GAO in the areas of Treasury's substantive statutory responsibilities under the Tariff Act of 1970 was inappropriate.

8. GENERAL BACKGROUND AND ORGANIZATIONAL INFORMATION FROM THE OFFICE OF THE ASSISTANT COMMISSIONER (INTERNAL REVENUE SERVICE) FOR STABILIZATION

In 1972, GAO requested from the Deputy Commissioner, Internal Revenue Service, Department of Treasury, general background and organizational information from the Office of the Assistant Commissioner for Stabilization. Although IRS did not formally deny GAO the right to review program records, it proposed limitations that would have precluded GAO from performing an independent review.

9. DATA CONCERNING REIMBURSEMENT BY THE COMMITTEE TO RE-ELECT THE PRESIDENT OF PRESIDENTIAL AIRCRAFT FLIGHT EXPENSES INCURRED DURING SEPTEMBER 1972.

On October 31, 1972, GAO requested from H. R. Haldeman, then Assistant to the President, data concerning all flights made by the Presidential crew during September, 1972, including information evidencing the extent to which the United States Government was reimbursed by the Committee to Re-Elect the President. On November 20, 1972, John Dean, then Counsel to the President, refused access to flight records of the Presidential crew. Mr. Dean stated that information of this nature has traditionally been considered personal to the President and thus not the proper subject of Congressional inquiry.

10 ACCESS TO CREDIT UNION EXAMINATION REPORTS HELD BY THE NATIONAL CREDIT UNION ADMINISTRATION

On December 22, 1972, GAO requested from the Administrator, National Credit Union Administration (NCUA), unrestricted access to the Administration's credit union examination reports. On January 9, 1973, the Administrator, NCUA, denied access to the reports. NCUA took the position that the Federal Credit Union Act does not provide for the sharing of credit union examination reports with GAO.

11 ACCESS TO RECORDS OF THE EMERGENCY LOAN GUARANTEE BOARD

GAO has made various requests beginning in September, 1971, to the Secretary of Treasury, as Chairman of the Emergency Loan Guarantee Board, for access to the records of the Emergency Loan

Guarantee Board. The Secretary of the Treasury has refused these requests. The Secretary of the Treasury took the position that it was not the intent of Congress in establishing the Board to grant GAO authority to review Board activities.

12. ADMINISTRATIVE EXPENSES OF THE ECONOMIC STABILIZATION FUND

GAO made various requests beginning in the Spring of 1972 to the Treasury Department for access to all financial records and relevant supporting information on the administrative expenses of the Exchange Stabilization Fund for 1972. After a long period of refusals and delays, the Treasury Department agreed in March, 1973, to provide GAO access to the records requested.

13. ACCESS TO RECORDS OF THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF TREASURY

In accordance with the precedent set by the Internal Revenue Service, the Bureau of Alcohol, Tobacco and Firearms, Department Treasury, does not permit GAO access to records relating to the administration of laws contained in the Internal Revenue Code on distilled spirits, tobacco products, and certain firearms.

14. ACCESS TO INVESTIGATION AND AUDIT FILES OF THE FEDERAL ENERGY ADMINISTRATION

In March, 1974, GAO requested from the Federal Energy Administration active investigation and audit files necessary for GAO's review of FEA's efforts to enforce the petroleum price

regulations. FEA initially refused this request. However, on December 4, 1974, Mr. Sawhill, then Administrator of FEA, granted the request. Mr. Sawhill took the position that FEA would no longer contest the fact that GAO has "plenary access" to compliance and enforcement information.

15. ACCESS TO FINANCIAL DISCLOSURE STATEMENTS AND OTHER INFORMATION OF EMPLOYEES OF THE OFFICE OF POLICY AND ANALYSIS, FEDERAL ENERGY ADMINISTRATION

In the Spring of 1974 GAO made various requests to the Office of General Counsel, Federal Energy Administration for access to the financial disclosure statements of employees of the Office of Policy and Analysis (OPA), FEA and for permission to question OPA employees to determine their relationship with persons holding financial interest in consulting firms dealing with that Office. GAO was informed that its request required further study and the issue remains unresolved.

16. ACCESS TO CONTRACT AND INVESTIGATIVE FILES OF THE AIR FORCE

GAO requested access to the contract and investigative files of the Air Force/BUSH contract. Air Force activities in Europe are required to obtain permission to release this data from Air Force Headquarters and this has resulted in an extensive delay.

17. ACCESS TO RECORDS FOR REVIEW OF FEDERAL POWER COMMISSION'S AUDIT PROCEDURES

In January, 1975, GAO informally requested from members of the Federal Power Commission (FPC) staff, access to records

necessary to review the adequacy of FPC's audit procedures relating to advertising. The staff members denied this request. When GAO made this request to the Executive Director, FPC, we were informed that our request would have to be approved by the Commission. On February 3, 1975, GAO made this request in writing to the Chairman of the Commission. By letter dated February 6, 1975, the Chairman granted the request and the records were provided on February 12, 1975.

18. ACCESS TO INFORMATION FROM AND ABOUT THE INTELLIGENCE COMMUNITY

GAO has made various requests to the intelligence community for access to records. We have encountered some serious difficulties in obtaining the requested information. Examples of situations in which these difficulties were encountered are described more fully in our response of May 10, 1974, to Senator Proxmire's request for a review of the extent of Congressional oversight and control over operations of the U. S. intelligence community.

19. ACCESS TO RECORDS OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Since April 1975, GAO has been attempting to gain access to information needed to evaluate HUD's experimental housing allowance program (EHAP). This is a social science research program on which about $200 million is to be spent for the experiment; if it leads to a national housing allowance program, the cost is estimated at $8 to $11 billion annually. HUD made several contracts for administration of the various phases of EHAP; the contracts contain confidentiality clauses denying HUD itself access to information, and the participants were promised confidentiality by the contractors. Although the contracts also contain the GAO access to records clause required by the Federal Property and Administrative Services Act of 1949, as amended (41 U.S.C. 254(c)), the contractors, acting on advice from HUD, continue to refuse GAO access to information needed for us to evaluate this program.

20. ACCESS TO RECORDS OF THE FEDERAL BUREAU OF INVESTIGATION

In making a review of the FBI's domestic intelligence operations for the Subcommittee on Civil Rights and Constitutional Rights, House Committee on the Judiciary, GAO, to protect the FBI's raw investigative files, agreed to accept FBI-prepared summaries of the contents of those files selected for audit. But in order to independently verify the accuracy and completeness of those summaries for ourselves and for the Congress, GAO proposed to randomly select a sampling of the summaries to be verified against ramdomly selected documents in the related investigative files. The documents would be pulled from the files by an FBI agent,

names of informants or sources could be expunged, GAO would take notes only if discrepancies or incompleteness were found, and the same confidence and security would be maintained as that prevailing for the summaries (no disclosure to the Committee or to any Member of Congress; disclosure within GAO only on a need-to-know basis). To date, the Attorney General has refused to agree to the verification process and has not made a substantive reply to Chairman Rodino's letter of June 25, 1975, on the subject.