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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

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OFFICE OF GENERAL COUNSEL

B-199132

SEP 10 1980

Russell D. Hall
Staff Attorney
Department of Human Services
Oklahoma Public Welfare Commission
P.O. Box 25352
Oklahoma City, Oklahoma 73125

Dear Mr. Hall:

This is in response to your letter of May 27, 1980 in which you raise two issues. The first concerns whether income received from vending machines operated on government property by Government employee associations must be deposited in the Treasury, pursuant to 31 U.S.C. § 484 (1976). The second concerns the General Accounting Office's (GAO) audit responsibility under the Randolph-Sheppard Act, 20 U.S.C. § 107 (1976).

Regarding the first issue, as your letter correctly points out, the Comptroller General's position on income from vending machines on Government property is basically set out in 32 Comp. Gen. 124 (1952) and 32 Comp. Gen. 282 (1952). In 32 Comp. Gen. 124, the Attorney General was advised that it was the consistent view of this Office that funds derived from the installation and operation of vending machines on Government-owned or -controlled property were funds "for the use of the United States" within the meaning of that phrase as used in 31 U.S.C. § 484 (1976) and, as such, were required to be deposited into the Treasury as miscellaneous receipts in the absence of express statutory authority to the contrary.

However, in the decision appearing at 32 Comp. Gen. 282, we advised the Postmaster General that we would not object to the continued use of funds received by employee groups of the Post Office Department from the operation of vending machines installed by them in Government-owned Post Office buildings. The decision to the Attorney General was distinguished on the basis of the fact that there the Government agency involved, the Federal Bureau of Investigation, actually received the proceeds, while in the Post Office case the contractual arrangements for the installment purchase, installation, and operation of the vending machines at the various Post Offices were made by postal employee groups, with administrative approval, and with the understanding that any proceeds received by the employee groups from the operation of the machines could be retained by them. We stated that:

> "While the legal authority of the administrative officials to have agreed to such an arrangement is doubtful, it has been concluded that this Office will interpose no objection to the continued use of proceeds derived by employee groups from the operation of such machines for employee general welfare activities pending further action in the matter by the Congress in the form of clarifying legislation..."

(In B-112840, February 2, 1953, this conclusion was held to be applicable to similar situations arising in the other Federal departments and agencies.)

On several occasions Congress was apprised by this Office that revenues from vending machines operated on Government property by Government employee groups were being withheld from the Treasury and of the need for clarifying legislation. The Randolph-Sheppard Act Amendments of 1974 (Public Law No. 93-516, Title 2, 88 Stat. 1622), while not explicity addressing this issue, in effect recognize that income from vending facilities on Federal property is not required to be deposited into the Treasury as miscellaneous receipts.

The Amendments assign such income primarily to blind licensees operating vending facilities on the property or to a State agency for the blind. However, under certain conditions, the blind licensees or State agency can receive only 50 percent of vending machine income, and when the income from a vending facility not in competition with a blind licensee is less than $3,000 annually, the blind licensee or State agency do not necessarily share in any of the income. 20 U.S.C. § 107d-3.

The Amendments do not say where the vending machine income not allocated to the blind licensee or State agency is to go, but the legislative history makes it clear that the Congress was aware of the GAO position and nevertheless considered that these funds could be retained by the employee groups rather than deposited in the Treasury as miscellaneous receipts. Thus, the Senate Committee on Labor and Public Welfare reported a bill (S. 2581, 93rd Congress), which had language similar to that in the Amendments, allowing some vending machine income to go other than to the blind. This represented a compromise compared to the bill originally introduced (S. 2461, 91st Congress), which sought to assign all vending machine income to blind vendors.

The Committee's report on S. 2581 explained that—

> "Federal employee welfare and recreation groups have for many years depended for their activities on income derived from vending machines on Federal property. * * *, Blinc organization representatives strongly object to the retention of this income by employee groups * * *. Further, they say, Federal law and opinions by Comptroller General support the position that such income may not legally accrue to such groups - their operation is not provided for in statutes, and the income constitutes miscellaneous receipts which by law must be returned to the U.S. Treasury.
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> "* * * The Committee believes that the compromise arrangeent reflected by section 7 of S. 2181 as reported is eminently fair. It provides additional vending machine income to blind licensees and the State agencies. At the same time it meets the objections of the postal union representatives to the previous bill provisions which either assigned all such income to blind licensees or phased out in the exclusive assignment of such income over a period of years. Postal and other Federal employees will continue to be permitted to retain a substantial portion of such income." S. Rep. No. 93-937, 22 (1974), emphasis added.

Thus, the only relevant legislation, the Randolph-Sheppard Act Amendments of 1974, apparently sanctions the practice to which we had objected. While we have not had occasion to rule directly on the effect of this element of the 1974 Amendments, it is clear that to the extent the Congress has spoken, it has confirmed the right of the employee groups to retain vending machine income. There is thus less reason today for GAO to question the disposition of these funds to Federal employee groups than there was in 1952 when we first decided not to do so pending clarifying legislation. In sum, we see no basis to change our longstanding policy.

Regarding your second question concerning GAO's audit responsibilities under the Randolph-Sheppard Act, 20 U.S.C. § 107b-3 reads:

> "The Comptroller General is authorized to conduct regular and periodic audits of all non-appropriated fund activities which receive income from vending machines on Federal property, under such rules and regulations as he may prescribe. In the conduct of such

audits he and his duly authorized representatives shall have access to any relevant books, documents, papers, accounts, and records of such activities as he deems necessary."

Thus, the Comptroller General is merely authorized to perform these audits, not required to do so. The language is permissive, not mandatory.

The primary responsibility for insuring compliance with the requirement that income from vending machines on Federal property go at least in part to the blind lies with the head of the department, agency, or instrumentality which controls the building. 20 U.S.C. § 107d-3(b)(2). That official and the Secretary of Health and Human Services (who is responsible under 20 U.S.C. § 107a(a)(6) to insure that the requirements of the Act are carried out) are in the first instance responsible if an audit is necessary in a particular case to enforce compliance with the distribution requirement of section 107d-3.

This Office has conducted two audits of vending operations on Federal property. Copies are enclosed for your information.

We hope that the above information is of assistance.

Sincerely yours,

Rollee H. Efros

Rollee Efros
Associate General Counsel

Enclosures