



United States
General Accounting Office
Washington, D.C. 20548

General Government Division

B-278573

November 14, 1997

159565

The Honorable Bob Barr
House of Representatives

Subject: Justice Department: Compliance with Vacancies Act

Dear Mr. Barr:

During a hearing of the House Committee on the Judiciary on September 30, 1997, at which I testified on the Justice Department's strategic plan, you asked about the GAO position regarding the applicability of the Vacancies Act (5 U.S.C. §§ 3345-3349) to the Justice Department.

The Vacancies Act provides methods for the temporary filling of vacancies created by the death, resignation, sickness, or absence of the head of an Executive department or military department or the head of a bureau thereof whose appointment is not vested in the head of the department or in the President alone but requires confirmation by the Senate. Appointments under the Vacancies Act are subject to a 120-day limitation. The intent of the Vacancies Act was to preclude the extended filling of an office subject to Senate confirmation without submission of a nomination to the Senate.

At issue is the application of the Vacancies Act to the Justice Department. It has been the Justice Department's long-held position that the Attorney General has authority under 28 U.S.C. § 509-510¹ to make temporary assignments of the duties and powers of offices in the Department, outside the limits of the Vacancies Act. Most recently, a letter dated May 2, 1997, from the Assistant Attorney General for the Office of Legislative Affairs asserted that because the Attorney General's powers in this area are so broad and flexible, and because 28 U.S.C. § 510 addresses the assignment of duties at the Department more specifically than the Vacancies Act, the Attorney General has ample authority, outside the Vacancies Act, to provide for the temporary discharge of the duties of Department officers when their positions become vacant.

¹Section 509 places virtually all functions of the Department of Justice in the Attorney General. Under section 510 the Attorney General may authorize any other officer or employee of the Department of Justice to perform any function of the Attorney General.

159565

GAO's long-held position has been that the provisions of the Vacancies Act are generally applicable to the Justice Department. GAO believes that the Act can only be superseded by statutes that provide specifically for an alternate means of filling a particular office.² Previous GAO decisions disagreeing with the Justice Department's interpretation have, in general, concluded that 28 U.S.C. § 510, while permitting the Attorney General to delegate her functions, does not supersede the provisions of the Vacancies Act.³

Despite the Justice Department's most recent assertion of its long-held position, GAO's view continues to be that the provisions of the Vacancies Act are generally applicable to the Justice Department and govern the filling of such vacancies which require Senate confirmation, except where there is specific statutory authority to fill such vacancies.

I hope this clarifies our position. Please call me on (202) 512-8777, if you have further questions.

Sincerely yours,



Norman Rabkin
Director, Administration of
Justice Issues

²See Opinion B-254491, September 28, 1993 (Vacancies Act not applicable to position of United States Attorney due to specific statutory provision found at 28 U.S.C. § 546 prescribing the manner in which vacancies are to be filled). See also Opinion B-231697, June 28, 1988; Opinion B-150136, April 11, 1973.

³See Opinion B-150136, February 22, 1973 (holding Vacancies Act applicable to the Department of Justice and in turn to the position of Director of the FBI); Opinion B-150136, February 19, 1976 (holding Vacancies Act applicable to the Department of Justice and in turn to the position of Acting Assistant Attorney General). See also 65 Comp. Gen. 626 (1986); Opinion B-220522, October 17, 1986.

Ordering Information

The first copy of each GAO report and testimony is free. Additional copies are \$2 each. Orders should be sent to the following address, accompanied by a check or money order made out to the Superintendent of Documents, when necessary. VISA and MasterCard credit cards are accepted, also. Orders for 100 or more copies to be mailed to a single address are discounted 25 percent.

Orders by mail:

U.S. General Accounting Office
P.O. Box 37050
Washington, DC 20013

or visit:

Room 1100
700 4th St. NW (corner of 4th and G Sts. NW)
U.S. General Accounting Office
Washington, DC

Orders may also be placed by calling (202) 512-6000
or by using fax number (202) 512-6061, or TDD (202) 512-2537.

Each day, GAO issues a list of newly available reports and testimony. To receive facsimile copies of the daily list or any list from the past 30 days, please call (202) 512-6000 using a touchtone phone. A recorded menu will provide information on how to obtain these lists.

For information on how to access GAO reports on the INTERNET, send an e-mail message with "info" in the body to:

info@www.gao.gov

or visit GAO's World Wide Web Home Page at:

<http://www.gao.gov>

**United States
General Accounting Office
Washington, D.C. 20548-0001**

**Official Business
Penalty for Private Use \$300**

<p>Bulk Rate Postage & Fees Paid GAO Permit No. G100</p>

Address Correction Requested
