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[Authority of the General Services Administration To Charge the National Association of Regulatory Utility Commissioners for Space It Occupies]. B-95136. November 17, 1978. 4 pp.

Letter to Rep. Mark Andrews; by Robert P. Keller, Deputy Comptroller General.

Contact: Office of the General Counsel: General Government Matters.

Organization Concerned: General Services Administration; Interstate Commerce Commission; National Association of Regulatory Utility Commissioners.

Congressional Relevance: Rep. Mark Andrews.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 490; 40 U.S.C. 474).

Randolph-Sheppard Act, as amended (20 U.S.C. 107). Federal Credit Union Act (12 U.S.C. 1770). Motor Carrier Act of 1935, as amended (49 U.S.C. 305(f)). Public Buildings Amendments of 1972. P.L. 92-313. 86 Stat. 219. 42 U.S.C. 1770. 55 Comp. Gen. 957. 55 Comp. Gen. 962. Morton v. Mancari, 417 U.S. 535 (1974).

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COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

NOV 17 1978

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The Honorable Mark Andrews  
House of Representatives

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Dear Mr. Andrews:

This refers to your inquiry concerning the authority of the General Services Administration (GSA) to charge the National Association of Regulatory Utility Commissioners (NARUC) for space it occupies in the Interstate Commerce Commission Building. Specifically, you ask whether the provisions of 40 U.S.C. §§ 490(j) and (k) (1976) supersede the authority set forth in 49 U.S.C. § 305(f) (1970).

In accordance with our usual policy, we requested a report from the Administrator of GSA on the question raised by your inquiry. By letter dated October 17, 1978, we received in response to our request the views of the General Counsel of GSA, as follows:

"Subsection 210(j) of the Federal Property and Administrative Services Act (Property Act), as amended, 40 U.S.C. §490(j) (Supp. V., 1975), directs GSA to charge anyone furnished space and services at rates which shall approximate commercial charges for comparable space and services. GSA refers to those charges as the Standard Level Users Charge (SLUC).

"NARUC occupies approximately 3,500 square feet of space in the ICC Building, pursuant to the authority set forth in 49 U.S.C. §305(f). We believe the SLUC is properly applicable to the space. Our reasoning is based on the provisions of 40 U.S.C. §490(j) and the provisions of section 607(c) of the Property Act, 40 U.S.C. §474, which provide in pertinent part:

'The authority conferred by this Act shall be in addition and paramount to any authority conferred by any other law and shall not be subject to the provisions of any law inconsistent herewith.'

"Your office in construing the above two provisions of the Property Act concluded that the SLUC rate must be

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charged with respect to all space under GSA control \* \* \* unless the Administrator determines that such charges would be infeasible or impracticable.' 55 [52] Comp. Gen. 957, 962. The decision permitted GSA to assess the SLUC for space occupied by Federal credit unions pursuant to 12 U.S.C. 1770, and vending stands operated by blind licensees pursuant to the Randolph-Sheppard Act, as amended 20 U.S.C. §107-107(f) (1976). The Federal Credit Union Act, 12 U.S.C. §1770, contained specific language authorizing the allotment of space to Federal credit unions without charge for rent or services. Therefore, we have construed section 210(j) of the Property Act when read with section 602(c) as controlling. Accordingly, notwithstanding section 205(f) of the Motor Carrier Act of 1935, as amended, which states that NARUC shall be assigned space either in or in convenient proximity to the ICC Building, in the absence of any circumstances on which a determination can be made that SLUC charges are infeasible or impracticable, no alternative exists but to charge for the space at applicable rates."

Section 205(f) of the Motor Carrier Act of 1935 (part II of the Interstate Commerce Act), as amended, 49 U.S.C. § 305(f), which is cited as authority for providing free space to NARUC, provides in pertinent part as follows:

"\* \* \* From any space in the Interstate Commerce Commission Building not required by the Commission, the Government authority controlling the allocation of space in public buildings shall assign for the use of the national organization of the State commissions and of their representatives suitable office space and facilities which shall be at all times available for the use of joint boards created under this chapter and for members and representatives of such boards cooperating with the Commission or with any other Federal commission or department under this or any other Act; and if there be no such suitable space in the Interstate Commerce Commission Building, the same shall be assigned in some other building in convenient proximity thereto."

We note that while this provision clearly authorizes the authority controlling the allocation of space in public buildings to assign space to NARUC, the provision is silent on whether such space was to be provided free of charge. Nevertheless, as indicated in your letter, pursuant to the above-quoted provision of the 1935 Act NARUC has occupied space in the Interstate Commerce Commission building without charge  
) it for more than 40 years.

However, sections 219(j) and (k) of the Federal Property and Administrative Services Act of 1949, as amended by the Public Buildings Amendments of 1972, Pub. L. No. 92-313 (June 16, 1972), section 4, 86 Stat. 219, 40 U.S.C. §§ 490(j) and (k) (1976), provide that:

"(j) Charges for space and services furnished by Administrator; determination of rates; exemption from charges

"The Administrator is authorized and directed to charge anyone furnished services, space, quarters, maintenance, repair, or other facilities (hereinafter referred to as space and services), at rates to be determined by the Administrator from time to time and provided for in regulations issued by him. Such rates and charges shall approximate commercial charges for comparable space and services, except that with respect to those buildings for which the Administrator of General Services is responsible for alterations only (as the term 'alter' is defined in section 612(5) of this title), the rates charged the occupant for such services shall be fixed by the Administrator so as to recover only the approximate applicable cost incurred by him in providing such alterations. The Administrator may exempt anyone from the charges required by this subsection if he determines that such charges would be infeasible or impractical. To the extent any such exemption is granted, appropriations to the General Services Administration are authorized to reimburse the fund for any loss of revenue.

"(k). Charges for space and services furnished by executive agencies; approval of rates by Administrator; credit to appropriation or fund

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"Any executive agency, other than the General Services Administration, which provides to anyone space and services set forth in subsection (j) of this section, is authorized to charge the occupant for such space and services at rates approved by the Administrator. Moneys derived by such executive agency from such rates or fees shall be credited to the appropriation or fund initially charged for providing the service, except that amounts which are in excess of actual operating and maintenance costs of providing the service shall be credited to miscellaneous receipts unless otherwise authorized by law." (Emphasis supplied.)

As indicated in the GSA General Counsel's letter to this Office, section 602(e) of the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. § 474 (1976) makes GSA's authority to charge for space or services "paramount to any authority conferred by any other law" and not "subject to the provisions of any law inconsistent" therewith. We have found nothing to indicate that the charges mandated by the Public Buildings Amendments of 1972 were intended to be limited to government agencies only. The statute refers to "anyone". Furthermore, while it has been held that where there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general statute regardless of their order of enactment, Morton v. Mancari, 417 U.S. 535 (1974), here Congress has clearly indicated that the general authority of the Administrator of GSA to charge for space or services was paramount to any other authority (e.g., authority not to charge). Thus, to the extent that there is any inconsistency with 49 U.S.C. § 305(f), Pub. L. No. 92-313, when read in conjunction with 40 U.S.C. § 474, must prevail.

Accordingly, in our opinion the Administrator is required to collect standard level user charges from NARUC for space provided in the Interstate Commerce Commission building, unless he exercises the exemption authority provided by section 210(j) of the Property Act, supra.

Sincerely yours,

Deputy Comptroller General  
of the United States