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B-213771.3, Sep 17, 1986

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B-213771.3, SEP 17, 1986

PROPERTY - PUBLIC - OFFICE FURNISHINGS DIGEST: 1. PROPERTY PURCHASED BY GENERAL SERVICES ADMINISTRATION (GSA) THROUGH GENERAL SUPPLY FUND AND FOR WHICH IT RECEIVES ANNUAL USE FEE FROM HOUSE OF REPRESENTATIVES FOR USE IN MEMBERS' HOME DISTRICT OFFICES IS PROPERTY OWNED BY THE UNITED STATES AND NOT BY EITHER THE HOUSE OF REPRESENTATIVES OR GSA, SINCE NO FEDERAL ENTITY IS AUTHORIZED TO OWN PROPERTY IN ITS OWN NAME. PROPERTY - PUBLIC - OFFICE FURNISHINGS 2. GSA HAS NO AUTHORITY TO PURCHASE PROPERTY FOR THE SOLE USE OF THE HOUSE OF REPRESENTATIVES AND THEN TO LEASE IT TO THE HOUSE IN ORDER TO PERMIT INCREMENTAL REIMBURSEMENT. BEGINNING WITH FISCAL YEAR 1987, GSA MUST RECEIVE REIMBURSEMENT OF THE TOTAL PURCHASE PRICE OF NEW FURNISHINGS WITHIN 45 DAYS OF THE PURCHASE, AS REQUIRED BY LAW. APPROPRIATIONS - FISCAL YEAR - AVAILABILITY BEYOND - CURRENT FISCAL YEAR OBLIGATION 3. THE HOUSE OF REPRESENTATIVES HAS NO AUTHORITY TO CHARGE UNDER RECORDED OR UNRECORDED OBLIGATIONS MORE THAN 2 YEARS OLD AGAINST WITHDRAWN BALANCES OF EXPIRED APPROPRIATIONS. UNDER 2 U.S.C. SEC. 102A, SUCH BALANCES ARE NO LONGER AVAILABLE FOR EXPENDITURE, AND THE OBLIGATIONS WOULD HAVE TO BE PAID FROM CURRENT APPROPRIATIONS.

THE HONORABLE FRANK ANNUNZIO:

CHAIRMAN, COMMITTEE ON HOUSE ADMINISTRATION

HOUSE OF REPRESENTATIVES

THIS IS IN RESPONSE TO YOUR INQUIRY DATED MAY 22, 1986, CONCERNING THE PROPER METHOD OF REIMBURSING THE GENERAL SUPPLY FUND (GSF) OF THE GENERAL SERVICES ADMINISTRATION (GSA) FOR OFFICE FURNISHINGS IN THE DISTRICT OFFICES OF MEMBERS OF THE HOUSE OF REPRESENTATIVES.

YOU HAVE ADVISED THIS OFFICE THAT EQUIPMENT, DRAPES, AND CARPETING FOR USE IN MEMBERS' HOME DISTRICT OFFICES WERE PURCHASED THROUGH THE GSF, AND THAT THE GSF IS BEING INCREMENTALLY REIMBURSED BY THE HOUSE OF REPRESENTATIVES. HOWEVER, GSA HAS ADVISED YOU, BY LETTER DATED MAY 13, 1986, THAT BASED UPON TWO RECENT GAO DECISIONS, /1/ THE INCREMENTAL FUNDING METHOD OF ACQUIRING EQUIPMENT, FURNISHINGS, AND OTHER ITEMS THROUGH THE GSF IS NOT CONSISTENT WITH THE APPLICABLE STATUTORY AUTHORITY. /2/ THIS IS TRUE WHETHER THE ITEMS ARE ACQUIRED FOR GSA'S OWN USE OR FOR THE USE OF ANOTHER GOVERNMENT ENTITY. WE ADVISED GSA THAT THE PRACTICE (OF INCREMENTAL FUNDING) SHOULD TERMINATE AT THE END OF FISCAL YEAR 1986.

THE GSA LETTER TO YOU ALSO STATED:

"ALL PURCHASES BEGINNING IN FY 1987 WOULD BE THE PROPERTY OF THE HOUSE. UNDER THE PRESENT SYSTEM, PURCHASED ITEMS ARE THE PROPERTY OF GSA. SUGGEST THAT YOU ARRANGE TO PURCHASE THE PRE-1987 INVENTORIES AT THE UNDEPRECIATED BALANCES. THIS WOULD ELIMINATE FUTURE ANNUAL USER CHARGES, A PROCEDURE THAT WOULD CONTINUE FOR A PERIOD OF UP TO 12 YEARS IF GSA MAINTAINS OWNERSHIP. IT ALSO WOULD AVOID THE INVENTORY COMPLEXITIES THAT ARE INEVITABLE IF DISTRICT OFFICES HAD SOME ITEMS OWNED BY THE HOUSE AND OTHER ITEMS OWNED BY GSA."

AS A RESULT OF THIS ADVICE, YOU SUBMITTED THREE QUESTIONS FOR OUR CONSIDERATION, WHICH ARE ANSWERED IN ORDER BELOW.

QUESTION 1. "SINCE GSA HAS BEEN PROCURING ITEMS FOR THE HOUSE AND CHARGING A 'USE FEE' FOR FURNITURE AND EQUIPMENT, IS THE FURNITURE AND EQUIPMENT THE PROPERTY OF THE HOUSE OR THE PROPERTY OF GSA?"

ANSWER.TECHNICALLY, THE PROPERTY IN QUESTION BELONGS TO THE UNITED STATES, HAVING BEEN PURCHASED WITH PUBLIC FUNDS. IT CANNOT BE "OWNED" IN THE NAME OF EITHER THE GSA OR THE HOUSE OF REPRESENTATIVES. NEVERTHELESS, WHILE HOUSE MEMBERS HAVE ENJOYED THE BENEFICIAL USE OF THE PROPERTY IN THEIR HOME DISTRICTS, THE GSA HAS EXERCISED MOST OF THE INDICIA OF OWNERSHIP ON BEHALF OF THE UNITED STATES; THAT IS, IT MAINTAINS ULTIMATE CUSTODY AND CONTROL OF THE PROPERTY, INCLUDING ITS DISPOSITION, SHOULD IT NO LONGER BE NEEDED BY A CURRENT MEMBER. IT IS ALSO RESPONSIBLE FOR MAINTENANCE AND REPAIRS (ON A REIMBURSABLE BASIS), PROPERTY ACCOUNTABILITY AND INVENTORY CONTROL RECORDS.

GSA HAS SUGGESTED THAT YOU ELIMINATE FUTURE ANNUAL "USE FEES" BY PURCHASING FROM GSA ALL PROPERTY ACQUIRED ON YOUR BEHALF BEFORE FISCAL YEAR 1987. YOU WOULD HAVE TO PAY THE GSA THE FULL UNDEPRECIATED BALANCE, JUST AS YOU WOULD HAVE TO DO IF YOU ACQUIRE ANY FURTHER ITEMS THROUGH THE GSA AFTER FISCAL YEAR 1987. (SEE ANSWER TO QUESTION 2.) GSA HAS ASSURED YOUR THAT YOU WILL RECEIVE FULL CREDIT FOR ALL USE FEES PAID TO DATE WHEN IT CALCULATED THE BALANCE STILL OWED BY THE HOUSE.

AS IS EXPLAINED IN THE ANSWER TO YOUR SECOND QUESTION, IF YOU SO CHOOSE, YOU CAN CONTINUE TO PAY GSA'S USE FEES, THUS ACQUIRING THE PROPERTY PURCHASED THROUGH THE GSF BEFORE FY 1987 INCREMENTALLY. OUR DECISION TO GSA WAS MADE APPLICABLE TO NEW PURCHASES MADE THROUGH THE GSF BEGINNING IN FISCAL YEAR 1987, IN ORDER TO FACILITATE THE NECESSARY ACCOUNTING AND OTHER ADJUSTMENTS.

QUESTION 2. "ALTHOUGH GAO HAS RULED THAT GSA POSSESSES NO LEGAL AUTHORITY TO PROCURE AN ITEM THROUGH THE GSF FOR THE SOLE USE OF GSA AND THEN LEASE IT TO ITSELF, IS IT LEGAL FOR GSA TO CONTINUE THE PROCEDURE FOR THE HOUSE?"

ANSWER. NO. GAO'S DECISION TO GSA WAS BASED ON THE 45-DAY "PROMPT REIMBURSEMENT" REQUIREMENT IN THE 1950 AMENDMENT TO THE FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949, APPLICABLE TO ALL FEDERAL AGENCIES WHO ACQUIRE PERSONAL PROPERTY OR NON-PERSONAL SERVICES THROUGH GSF. (SEE FOOTNOTE 2, SUPRA.) OUR DECISION MERELY EXPLAINED TO GSA THAT ALTHOUGH IT ADMINISTRATED THE GSF, IT WAS NOT EXEMPT FROM THAT REQUIREMENT. (A COPY OF THE 1985 DECISION IS ENCLOSED FOR YOUR CONVENIENCE.)

IT IS TRUE THAT THE PROVISIONS OF THE ACT DO NOT APPLY DIRECTLY TO THE SENATE AND HOUSE OF REPRESENTATIVES, WHICH ARE NOT CONSIDERED TO BE "FEDERAL AGENCIES" FOR THIS PURPOSE. 40 U.S.C. SEC. 474. NEVERTHELESS, SECTION 602(E) OF THE 1949 ACT, 40 U.S.C. SEC. 474, AUTHORIZES THE ADMINISTRATOR OF GENERAL SERVICES TO

MAKE AVAILABLE, AS FAR AS PRACTICABLE, TO THE SENATE, THE HOUSE OF REPRESENTATIVES, OR THE ARCHITECT OF THE CAPITOL UPON REQUEST, ANY OF THE SERVICES AND FACILITIES AUTHORIZED TO BE RENDERED OR FURNISHED TO EXECUTIVE AGENCIES UNDER THE 1949 ACT. ALSO PROVIDES THAT IF PAYMENT WOULD BE REQUIRED FOR FURNISHING SIMILAR SERVICES OR PROPERTY TO AN EXECUTIVE AGENCY, THE SENATE, THE HOUSE OF REPRESENTATIVES OR THE ARCHITECT OF THE CAPITOL MUST PAY FOR PROPERTY OR SERVICES FURNISHED ON THE SAME BASIS AND ON THE SAME TERMS. THUS AS LONG AS THE HOUSE CHOOSES TO ACQUIRE PROPERTY THROUGH THE GSA FUND, IT MUST ADHERE TO THE AFOREMENTIONED REQUIREMENT THAT IT REIMBURSE THE FUND IN FULL FOR THE COSTS OF THE PROPERTY ACQUIRED OR SERVICES RENDERED WITHIN 45 DAYS OF ITS RECEIPT OF A VOUCHER FROM THE GSA.

AGAIN, NOTE THAT THE HOUSE IS ENTITLED TO THE SAME LEEWAY WE OFFERED TO GSA FOR ITS OWN PURCHASES. (ALL OTHER FEDERAL AGENCIES HAVE BEEN ADHERING TO THE PROMPT REIMBURSEMENT REQUIREMENTS OF THE ACT SINCE THEY WERE ENACTED IN 1950). THEREFORE, THE HOUSE CAN CONTINUE TO PAY INCREMENTALLY FOR MEMBERS' DISTRICT OFFICE FURNISHING ACQUIRED PRIOR TO FISCAL YEAR 1987.

QUESTION 3. "GSA HAS ADVISED THE HOUSE THAT WE HAVE APPROXIMATELY $7 MILLION IN EQUIPMENT AND FURNITURE ON OUR INVENTORY FOR WHICH DEPRECIATION COSTS-- I.E., USE FEES-- ARE STILL OWED TO THE GENERAL SUPPLY FUND. BECAUSE OF CURRENT BUDGET CONSTRAINTS AND SINCE TREASURY MONEY HAS ALREADY BEEN EXPENDED TO COVER THE COST OF PURCHASES PRIOR TO OCTOBER 1ST, IS IT NECESSARY TO CONTINUE TO TRANSFER HOUSE FUNDS TO GSA? IF YES, CAN THE HOUSE PAY FOR THESE ITEMS WITH UNUSED HOUSE FUNDS FROM PRIOR YEARS' APPROPRIATIONS?"

ANSWER. IF THE QUESTION REFERS TO ACQUISITIONS MADE FOR THE HOUSE PRIOR TO FISCAL YEAR 1987, THE HOUSE NEED NOT PAY THE ENTIRE $7 MILLION BALANCE DUE TO GSA ALL IN 1 YEAR. AS EXPLAINED ABOVE, IT CAN CONTINUE TO PAY INCREMENTALLY FOR THE REMAINING LIFE OF THE FURNISHINGS THROUGH "USE FEES." SHOULD THE HOUSE ELECT TO PAY OFF THE $7 MILLION BALANCE IMMEDIATELY, AS GSA ADVISES, THE PAYMENT WOULD HAVE TO COME FROM CURRENT YEAR FUNDS. UNLIKE NON-CONGRESSIONAL FEDERAL AGENCIES WHICH, UNDER CERTAIN CIRCUMSTANCES, ARE PERMITTED TO RESTORE UNOBLIGATED BALANCES FROM PRIOR FISCAL YEAR APPROPRIATIONS IN ORDER TO SUPPORT UNRECORDED OR UNDERRECORDED OBLIGATIONS PROPERLY INCURRED DURING THE PRIOR FISCAL YEARS, 31 U.S.C. SEC. 1551-57, THIS AUTHORITY DOES NOT EXTEND TO APPROPRIATIONS DISBURSED BY THE CLERK OF THE HOUSE OF REPRESENTATIVES, 31 U.S.C. SEC. 1551(B)(2). FURTHERMORE, 2 U.S.C. SEC. 102A, DEALING WITH WITHDRAWN UNEXPENDED BALANCES OF APPROPRIATIONS DISBURSED BY THE CLERK OF THE HOUSE, APPEARS TO PROVIDE THAT ANY UNEXPENDED APPROPRIATION BALANCES MORE THAN 2 FULL FISCAL YEARS OLD MUST BE WITHDRAWN AND ARE NO LONGER AVAILABLE FOR EXPENDITURE. ANY UNPAID OBLIGATIONS CHARGEABLE TO THE WITHDRAWN BALANCES MUST THEREAFTER BE LIQUIDATED FROM APPROPRIATIONS CURRENTLY AVAILABLE FOR THE SAME PURPOSE. IN OTHER WORDS, THE HOUSE CANNOT TAP APPROPRIATIONS MORE THAN 2 YEARS OLD TO PAY OFF ITS OBLIGATION TO GSA.

WITH RESPECT TO NEW ACQUISITIONS FROM THE GSF AFTER FISCAL YEAR 1987 BEGINS, PRIOR YEAR APPROPRIATIONS WOULD NOT IN ANY CASE BE AVAILABLE SINCE PAYMENT WOULD BE DUE WITHIN 45 DAYS OF RECEIPT OF GSA'S VOUCHER AND THE ENTIRE COST WOULD BE CHARGEABLE TO CURRENT FUNDS.

/1/ B-213771, JULY 10, 1984 AND B-213771.2, APRIL 1, 1985.

/2/ UNDER SECTION 109(B) OF THE FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949, AS AMENDED, 40 U.S.C. SEC. 756(B), THERE IS A 45 DAY "PROMPT

REIMBURSEMENT" REQUIREMENT APPLICABLE TO ALL FEDERAL AGENCIES WHO ACQUIRE PERSONAL PROPERTY AND NON-PERSONAL SERVICES THROUGH THE GSF.