



Office of the General Counsel

B-217402.2

July 15, 1988

The Honorable Frank Annunzio
Chairman, Committee on House Administration
House of Representatives

Dear Mr. Chairman:

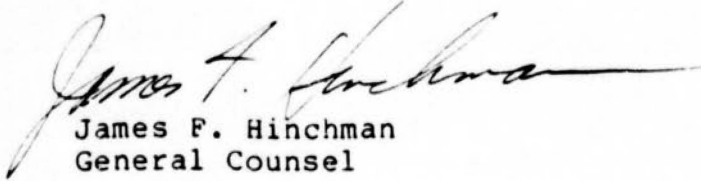
By your letter of May 17, 1988, you inquired about our opinion for the Government Printing Office (GPO) in B-217402, June 10, 1985, concerning 5 U.S.C. § 5514 (1982), as amended by section 5 of the Debt Collection Act of 1982 (DCA), Pub. L. No. 97-365, 96 Stat. 1749, 1751-52, and the use of salary offset against legislative branch employees.

The Office of Management and Budget (OMB) stated in a letter to the Speaker of the House that congressional employees are subject to the DCA and, apparently, to Office of Personnel Management (OPM) regulations, which implement 5 U.S.C. § 5514. OMB further suggested that our Office be asked for an opinion on the applicability of the Debt Collection Act to congressional employees. Your Counsel has concluded that OPM's regulations purporting to govern the judicial and legislative branches are ultra vires and unconstitutional. You asked us to reexamine our position.

As discussed in the enclosure to this letter, upon reconsideration we conclude that our previous opinion was correct in its interpretation of section 5514 as applying to GPO. Based on the original language of the Act, it is clear that section 5514 applies to "agencies," "departments," and "independent establishments" within the federal government like GPO. The House and Senate, however, are not covered by section 5514. At the same time, other sections of the Debt Collection Act, not implemented by OPM, apply to the House and Senate. Thus, while neither section 5514 nor the OPM regulations which implement it apply to these bodies, there is a mechanism for debt collection not subject to executive branch regulation.

We appreciate the opportunity to clarify our views on this matter. As agreed with your staff, this letter will be available to the public 5 days after its delivery to you.

Sincerely yours,



James F. Hinchman
James F. Hinchman
General Counsel

Enclosure

By letter of May 17, 1988, the Chairman of the House Committee on Administration asked us to reconsider our opinion for the Government Printing Office (GPO) in B-217402, June 10, 1985. That opinion concerned the applicability of 5 U.S.C. § 5514, as amended by section 5 of the Debt Collection Act of 1982 (DCA), Pub. L. No. 97-365, 96 Stat. 1749, 1751-52, to the collection by salary offset of debts owed to the United States by employees of legislative branch agencies. Based on conversations with a member of the Committee's staff, we understand that the Offices of Management and Budget (OMB), and Personnel Management (OPM) have cited that decision for the proposition that the House of Representatives and Senate are subject to executive branch supervision (in the form of regulations issued by OPM, 5 C.F.R. pt. 550, subpt. K (1988)) when debts are collected by salary offset. The Chairman wishes to know whether we still support our previous opinion, and whether we agree with OMB's and OPM's interpretation of it. Upon reconsideration, we conclude that while we do not agree with OMB and OPM on this point, our previous opinion is in need of clarification.

SALARY OFFSET UNDER 5 U.S.C. § 5514

As noted in our previous opinion, section 5514 authorizes the "heads of agencies" to use salary offset to collect debts owed to the United States by its employees and military members. 5 U.S.C. § 5514(a)(1). That act is primarily implemented in the OPM regulations cited above. Each "agency" which is subject to the provisions of section 5514 is required to issue its own regulations which follow the OPM regulations. See 5 U.S.C. § 5514(b)(1). GPO's question arose because, at the time of our previous opinion, OPM's regulations defined the term "agency" to include only executive branch agencies, the U.S. Postal Service and Rate Commission, and the military departments. See 49 Fed. Reg. 27470, 27473 (1984) (§ 550.1103). GPO, in seeking our guidance, suggested that there was nothing in the language or history of section 5514 that would indicate that the Congress intended to restrict application of that section to the entities listed by OPM.

We advised GPO that section 5514 has used the term "agency" since 1966, when title 5 of the U.S. Code was recodified. See Pub. L. No. 89-554, 80 Stat. 378, 477-78 (1966). The 1966 recodification substituted the phrase "head of the agency" for the phrase "Secretary of the department . . . , or the head of the agency or independent establishment." S. Rep. No. 1380, 89th Cong., 2d Sess. 107 (1966). Compare Pub. L. No. 83-497, ch. 509, 68 Stat. 482 (1954) (the original enactment of section 5514). No substantive change was intended by the 1966 change in terminology, as we pointed out in our previous opinion. S. Rep. No. 1380, supra, at 20-21. We also pointed out that we were not aware of anything in the language or history of the 1982 amendments to section 5514 that would indicate congressional intent to narrow the scope of the original statute. In this regard, our previous opinion referred to our decision in 34 Comp. Gen. 170, 173 (1954) which noted that section 5514 was not restricted to the executive branch. Finally, we advised GPO that we understood OPM had decided to broaden the scope of its regulations to include "legislative and judicial branch agencies, as well as executive branch agencies." B-217402, supra, at 2.

We continue to read section 5514 as applying to "departments," "agencies," and "independent establishments" of the federal government, without regard to which branch they may be in.^{1/} Putting this another way, we think that unless the institution at issue is properly classifiable as a "department," "agency," or "independent establishment," section 5514 does not apply to it. Pub. L. No. 83-497, supra. Clearly, the House of Representatives is not so classifiable, and accordingly, its employees are not subject to salary offset under section 5514. From this, it follows that OPM's regulations do not apply to the House or Senate.

SALARY OFFSET UNDER 31 U.S.C. § 3716

The foregoing conclusion does not mean that the House and Senate lack the power to use salary offset to collect debts owed to the United States by their employees. Under section 10 of the DCA, 96 Stat. at 1754-55, as codified at 31 U.S.C. § 3716 (1982), "the head of an executive or legislative

^{1/} Compare Letter of Feb. 1, 1954, from the Comptroller General to the Chairman, Senate Committee on Post Office and Civil Service, reprinted in S. Rep. No. 937, 83rd Cong., 2d Sess. 4-5 (1954). (In commenting upon the bill, which became section 5514, GAO advised the Congress that the bill "would extend the provisions of existing legislation to reach employees of the legislative and judicial branches of the Government.").

agency" may take "administrative offset" against nearly any payment owed by the United States in order to recover nearly any kind of debt owed to the United States. Section 3716 is a broader statute than section 5514. 64 Comp. Gen. 142 (1984). Although sections 5514 and 3716 are both part of the DCA, and both sections apply to actions taken by "heads of agencies," section 3716 was enacted as an amendment to the Federal Claims Collection Act of 1966 (FCCA), Pub. L. No. 89-508, 80 Stat. 308. The FCCA defines the term "agency" to mean "any department, office, commission, board, Government corporation, instrumentality, or other establishment or body in either the executive or legislative branch of the Federal Government." FCCA, § 2(a), 80 Stat. at 308 (emphasis added). Thus, the House and Senate, while not "agencies" for the purposes of 5 U.S.C. § 5514, are "agencies" for the purposes of the FCCA and 31 U.S.C. § 3716.

In view of the FCCA's broader definition of "agency" and the broad offset authority conferred by section 3716, we think that there can be no doubt that the House and Senate retain the power to take salary offset against their employees under section 3716 and the Federal Claims Collection Standards (FCCS), the government-wide regulations jointly issued by GAO and the Justice Department which implement section 3716 and the rest of the FCCA. See 4 C.F.R. ch. II (1988); 31 U.S.C. § 3711(e)(2) (1982). Agencies subject to section 3716 (and the rest of the FCCA) are to promulgate their own regulations on this subject, consistent with the provisions of the FCCS. 31 U.S.C. § 3711(e)(1), 3716(b); 4 C.F.R. 101.1, 102.3(a). Cf. 64 Comp. Gen. 816 (1985).

CONCLUSIONS

The House of Representatives and Senate are not subject to the provisions of 5 U.S.C. § 5514, or the OPM regulations which implement it. However, the House and Senate do have the power to take salary offset to recover debts owed to the United States pursuant to 31 U.S.C. § 3716 and the joint GAO-Justice Department regulations which implement it.