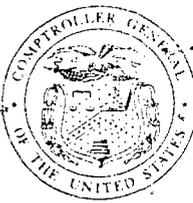


DECISION

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THE COMPTROLLER GENERAL
OF THE UNITED STATES

WASHINGTON, D. C. 20548

FILE: B-198242

DATE: April 24, 1980

SEN00300

MATTER OF: Contracts for maintenance of office plants

DIGEST: [Extent of prohibition against using appropriated funds] for plant care and watering contracts with private firms, contained in fiscal year 1980 HUD Appropriation Act, is uncertain. However, violation of provision clearly occurs when appropriated funds are used for private maintenance contracts for office plants located in areas which are assigned work spaces of particular Federal employee or employees.

This decision interprets section 409 of the Department of Housing and Urban Development--Independent Agencies Appropriation Act, 1980, Pub. L. No. 96-103, 93 Stat. 771, 788 (HUD Appropriation Act). This provision prohibits the use of appropriated funds for plant maintenance contracts. For the reasons indicated below, we conclude that this section is violated when appropriated funds are used for contracts to maintain plants located in offices to which particular Federal employees are assigned. On the other hand, without further clarification from the Congress, we are unable to conclude that the section is violated if the plants are located in publicly or commonly used areas which are not the work spaces of any particular employees.

Section 409 of the HUD Appropriation Act provides:

"No part of any appropriation for the fiscal year ending September 30, 1980, contained in this or any other Act shall be used to contract with private firms to provide plant care or watering services."

If read literally, this section would prohibit the use of any appropriated money for any contract for maintenance of plants, wherever located. For example, it would prohibit contracting for landscaping services outside of Federal office buildings, contracting for tree and shrubbery care in national cemeteries, and contracting by municipalities for maintenance of their parks if Federal revenue sharing funds were used, as well as contracting for watering office plants within Federal buildings.

However, after examining the legislative history of this provision, we believe that the Congress did not intend such a broad application of the prohibition. The provision was introduced as a floor amendment to the HUD Appropriation Act by Senator Sasser. In explaining the need for this

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provision, Senator Sasser stated his belief that the Government should not be spending its money to care for "office" plants for Federal employees. For example, he stated:

"Mr. PRESIDENT, in the final analysis, the question comes down to 'Should the taxpayers pay for office plants for Federal employees.'

"Consequently, Mr. PRESIDENT, I am offering an amendment that would prohibit Federal agencies from using appropriated funds to contract with private firms to provide plant care and watering services." (125 Cong. Rec. S10725 (daily ed. July 27, 1979).)

Senator Sasser was then asked by Senator Proxmire whether the proposed amendment would apply to activities in city parks and similar activities. Senator Sasser replied:

"No; this would be activities which are conducted in the offices of various agencies wherein they contract with a private plant service to come by and water their plants. (Id. at S10726)

Although the Senate adopted this amendment, while the bill was in conference, Senator Proxmire again expressed concern about the coverage of the amendment. The staff of the Senate Appropriations Committee informally asked this Office for its interpretation of the amendment. In a letter to the committee staff dated August 10, 1979, Richard Brown, GAO's Director, General Services and Controller, stated:

"* * * Based upon the legislative history involved, we have concluded that it is the clear intent of the sponsor that no part of any appropriation for fiscal year 1980 should be used to contract with private firms to provide plant care or watering services in interior offices housing federal employees."

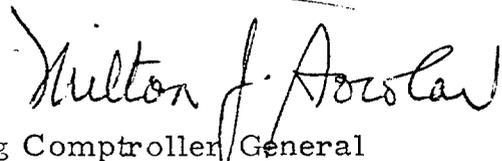
At the request of Senator Proxmire, this letter was printed in the Congressional Record to aid the Senate in its consideration of the conference report on the HUD Appropriation Act. In explaining the amendment at that time, Senator Proxmire stated that the prohibition was "clearly meant to apply to plants in interior offices * * *."

Based on this history, we believe that the Congress intended that the prohibition only apply to plant maintenance contracts inside Federal offices. In our opinion, maintenance contracts for outdoor plants were not intended to be covered.

Moreover, we are not certain that the Congress intended the prohibition to apply to all plants located inside Federal buildings or in rented space controlled and occupied by the Federal Government.

For example, in introducing the amendment, Senator Sasser stated that he didn't think Tennessee taxpayers would want to pay for indoor office plants "for Federal employees." Further, the GAO letter printed in the Congressional Record interpreted the prohibition as extending to plants in interior offices "housing Federal employees." Finally, Senator Proxmire explained that the prohibition applied to plants in interior offices "which I think we can agree should be cared for by the occupants of those offices rather than a private contractor." From these statements, it would appear that the Congress intended that the prohibition only apply to office space to which particular Federal employees are actually assigned. In such space, it appears that the Congress intends that the occupant should care for the plants.

Therefore, we conclude that the prohibition is violated when fiscal year 1980 appropriated funds are used for private contracts to care for or water plants located in areas where an individual or group of Federal employees are assigned to work. We would be forced to take exception to any expenditures for these contracts. On the other hand, it is not clear that the Congress intended the prohibition to apply where the plants maintained are in publicly or commonly used areas which are not the assigned work space of any particular employee or employees. In the absence of further clarification by the Congress, we cannot conclude that these contracts violate the act. Therefore, we will not object to expenditures for plant maintenance in such public or common areas.



Acting Comptroller General
of the United States