

DECISION



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

FILE: B-209345

DATE: November 9, 1982

MATTER OF: Northern Courier Service, Inc.

DIGEST:

GAO will not decide protest against contract award by Federal Reserve Bank, despite GAO audit authority, because GAO account settlement authority (the basis of GAO bid protest jurisdiction) does not extend to Federal Reserve System banks.

Northern Courier Service, Inc., protests the award of a contract by the Federal Reserve Bank of Minneapolis.

Our bid protest jurisdiction is based on our authority to adjust and settle accounts and to certify balances in the accounts of accountable officers under Pub. L. No. 97-258, § 3526, 96 Stat. 964 (1982) (to be codified at 31 U.S.C. § 3526; formerly 31 U.S.C. §§ 71, 72 and 74 (1976)). This section, derived from the Dockery Act of 1894, sets forth the limits of our account settlement authority. We are authorized to settle the "public accounts" of Government agencies, departments, or independent establishments, as these terms are further defined by law, but the definitions explicitly exclude Government corporations or agencies subject to the Government Corporation Control Act. Pub. L. No. 97-258, § 3501, 96 Stat. 959 (1982) (to be codified at 31 U.S.C. § 3501; formerly 31 U.S.C. § 65a (1976)). In other words, unless a later enactment specifically subjects an entity not covered under the Dockery Act to our settlement authority, we do not have such authority.

The member banks of the Federal Reserve System clearly do not fit under the above-mentioned authorities. Section 9 of the Federal Reserve Act, 12 U.S.C. § 330 (1976), states:

* * * Subject to the provisions of this chapter and to the regulations of the [Federal

Reserve] board made pursuant thereto, any bank becoming a member of the Federal reserve system shall retain its full charter and statutory rights as a State bank or trust company, and may continue to exercise all corporate powers granted it by the State in which it was created * * **

As a State-chartered corporation, therefore, a Federal Reserve bank is entitled, like any other corporation, to sue and be sued, to conduct its ordinary house-keeping affairs as it sees fit and to make business decisions involving the expenditure of its own funds which are not subject to further review.

The protester cites, as grounds for the assumption of jurisdiction by GAO, a 1978 amendment to the Federal Banking Agency Audit Act, Pub. L. No. 97-258, § 714, 96 Stat. 890 (1982) (to be codified at 31 U.S.C. § 714; formerly 31 U.S.C. § 67(e)(1)(b) (Supp. III 1979)). Under that amendment, the Comptroller General is now required to audit the transactions of the "Federal Reserve Board, all Federal Reserve banks, and their branches and facilities." Paragraph (2) of that subsection provides that Federal Reserve banks, among others, are considered to be agencies "for purposes of this subsection." (Emphasis added.)

But audit authority is quite different from settlement authority, particularly with respect to the consequences of a finding that a financial transaction was improper. With account settlement authority, the Comptroller General can take exception to an improper transaction and hold the certifying officer or relevant official personally liable for the amount of money improperly expended. Moreover, his decisions on the expenditures of appropriated funds are binding on the executive branch. Under the new audit authority conferred by the 1978 amendment to the Federal Banking Agency Audit Act, the Comptroller General is required to report his findings to the Congress, but is not given the power to take exception to the accounts of the entities he audits.

In view of the above, we conclude that our account settlement authority does not extend to Federal Reserve System banks and, therefore, we have no authority to

decide a protest against a contract award by such banks.
See Gamco Industries, B-198145, March 28, 1980, 80-1
CPD 235.

The protest is dismissed.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel