

**DECISION**



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

**FILE:** B-213771

**DATE:** July 10, 1984

**MATTER OF:** General Services Administration's incremental Reimbursement of General Supply Fund for Operating Equipment Purchases

**DIGEST:**

1. General Services Administration (GSA) when using the General Supply Fund (GSF) to procure GSF operating equipment but whose cost will ultimately be charged to annual appropriation available for paying GSF operating expenses is bound by same prompt reimbursement requirement applicable to other requisitioning agencies under section 109(b) of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. § 756(b) (1982), since it possesses no legal authority on which it can base its claim for exemption from application of this provision and the Congress has not by acquiescence approved GSA's action.

2. Lump-sum appropriation by the Congress to General Services Administration (GSA) for operation and maintenance without objection to GSA explanation of its proposed method of spending line item in its budget request does not constitute Congressional sanction of spending action in contravention of legal requirement that the General Supply Fund (GSF) be promptly reimbursed the full purchase price of items requisitioned through the GSF. Appropriation of lump-sum appropriation does not constitute either ratification of GSA's action or implied repealer of prompt reimbursement requirement.

This decision is in response to separate inquiries from Joseph A. Sickon, Inspector General of the General Services Administration (GSA) and Allie Latimer, General Counsel of GSA, asking the same basic question:

"Whether the Federal Supply Service (FSS) within GSA, in the year of purchase, may charge the General Supply Fund (GSF) for the entire cost of operating equipment (i.e., equipment necessary to fulfill the mission of the FSS), and reimburse the GSF over the useful life of such equipment by crediting the GSF during each

such year with that portion of FSS' annual appropriation equal to the yearly amortization?"

For the reasons stated below, we find that the FSS may not amortize its operating equipment costs in the manner described.

#### Background

The FSS purchases through the GSF and makes available to Federal agencies a broad line of products and services required in the day-to-day operations of the Government. A national supply system of wholesale distribution facilities is managed and operated through which commercial-type commodities are received, stored, and issued to Federal agencies. Supplies are shipped by the wholesale operation to customer agencies from GSA supply distribution facilities located in each of the 11 GSA regions and the fuel yard located in Washington, D.C.

Administrative, office, and maintenance supplies, as well as standard forms, are provided to Federal agencies through self-service retail facilities located wherever there is a concentration of Federal activities. The retail facilities also manage and operate programs for processing and control of agency requisitions.

The question presented here arose in connection with the Inspector General's audit of the procurement portion of the FSS-28 System Development Project whereby GSA acquired ADP equipment and related software for use in conducting its self-service supply store activities. The equipment consists of a central processing unit located in Washington D.C. and Point of Sale (POS) terminals located in each store (electronic cash registers) providing access to the central unit. The POS terminals are equipped with Optical Character Recognition wand readers for reading information on merchandise labels when recording sales transactions. The system is intended to permit the storing and generation of sales information (items purchased, purchase price, purchasing agency, deliveries, receipts, etc.) for accounting and inventory control purposes. The entire system is intended solely for use by FSS in its supply stores system operations.

With the exception of certain items of cost which the law authorizes GSA to recover from agencies through reimbursements, the Congress, since 1951, has made annual appropriations to GSA to cover all costs incurred in administering and operating the GSF. GSA proposes to charge the entire purchase price of the ADP and related software acquisition to the GSF and then reimburse the GSF over the useful life of the equipment through incremental charges against the annual appropriations made available to GSA for operation of the GSF. Thus, in each year,

the annual operating expense appropriation would be charged with only a portion of the total purchase price of the equipment.

#### Dispute Within GSA

The Inspector General of GSA is of the opinion that this procedure violates the statutory requirement that requisitioning agencies promptly reimburse the GSF for purchases made on their behalf.<sup>1/</sup> The General Counsel for GSA on the other hand has submitted the opinion of her Assistant General Counsel, General Law Division, which concludes that the incremented payment procedure described above is authorized so long as--

- (1) the Administrator of General Services has determined that amortized reimbursement is in the best interest of the Government and the "promptness" of the payment under the proposed billing cycle is satisfactory;
- (2) the financial condition of the GSF is "healthy"; and,
- (3) the Congress was informed during the budget cycle that a specific amount of its direct appropriations will be used "for amortization of operating equipment payable to the General Supply Fund."

#### The General Supply Fund

The GSF was established in 1929, to fund the centralized procurement and redistribution of supplies by the Treasury Department on behalf of the Government.<sup>2/</sup> This function was transferred to the GSA by section 109(a) of the Federal Property and Administrative Services Act of 1949 (1949 Act)<sup>3/</sup> and the authority was expanded to include the procurement of nonpersonal services.

Since its establishment, the Congress from time-to-time has made appropriations directly to the GSF to provide it with obligation authority sufficient to permit it to finance procurements and maintain inventories. In addition, until 1949, the

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<sup>1/</sup> 40 U.S.C. § 756(b) (1982).

<sup>2/</sup> Act of February 27, 1929, ch. 354, secs. 1-4, 45 Stat. 1341, 41 U.S.C. §§ 7a-7d (1946).

<sup>3/</sup> Act of June 30, 1949, ch. 288, 63 Stat. 380, 40 U.S.C. § 752(a) (1982).

Treasury recovered its costs of operating the supply system by reimbursements from agencies acquiring supplies from the system.<sup>4/</sup> Treasury accomplished this by charging customers the price Treasury paid for the items furnished and adding thereto a surcharge intended to recover on a pro rata basis all the other costs incurred by Treasury in operating the centralized procurement and redistribution system. Treasury excluded from its computation of the surcharge the costs of its highest level agency personnel since they were engaged in agency-wide management activities and not just centralized property procurement and redistribution activities. These excluded costs were paid from annual "Salary and Expenses" appropriations.<sup>5/</sup>

However, review of the Treasury's and other agencies' centralized supply operations caused the Hoover Commission to conclude:

"At the present time the Bureau of Federal Supply is required to levy a surcharge of 12 percent of the purchase price on commodities which agencies purchase through the Bureau. A similar practice exists in many of the departments which have central supply organizations handling purchasing on a department-wide basis. This practice has discouraged use of economical centralized facilities and fostered the growth of costly supply units throughout the Government. As long as the practice of levying surcharges exists, agency officials will persist in the impression that they are able to purchase

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<sup>4/</sup> Section 2 of the Act of February 27, 1929, ch. 354, 45 Stat. 1342, 41 U.S.C. § 7b (1946).

<sup>5/</sup> See Hearings before the Subcommittee of the House Committee on Appropriations on the Treasury Department Appropriation Bill for 1949, Part 1, 80th Cong., 2d Sess., pp. 326, 376, 401 and 408 (1948).

Since the surcharge was based only on estimated costs, variations would result in the amount Treasury recovered. Thus, the law provided for an annual audit of the GSF by GAO and any identified surplus of reimbursements above cost were transferred and covered into miscellaneous receipts of the Treasury. Act of February 27, 1929, ch. 354, sec. 3, 45 Stat. 1342, 41 U.S.C. § 7c (1946).

more economically than the central organizations, since they do not take into account the overhead and operating costs of their own purchasing organizations."

The Commission recommended that the Congress:

"Eliminate the present surcharge levied on the price of commodities purchased through central supply organizations for the Government as a whole and the departments and pay the administrative costs of such organizations through direct appropriations."<sup>6/</sup>

As a result of these and other identified shortcomings in the GSF operations, Congress reconstituted the GSF and transferred responsibility for the operation of the centralized procurement and redistribution of property to the then newly created GSA<sup>7/</sup> In reconstituting the GSF, the Congress sought to limit the costs incurred by GSA in administering and operating the central supply and redistribution system which could (1) be paid from the GSF and (2) recovered by way of reimbursement from other agencies. Thus, it precluded the GSF from paying and recovering indirect or overhead costs, beginning on July 1, 1950.<sup>8/</sup> From that date, indirect and overhead costs were to be paid from annual appropriations made available to GSA. However, GSA still was permitted to pay from the GSF, and to recover from agencies, many elements of its operating or administrative costs by means of a surcharge, thereby falling

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<sup>6/</sup> Recommendation No. 14 relating to supply activities made by the Commission on Organizations of the Executive Branch of the Government in its report to the Congress entitled "Organization and Management of Federal Supply Activities" p. 49 (GPO, 1949). See also the accompanying Appendix B, task force Report entitled "The Federal Supply System" pp. 57-60 and 66-67 detailing the problem.

<sup>7/</sup> Sections 102(a) and 107 of the 1949 Act, 40 U.S.C. §§ 752(a) and 755 (1982).

<sup>8/</sup> Section 109 of the 1949 Act, 63 Stat. 382-383, 41 U.S.C. § 219 (Supp. III 1949). See also S. Rep. No. 475, 81st Cong., 1st Sess., 11-12 (1949) and H.R. Rep. No. 935, 81st Cong., 1st Sess. 33 (1949) accompanying the 1949 Act.

short of the goal of the Hoover Commission recommendation. Shortly thereafter, however, the Congress amended section 109(a) and (b) of the 1949 Act to enumerate specifically the elements of cost which could be charged to the GSF and recovered from the agencies. <sup>9/</sup>

These included:

- (a) procuring personal property and non-personal services for the use of Federal agencies in the proper discharge of their responsibilities;
- (b) paying the purchase price of supplies or services;
- (c) paying the transportation cost to the first storage point of supplies; and,
- (d) paying the cost of personal services employed directly in the repair, rehabilitation, and conversion of personal property;
- (e) inventory losses

All other elements of cost were required to be paid from GSA's annual appropriations.

Concomitant with the Congress' elimination of the surcharge to fund GSA's direct and indirect costs of operating and administering the GSF operations, the Congress amended the law to require prompt reimbursements of the GSF by requisitioning agencies. This was necessary in order to reduce the capital requirements of the GSF to only the minimum necessary to permit successful operations. The longer an agency took to reimburse the GSF for acquisitions on its behalf, the longer GSF capital

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<sup>9/</sup> Section 109(a) and (b), as amended by the act of September 5, 1950, ch. 849, §§ 1 and 2, 64 Stat. 578-579, 41 U.S.C. § 219(a) and (b) (Supp. IV 1950). See also H.R. Rep. No. 2747, 81st Cong., 2d Sess., p.3 (1950), and Hearings Before the Executive and Legislative Reorganization Subcommittee of the House Committee on Expenditures in the Executive Departments, 81st Cong., 2d Sess., on inter alia, H.R. 9129, the source of the 1950 amendment to section 109 of the 1949 Act, pp. 44-47 (1950).

was tied up in financing that agency's procurement. The capital would be unavailable to procure for other agencies or to acquire and stock inventory.<sup>10/</sup>

Thus, section 109(b) of the 1949 Act required payment either by advances when the fund's available capital was deemed inadequate by the Administrator or by prompt reimbursement of the cost of supplies or services delivered within 45 days of billing. If payment was not made within this time, procedures were established for automatically charging the ordering agency's account.<sup>11/</sup>

At the time it eliminated the authority of GSA to recover any elements of its administrative or operating costs by means of reimbursements from agencies (except for those specified in the law), the Congress also amended section 109(b) to require reimbursement within either 45 days of billing or 45 days of actual liability for supplies or services is incurred by the Administrator, whichever is later.<sup>12/</sup> This assured that GSA could not require reimbursement until it had actually incurred liability and therefore, had a demonstrated need for the funds.<sup>13/</sup>

#### Analysis

We concur in the view of GSA's General Counsel that, as a general proposition, the GSF is available to "procure personal property \* \* \* and nonpersonal services for use of Federal agencies" and that since GSA is a "Federal agency" for the

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<sup>10/</sup> See Hearing before the Subcommittee of the House Committee on Appropriations on the Treasury Department Appropriation Bill for 1949, Part 1, 80 Cong., 2d Sess., pp. 72-374, 402-404 (1948).

<sup>11/</sup> 41 U.S.C. § 219(b) (Supp. III, 1949).

<sup>12/</sup> 41 U.S.C. § 219(b) (Supp. IV, 1950).

<sup>13/</sup> See testimony of Maxwell Elliot, General Counsel, GSA during Hearings before the Executive and Legislative Reorganization Subcommittee of the House Committee on Expenditures in the Executive Departments on inter alia H.R. 9129, the source for this amendment, 81st Cong., 2d Sess., 54 (1950).

purposes of the 1949 Act,<sup>14/</sup> the GSF is available to procure these items in the same manner as it would be available to procure items on behalf of other Federal agencies. Furthermore, since, as the Assistant GSA General Counsel has indicated, the entire cost of this procurement will be borne by GSA's appropriations received for operating and administering the GSF, none of the costs will be passed on to other agencies in contravention of the purpose the Congress sought to achieve in eliminating the surcharge. However, we do not concur in the view that GSA does not have to reimburse the GSF within either 45 days of billing or 45 days of the GSA incurrence by the GSF of liability for personal property procured.

The Assistant General Counsel urges that although operating equipment was originally purchased through the GSF and the cost recovered as depreciation allocated over the useful life of the equipment and included in the annual operating expenses recovered through a surcharge on requisitioning agencies, the Congress' elimination of the surcharge did not serve to eliminate the authority of GSA to amortize these costs. It merely shifted the burden of bearing these costs from the requisitioning agency's appropriations to GSA's appropriations. We disagree.

We note that prior to 1949 when this law permitted all costs of Treasury's operation of the GSF (with the exception of top officials' salaries) to be financed by agency reimbursements to the GSF by means of a surcharge added to the cost of goods provided, there was a practical reason for allocating the cost of operating equipment among all customers over the useful life of the equipment. This was a fair and simple way to assure that no one customer agency appropriation bore a disproportionate

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<sup>14/</sup> Section 3(a) and (b) of the 1949 Act, as amended, 40 U.S.C. § 472(a) and (b) (1982), provides that for purposes of the 1949 Act:

"(a) The term 'executive agency' means any executive department or independent establishment in the executive branch of the Government, including any wholly owned Government corporation.

"(b) The term 'Federal agency' means any executive agency or any establishment in the legislative or judicial branch of the Government (except the Senate, the House of Representatives, and the Architect of the Capitol and any activities under his direction)."

share of equipment costs. Thus, cost allocation in this manner was inherent in the surcharge method of financing operations and authorized by the law then in effect.

However, eliminating the surcharge method of financing these costs also eliminated the possibility of one customer agency unfairly bearing a disproportionate share of the costs. In fact, the whole purpose of the change in funding was to make one agency (GSA) responsible for all the costs and to have GSA annually held accountable for these costs by way of the appropriation process. Thus, the only practical reason for recovering the purchase price of the equipment over its useful life disappeared.

Furthermore, absent some indication by the Congress to the contrary, we cannot assume that it expected that GSA would be exempt from appropriation rules generally applicable to other Federal agencies in making procurements with annual appropriations. Even in the absence of the "prompt reimbursement" requirement of section 109(b), the total cost of any fixed price contract for the procurement of equipment or supplies must be charged to the appropriation current when the contract is made in the absence of some provision of law to the contrary. The substitution of the resources of the GSF does not meet this requirement unless GSA's operating appropriation can be simultaneously obligated for purposes of making full reimbursement for the equipment procured through the GSF.

Next, we point out that the impact of delayed reimbursement upon the capital requirements of the GSF is the same regardless of which agency purchases through the GSF. The longer capital is tied up in financing a particular procurement, the longer it is unavailable to finance other procurements. This inadequacy of capital has in the past resulted in GSA seeking additional appropriations to the GSF to improve its cash flow situation.<sup>15/</sup>

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<sup>15/</sup> A few years ago, the Congress appropriated \$150 million to the GSF to remedy cash-flow problems which posed possible anti-deficiency problems. Supplemental Appropriations and Recissions Act, 1981, Pub. L. No. 97-12, June 5, 1981, 95 Stat. 75.

We have been advised by officials of GSA that for fiscal year 1983, reimbursements representing amortized costs amounted to about \$3.6 million. At that time GSA had \$76 million in purchases through the GSF of which it had repaid \$49 million to the GSF, leaving an outstanding balance of \$27 million.

Finally, the General Counsel urges that GSA has kept the Congress "fully informed" of this practice and that this lends support to the contention that it is authorized under the 1949 Act as amended. GSA points to statements submitted to the Appropriations Committees of both Houses of Congress to justify its annual appropriation request, such as:

"Rents, Communications, and Utilities, \$34,209,000 - \$81,000 for rental of equipment; \$603,000 for general telephone; \$526,000 for FTS; \$107,000 for data transmission; \$1,095,000 for postage and related fees; \$70,000 for teletype and telegraph services; \$132,000 for administrative equipment payable to the General Supply Fund; \$1,243,000 for amortization of operating equipment payable to the General Supply Fund; \$1,219,000 for non-SLUC space costs; \$32,000 for related ADP equipment; and \$29,101,000 for Standard Level User Charges payable to the Federal Buildings Fund for space." Emphasis supplied.

The line item for "Rents, Communications, and Utilities" is one of the items used for supporting the overall appropriation request for "Operating Expenses" FSS.

Since the Congress thereafter made appropriations to GSA for operating expenses without objecting to its explanation of its proposed method of spending the line item request in question, GSA apparently is of the opinion that this constitutes a congressional sanctioning of its actions. Thus, it suggests that Congress tacitly authorized GSA's amortization plan or ratified it. We do not agree.

It is conceded that the Congress may ratify that which it could have authorized. Swayne & Hoyt v. United States, 300 U.S. 297, 301-302 (1937). Furthermore, this ratification may be effected through appropriation acts. Greene v. McElroy, 360 U.S. 474 (1959). Brooks v. Dewar, 313 U.S. 354, 361 (1941); Isbrandtsen-Moller Co. v. United States, 300 U.S. 297, 301-302 (1937). Generally, the action ratified is taken by the agency pursuant to at least arguable authority and the Congress has specific knowledge of the facts. Further, the appropriation of funds clearly bestows the precise authority which is claimed. Ex Parte Endo, 323 U.S. 283, n. 24 303 (1944); D. C. Federation of Civic Associations, Inc. v. F. Aires, 391 F. 2d 478, 481 (D.C. Cir., 1968); Wade v. Lewis, 561 F. Supp. 913, 944 (N.D. Ill., 1983). However, the fact that a lump-sum appropriation was made for an overall program or activity, does not serve as a

ratification of every phase of the program or activity. Ex Parte Endo; Wade v. Lewis, supra.<sup>16/</sup> This is particularly true when an implied ratification would contravene an express statutory requirement.

Thus, we cannot accept the contention that the Congress, in making lump-sum appropriations for "Operating Expenses" FSS, intended to bestow the authority on GSA to incrementally reimburse the GSF for purchase of operating equipment made on its behalf, either by ratifying GSA's previous actions or by amending or repealing the prompt reimbursement requirement vis-a-vis GSA for purchases of GSF operations equipment.

The position that the Congress has by silence acquiesced to GSA's practice of exempting itself from the prompt reimbursement requirements of section 109(b) of the 1949 Act, as amended, is inconsistent with the general approach the Congress has taken over the years in exercising its oversight responsibility in relationship to the GSF.

For example, when this Office questioned the authority of GSA to recover transportation costs beyond shipment to the first storage point, the Congress sanctioned the long established practice by specifically amending the law.<sup>17/</sup> Again, when this Office questioned the authority of GSA to recover motor vehicle costs by depreciation charges (which are specifically authorized) based upon replacement cost rather than historical cost, GSA sought and received an amendment to the law to specifically authorize this method of computing depreciation.<sup>18/</sup> Finally, when it was suggested that the use of surplus revenue of the GSF should be used to finance increases in inventory levels, rather than transferred to the Treasury and deposited to miscellaneous receipts, this was accomplished by specific legislative authorization in the form of language contained in the Supplemental Appropriation Act, 1981.<sup>19/</sup>

<sup>16/</sup> Compare TVA v. Hill, 437 U.S. 153, 189 n. 35 (1977) explaining the futility of relying upon line item requests to support contention that lump-sum appropriation served as amendment or repealer of law.

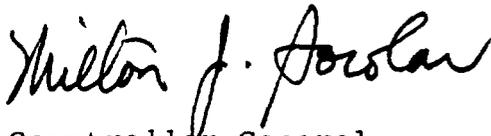
<sup>17/</sup> B-141251, April 11, 1960. Sec. 109(a) and (b) of the 1949 Act as amended by Pub. L. No. 87-600, sections (a) and (b), August 24, 1962, 76 Stat. 401, 5 U.S.C. § 630g (a) and (b) (1964).

<sup>18/</sup> See sec. 211(d) of the 1949 Act, as amended by Pub. L. No. 95-506, October 24, 1978, 92 Stat. 1756. 40 U.S.C. § 490(d) (Supp. II 1978).

<sup>19/</sup> Pub. L. No. 97-12, June 5, 1981, 95 Stat. 75, 40 U.S.C. § 7562 (1982).

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We therefore conclude that a brief reference in a budget submission describing one item of a lump-sum appropriation, although offered without objection by the applicable congressional committees, cannot serve to permit GSA (or any other agency) to depart from the clear statutory requirement to reimburse the GSF within 45 days for operating equipment initially charged to the Fund. We thus agree with the GSA Inspector General that the costs of the equipment may not be amortized but must be charged to the annual appropriation current when the equipment was purchased.

*for*   
Comptroller General  
of the United States