UNITED STATES GOVERNMENT

Memorandum

B-202979-O.M.

GENERAL ACCOUNTING OFFICE

September 28, 1981

TO : Director, FPCD - Clifford Gould

Harry R. Van Cleve

FROM : Acting General Counsel - Harry R. Van Cleve

SUBJECT: Availability of Funds for Salaries in the Department of the Interior, Office of the Solicitor - B-202979-O.M. (Code 966017)

Pursuant to requests from Representatives Schroeder and Dingell, John Anderson, Ray Bickert and Don Benedict of your staff are investigating the Reduction-in-Force (RIF) effected April 24, 1981 in the Solicitor's Office of the United States Department of the Interior. The threshold legal issue in the investigation is whether the RIF was justified on the grounds of shortage of funds.

Two questions have been presented to us in this context:

(1) Were any other funds, other than the Solicitor's Office FY 1981 appropriation, available to the Solicitor, and

(2) Should some forseeable attrition have been calculated in determining the funds available for salaries and expenses of the Solicitor's Office when making the decision to RIF because of shortage of funds.

The latter question was submitted informally.

As explained below, there were no other sources of funds within the Solicitor's control which could have been used for salaries, although some options were available to the Secretary to aid the Solicitor and some attrition related savings should have been considered in estimating available funds. We have already advised your staff that to accept personal services from employees at such time as available funds for salaries are exhausted would constitute a violation of the Anti-deficiency Act, 31 U.S.C. §665(b), B-197841, March 3, 1980 and OMB Circular A-34, § 25.1A (1976).

Current funds appropriated or otherwise available to the Solicitor's Office are the following:

Source	Item	Amount
Pub. L. No. 96-514, 94 Stat. 2970	FY 1981 Appropriation Act	$ 16,313,000
Transfer of funds 64 Stat. 1262	Legal Services Review	501,000
	Estimated Reimbursements	200,000
Public Law No. 97-12 95 Stat. 45	FY 1981 Supplemental Appropriation-Alaska Lands Act	62,000
Public Law No. 97-12 95 Stat. 87	FY 1981 Supplemental Appropriation Pay Increases	1,032,000

Question 1: No additional funds were freely available for salaries and expenses of the Solicitor's Office.

Your staff asked for a legal opinion on the possibility that the appropriation for Departmental Management under the Office of the Secretary might be available to assist the Solicitor. Strictly interpreting the law in this area, it appears that the appropriation, which is available

> "for necessary expenses of the Office of the Secretary of the Interior, including necessary expenses for certain operations that provide departmentwide services, $37,619,000, of which not to exceed $5,000 may be for official reception and representation expenses, and of which not to exceed $576,000 shall be available, on a departmentwide basis, for payment of bonuses of the Senior Executive Service as authorized by the Civil Service Reform Act of 1978"

could not be tapped by the Solicitor. This is not to say, however, that there existed no opportunity, in the legitimate exercise of administrative

discretion, to assist the financially strapped Solicitor's Office. Each source of funds available at the time of the RIF will be examined in depth to understand its potential for use by the Solicitor.

A. $16,313,000 Appropriation.

Because it enumerates a stated amount for a specific purpose, the Solicitor's Office is a line item in the appropriation. This means the $16,313,000 for salaries and expenses constitutes a discrete fund which, when exhausted, may not be supplemented by any other appropriated funds. 10 Comp. Gen. 440 (1931). The mere connection of a number and a stated purpose means that expenditures for that purpose may not exceed the stated amount. 36 Comp. Gen. 524 (1956). This remains true even when another more general fund is available for the same or a compatible purpose. 19 Comp. Gen. 324 (1939).

As to the $16,313,000 in the Solicitor's appropriation, however, there is complete legal discretion in how best to allocate the funds available. 55 Comp. Gen. 307 (1975). This is a lump sum appropriation. As such, the Solicitor has broad authority to apply funds to salaries and benefits, including authority to divert to that purpose funds which were requested for new projects such as microfilming records. See FY 1981 Budget Justifications, Attachment, Tab J, and 55 Comp. Gen. 307 (1975).

The key word in the preceding paragraph is "discretion." Although the Solicitor had the discretion to broadly reallocate funds and to severely restrict travel, slash training, eliminate new projects and apply the savings to salaries, there was no obligation to do so. Further, how great a reduction could be sustained in these ancillary activities, without a negative impact on the ability of the Office to perform its mission, should be a matter for the Solicitor's judgment. The apparent judgment that the previous administration's 23 per cent reduction in first and second quarter expenditures for travel, training, equipment and library supplies was all that could be sustained is not unreasonable on its face.

B. $501,000 Transfer - "Legal Services Review"

In 1950, the Department of the Interior was the subject of Reorganization Plan No. 3, 64 Stat. 1262. As part of the Reorganization, the Solicitor's Office was consolidated into a single unit for providing legal services to the Department. Some organizational entities, however, maintained their own staff attorneys, who were compensated from appropriations available to the unit which they were assigned to and served.

In FY 1980, the Solicitor conducted a study to determine whether at least some of those positions ought to be consolidated into the Solicitor's

Office. The reassignment was accomplished in April 1980, and funds for base compensation (not including pay increases) of those attorneys in FY 1981 were transferred to the Solicitor's Office appropriation. Authority for the transfers is found in 64 Stat. 1262, §5.

It is important to note that, although these transfers of positions and funds were approved by OMB (Tab E, page 3), the personnel ceiling for the Solicitor's Office was not adjusted upward. This set up the situation in existence at the time of the change in administration—the annual incoming program attorney group, recruited through the Solicitor's Honors Program, caused a substantial, short-term increase over the OMB personnel ceiling.

Additionally, the transfer of positions and funds created a corollary increase in the needed supplemental appropriation for pay increases. The $501,000 transfer covered only the base compensation for those positions prior to the October 1980 pay raise.

C. Economy Act Transactions

1. Reimbursements to the Solicitor

Notwithstanding the organizational charter of the Solicitor's Office to provide legal services to all operational entities in the Department of the Interior, the Office obtains reimbursements for some of its services. As explained in Interior Department memorandum of June 1, generated in response to our inquiries, (Tab K) the Solicitor's Office seeks reimbursements for those services which in its opinion are "contemplated to be paid from" another appropriation. Examples provided informally were: an attorney temporarily detailed to a regional office to handle an unusually large number of Freedom of Information Act requests, and an attorney temporarily assigned to the Office of Surface Mining to work on helium contracts. The authority cited for the reimbursements is the Economy Act, 31 U.S.C. § 686. We see no objection in principle to the reimbursement arrangements.

Typically, the Economy Act provides authority for transactions on an inter-agency basis. This purpose is reflected in the statutory reference to transactions between bureaus, departments and establishments. However, we have held that this Act may be used to accomplish the exchange of services and the transfer of funds between "* * *two departments or offices of the Government operating under separate appropriations * * *" 13 Comp. Gen. 234, 236 (1934). Applying the separate appropriations concept, it is apparent that, the Solicitor's Office being a line item, Economy Act transactions can legitimately be sustained between that Office and other organizational segments of the Department of the Interior.

There is one limitation on the type of transactions which may take place. Transfers of funds under the Economy Act are subject to the provisions of 31 U.S.C. § 628. 15 Comp. Gen. 704 (1934); 34 Comp. Gen. 42 (1954). Accordingly, funds may not be transferred under the Economy Act for a use other than that for which they were originally intended. Because the Solicitor is charged with the responsibility of providing legal services to the whole Department, we would interpret the purpose restriction as prohibiting reimbursements for ordinary legal services, unless specifically authorized by statute. In other words, the Solicitor's Office may not enter into an Economy Act transaction which would reimburse it for the services for which it received its appropriation.

Assuming that the purposes restrictions are observed, details of personnel may be accomplished on reimbursable basis pursuant to a written agreement. 13 Comp. Gen. 234 (1934); 31 Comp. Gen. 190 (1951). We do not know whether the reimbursable details completed so far have been proper. To make such a determination would require considerable additional information.

We understand, however, that the issue may be moot, because expected reimbursements have not materialized due to the fact that the junior attorneys normally assigned to these projects have been separated in the RIF. Acknowledging that reimbursable details of personnel could be used in some cases, we would caution against regarding reimbursables as either regular sources of funds or measures to achieve savings since there is no way to foretell whether or not the need for the details will continue. Tab H, page 2.

2. Reimbursements made by the Solicitor to the Office of the Secretary:

In addition to receiving reimbursements for some of its services, the Solicitor's Office also makes reimbursements to the Secretariat for personnel, budget and other services it receives. These services are funded by the Departmental Management appropriation, which is available for

> "[N]ecessary expenses for certain operations that provide departmentwide services, * * *" 94 Stat. 2970.

The appropriation is specifically available to support those functions which the Solicitor's Office is currently reimbursing for. The theory underlying these reimbursements appears to be one or a combination of the following: an assumption that the Solicitor's Office, as a line item, must be totally self supporting and/or an inference drawn from the statutorily-created working capital fund for certain centralized management services that, for administrative convenience, all centralized management services may be handled on a reimbursable basis at the discretion of the Secretary. See 43 U.S.C. §1467.

We disagree. Although it appears to be a question of first impression, we see no legal reason why a departmental entity which has a line item appropriation needs to be totally self supporting or financially insulated from the rest of the organization. In our view, the Solicitor's Office is eligible to receive any centrally provided services (other than those required to be processed through the working capital fund (43 U.S.C. § 1467)) without reimbursements, in the same way as other segments of the Department apparently are.

If there is no legal requirement that line item functions be independent, it may actually be improper to reimburse for these management services. It has already been discussed that Economy Act reimbursements are subject to the purposes restrictions in 31 U.S.C. § 628. A corollary principle is that when a specific appropriation is available to accomplish a purpose, a more general appropriation available to accomplish the same or a compatible purpose may not be used. 10 Comp. Gen. 440 (1954); 19 Comp. Gen. 324 (1939). This rule applies to Economy Act reimbursements as well. 34 Comp. Gen. 42 (1954). The Departmental Management appropriation is specifically available to support departmentwide service operations (such as personnel, etc.). As no qualification of that specific purpose is found in the statute, the specific versus general rule would appear to prevent reimbursements for personnel and other management services provided by the Secretary.

Neither do we think it proper to infer that reimbursements are required for such services based on the existence of the working capital fund. The fund was established by statute to provide full reimbursement for so-called central services, e.g. printing and reproduction, stationery and office supplies, a communication system, a library and a health service " * * * and such other similar service functions as the Secretary determines may be performed more advantageously on a reimbursable basis. * * *" 43 U.S.C. § 1467(6). [Emphasis added.] Similar services for discretionary inclusion in the fund would, in our view, necessarily be mechanical or routine services such as computer operations or payroll processing, rather than managerial or policy making functions such as personnel or budget operations for which the Secretary receives a specific appropriation. Therefore, we see no authority to require reimbursements for these services based on the working capital fund statute.

Notwithstanding this analysis, reimbursements for these services apparently have been taking place for many years. Budget requests and annual appropriations have obviously taken this practice into account. Congress was aware of these transactions and therefore we will not question their legal acceptability. However, insofar as we see no legal requirement for the reimbursements, and the Departmental Management appropriation is specifically available for the services which

up to now have been reimbursed, we would regard the practice as an administrative convenience. The reimbursements could accordingly be waived at the Secretary's discretion, provided the Departmental Management appropriation had sufficient funds available. We have been advised informally that just such a waiver of reimbursement has been used in the past when the Solicitor experienced a shortfall. The use of a waiver of reimbursement would free additional funds for the Solicitor's Office salaries, but no monies would be transferred or added to the Solicitor's account. Therefore, the benefitted appropriation could not be said to have been augmented.

Some flexibility thus existed in the interplay between the Office of the Secretary's appropriation for Departmental Management and the Solicitor's Office as regards reimbursements. However, as was the case with allocations of funds in the lump sum appropriation, the degree of flexibility to be exercised lies within the administrative discretion of the cognizant officials. The decision to be inflexible on such matters would not really be open to criticism.

Question 2: Attrition rates and vacancies should have been considered in estimating available funds.

In answering a question by Congressman Markey on which individuals were "illegally hired" by the previous administration, Interior Department officials stated, "No specific individual or group of employees can be identified as being 'illegally' hired as it is the budget picture taken in total which constitutes more individuals being employed than the Office could have reasonably been expected to pay for." Tab D, page 4.

Understanding this principle of total payroll costs to be the guide against which shortages are to be measured, it is important that estimated total payroll costs be calculated in such a way as to account for payroll savings achieved through attrition. Attrition includes all separation-induced savings (day's pay times days remaining minus lump sum annual leave payment) less salary and other payments made to a replacement, if any. An example of the savings realized through attrition is the following: if three SES positions remained vacant for three months each, while a successor was being selected, the saved compensation would have paid the salaries for the remainder of the year of four GS-11s who were RIFed.

Officials determined that the hiring freeze and other constraints on Federal employment would result in a lower-than-average rate of voluntary separations. This was probably a correct assumption. However, rather than calculate the savings accrued through some lesser amount of attrition, those officials calculated available funds on the assumption that no attrition would take place: no voluntary terminations to accept other

employment, retirement, schooling; no leaves of absence without pay; no departures from Senior Executive Service ranks; in other words no personnel changes at all. The question of how much of the total payroll expense might have been saved would be a matter of judgment for the Solicitor's Office, and, as such, not really open to question. However, the judgment that no savings would be realized through attrition seems to be unreasonable. Here, the failure to consider any savings realized by attrition may have caused an overestimation of total outlays for salaries in the Solicitor's Office, causing either the unnecessary RIF of 28 permanent full time employees and 23 temporary employees or an unnecessarily large RIF.