

B-251481.4

September 30, 1994

The Honorable Wendell H. Ford
Chairman, Joint Committee on Printing
Congress of the United States

Dear Mr. Chairman:

This responds to your letter of August 9, 1994, requesting our opinion concerning the effect of a recent amendment to section 207 of the Legislative Branch Appropriations Act, 1993.¹ The amendment, contained in section 207 of the Legislative Branch Appropriations Act, 1995,² added "duplicating" to the definition of printing for purposes of a requirement that executive agency procurements of printing generally must be made by or through the Government Printing Office (GPO).

You ask whether the term "duplicating" would cover work done on high-speed duplicating devices, and, if so, whether agencies contracting directly for such work in violation of section 207 may pay contractors for that work. In addition, you ask that we determine the effective date of the amendment to section 207.

For the reasons explained below, we conclude that the amendment to section 207 expanded the definition of printing to include duplicating processes using high-speed duplicating equipment. Therefore, unless authorized under one of the exceptions to section 207, contractors performing such work directly for executive agencies may not be paid. Furthermore, we conclude that the effective date of the amendment is the date on which the statute containing it was enacted.

¹Pub. L. No. 102-392, 106 Stat. 1703, 1719-20 (Oct. 6, 1992), 44 U.S.C. § 501 note.

²Pub. L. No. 103-283, 108 Stat. 1423, 1440 (July 22, 1994).

BACKGROUND

Section 207 of the Legislative Branch Appropriations Act, 1993, as amended by the 1995 appropriations act, provides as follows:

"(a)(1) None of the funds appropriated for any fiscal year may be obligated or expended by any entity of the executive branch for the procurement of any printing related to the production of Government publications (including printed forms), unless such procurement is by or through the Government Printing Office.

"(2) Paragraph (1) does not apply to
 (A) individual printing orders costing not more than \$1,000, if the work is not of a continuing or repetitive nature, and, as certified by the Public Printer, if the work is included in a class of work which cannot be provided more economically through the Government Printing Office,
 (B) printing for the Central Intelligence Agency, the Defense Intelligence Agency, or the National Security Agency, or (C) printing from other sources that is specifically authorized by law.

"(3) As used in this subsection, the term 'printing' includes the processes of composition, platemaking, presswork, duplicating, silk screen processes, binding, microform, and the end items of such processes." (Emphasis added.)

The only amendment made to the definition of "printing" in section 207(a)(3) was the addition of the term "duplicating."³

The amendment to section 207(a)(3) originated in a floor amendment that was introduced by Senator Burns and adopted by the Senate. In addition to expanding the list of processes in the definition to include "duplicating," the Senate amendment also added the phrase "the production of an image on paper or other substrate by any process."⁴ The conference committee retained the term "duplicating" as

³The text of section 207(a)(2) was also amended. Previously, it had excepted individual printing orders that meet the specified criteria and "as certified by the Public Printer cannot be provided more economically through the Government Printing Office."

⁴140 Cong. Rec. S7048 (daily ed. June 16, 1994).

added by the Senate amendment but deleted the second phrase, explaining as follows:

"Finally, the conferees have agreed to incorporate 'duplicating' within the definition of printing for procurement purposes. It should be noted this only applies in the case of procured printing. The conferees have not included the additional matter regarding 'production of an image on paper or other substrate.' That conceivably would encompass ADP output, CD-ROMs, video discs, and other material that fall within the Brooks Act or other statutes.

" . . . [T]his provision makes clear that procurement of printing and duplicating orders from sources external to the agency originating the procurement must be by or through the Government Printing Office. The current exceptions provided in section 207(a)(2) of Public Law 102-392 are retained." H.R. Conf. Rep. No. 567, 103d Cong., 2nd Sess. 13 (1994).

In signing the act, President Clinton characterized the amendment to section 207 as expanding GPO's role in executive branch functions and exacerbating his concerns about the constitutionality of the underlying provision. On this basis, the President stated that he would interpret the amendment in a manner that would minimize potential constitutional deficiencies. Specifically, he stated that, "in light of the substantial expansion of the role of the Government Printing Office that would be occasioned by a broad reading of the term 'duplicating,' that term will be read to encompass only the reproduction inherent in traditional printing processes such as composition and presswork, and not reproduced by other means such as laser printers or photocopying machines." 30 Weekly Comp. of Pres. Doc. 1541-1542 (Aug. 1, 1994).

ANALYSIS

The determination whether high-speed duplicating is included in the definition of printing, and therefore must be procured through GPO, depends in the first instance on whether the addition of the term "duplicating" expands the scope of the definition of printing beyond those processes originally listed.⁵ Under well-settled principles of

⁵As discussed above, the President's signing statement indicates that the term "duplicating" should be construed narrowly in order to "minimize potential constitutional deficiencies" in the amendment. The statement suggests that

statutory construction, the presumption is that legislative changes are intended to produce a legislative result, and that each word in a statute has an independent meaning.⁶ Applying these principles, interpreting the term "duplicating" to mean only the use of the processes already included in the original definition of printing would, in effect, nullify the amendment to section 207(a)(3) and render the term "duplicating" mere surplusage. Consequently, we believe that the term "duplicating" must be read as having a meaning distinct from the printing processes originally listed in the definition.

The legislative history of the amendment and related events support the view that Congress added the term "duplicating" to the definition of printing with the intention of expanding that definition. The amendment was introduced on the Senate floor only months after the Justice Department's Office of Legal Counsel (OLC) issued an April 7, 1994 opinion concluding that the definition of printing did not include duplicating and therefore that executive agencies were free to procure duplicating services directly from outside sources. As discussed above, the conference

the President's constitutional concerns are based on the separation-of-powers doctrine in general and refers to the original language in section 207 providing for a certification by the Public Printer before an exception to the statutory requirement is authorized. However, the narrow construction of the term "duplicating" favored by the President would not avoid the constitutional deficiencies suggested by the statement. Furthermore, in view of our conclusion that Congress added the term "duplicating" to the statutory definition of printing in order to expand the scope of the definition, a narrow reading of that term would be "plainly contrary" to congressional intent. See Edward J. DeBartolo Corp. v. Florida Gulf Coast Building & Construction Trades Council, 485 U.S. 568, 575 (1988).

⁶See United States v. Menasche, 348 U.S. 528 (1955); Mogis v. Lyman-Richey Sand & Gravel Corp., 189 F.2d 130 (8th Cir. 1951).

⁷The OLC opinion responded to a request from the General Services Administration (GSA) concerning a letter the Joint Committee on Printing issued to the heads of departments and agencies on March 28, 1994. The letter advised agencies that the restrictions in section 207 apply not only to procurements from commercial contractors, but also to procurements from other governmental organizations that have offered "printing and duplicating services." OLC had previously issued two memoranda to GSA dated September 13, 1993, and March 11, 1994, which concluded that section 207

report accompanying the amendment makes clear that Congress viewed the addition of the term "duplicating" to the definition in section 207 as requiring "that procurement of printing and duplicating orders" be handled by GPO. (Emphasis added.)⁸

While the language and history of the amendment to section 207 indicate that Congress added the term "duplicating" to the definition of printing in order to expand the scope of the definition, the precise parameters of the term "duplicating" are more difficult to determine. The amendment does not contain a separate definition of the term, and there is nothing in its legislative history that specifically identifies the processes Congress considered to be "duplicating."

In the absence of a statutory definition of the term "duplicating," the Government Printing and Binding Regulations serve as a useful guide for interpreting the term. These regulations are well known to the printing trade and it is reasonable to believe that the drafters of the amendment were aware of their existence as well. Under section 2-1 of the regulations, the term "duplicating/copying" is defined as including "that material produced by use of (a) equipment listed in [the regulations'] equipment tables and (b) duplicating equipment employing the lithographic process; and automatic copy-processing or copier-duplicating machines employing electrostatic, thermal, or other copying processes . . ." (Emphasis added.) The underscored processes likewise are considered "duplicating" by the printing trade.¹⁰

restricts GSA's authority to perform printing services for other government agencies.

⁸Similarly, in opposing adoption of the conference report on the House floor, Congressman Geren commented that the revised definition "would now require nearly all duplicating by Federal agencies be procured by or through the GPO" and would "expand GPO's jurisdiction to a far wider range of operations" 140 Cong. Rec. E1371 (daily ed. June 29, 1994).

⁹S. Pub. 101-9, 101st Cong., 2d Sess. (1990).

¹⁰In the early years the trade used the term "duplicating" to refer to work done on an offset lithographic press. Beginning in the 1970's, however, copiers became competitive with offset lithography, and they began to be known as "copy-duplicators." Later models of copiers became known simply as "duplicators." See Government Printing: Legal and Regulatory Framework Is Outdated for New Technological

While the term "duplicating" conceivably could be viewed as extending to processes beyond those described in the Government Printing and Binding Regulations, the legislative history of the amendment to section 207(a)(3) indicates that Congress intended to exclude certain processes from the reach of the revised definition. Specifically, in deleting language which also would have added to the definition of printing those processes involving "production of an image on paper or other substrate," the conference report accompanying the amendment stated that the deletion was made so that the revised definition would not encompass "ADP output, CD-ROMs, video discs, and other material that fall within the Brooks Act or other statutes." H.R. Conf. Rep. 567, 103 Cong. 2nd Sess. 13 (1994).

Based on the foregoing, it is our opinion that executive agencies procuring duplicating services involving the use of high-speed duplicating equipment must do so through the GPO, unless the procurement meets one of the exceptions specified in section 207 or involves processes identified in the conference report language quoted above. Therefore, agencies procuring such work directly from outside sources in violation of section 207 may not pay the claims of contractors performing the work. In this regard, we have held that section 207 prohibits an executive agency from paying a contractor for services procured directly by the agency either on a contractual basis or under the equitable doctrine of quantum meruit, since equitable relief is not available where a payment is prohibited by statute. See B-251481.2, July 2, 1993.¹¹

Your final question concerns the effective date of the amendment made by 207 of the Legislative Branch Appropriations Act, 1995. Section 207 of that act amends section 207 of the Legislative Branch Appropriations Act, 1993, which is a permanent provision of law since it applies to appropriations "for any fiscal year." See B-230110, April 11, 1988. Although the amendment is in an annual appropriations statute which governs the expenditure of monies in the new fiscal year, permanent legislation contained in an annual appropriations act becomes effective on the date of enactment unless another effective date is specified. See 70 Comp. Gen. 351 (1991); 13 Comp. Gen. 265 (1934). Furthermore, this rule applies to provisions

Environment at 16-17 (GAO/NSIAD-94-157).

¹¹In an earlier decision, B-251481, Feb. 23, 1993, involving the same claim we had concluded that the claim could not be paid under 44 U.S.C. § 501, which generally requires that all printing and binding for the government be performed by GPO.

contained in annual appropriations acts which amend previously enacted substantive law. See 4 Comp. Gen. 896 (1925). Accordingly, it is our view that the effective date of the amendment contained in section 207 of the 1995 appropriations act is July 22, 1994, the date the statute was enacted.

Sincerely yours,

/s/ James F. Hinchman
for Comptroller General
of the United States

DIGEST

Executive agencies which procure duplicating services involving the use of high-speed duplicating equipment from outside sources in violation of section 207 of the Legislative Branch Appropriations Act, 1993 (P. L. 102-392) as amended by section 207 of the Legislative Branch Appropriations Act, 1995 (P. L. 103-283) may not pay contractors for that work. Section 207 of the Legislative Branch Appropriations Act, 1993 prohibits, with limited exceptions, the use of appropriated funds by executive branch agencies for the procurement of printing other than by or through the Government Printing Office. Section 207 of the Legislative Branch Appropriation Act, 1995 added the term "duplicating" to the definition of printing covered by that prohibition and is effective on the date that appropriation act was enacted.