



**Comptroller General
of the United States**

Washington, D.C. 20548

B-231697

June 28, 1988

The Honorable John Glenn
Chairman, Committee on
Governmental Affairs
United States Senate

Dear Mr. Chairman:

This is in response to an informal inquiry of June 9, 1988, by your staff concerning the service of John Alderson as Acting Administrator of the General Services Administration (GSA). Mr. Alderson has been serving as Acting Administrator since his designation to that position on April 1, 1988. Your staff member asked whether the position of Acting Administrator of GSA is subject to the 30-day limit placed on certain temporary appointments by 5 U.S.C. § 3348.

GSA was established as ". . . an agency in the executive branch of the Government" under section 101(a) of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. § 751(a). The authority under which President Reagan designated Mr. Alderson to serve as Acting Administrator is found in section 101(c) of that act, 40 U.S.C. § 751(c), which provides as follows:

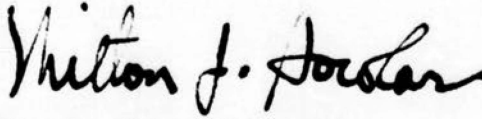
"There shall be in the General Services Administration a Deputy Administrator of General Services who shall be appointed by the Administrator of General Services. The Deputy Administrator shall perform such functions as the Administrator shall designate and shall be Acting Administrator of General Services during the absence or disability of the Administrator and, unless the President shall designate another officer of the Government, in the event of a vacancy in the office of Administrator." (Emphasis added.)

Thus, Congress has specifically provided for an acting head of GSA when the position of Administrator is vacant, and has empowered the President to designate any officer of the government to serve in that capacity.

On the other hand, the 30-day limit placed on temporary appointments by 5 U.S.C. § 3348 applies by its terms only to appointments or designations made under the Vacancies Act. The Vacancies Act (5 U.S.C. §§ 3345-3348) provides for the temporary filling of vacancies created by the death, resignation, sickness or absence of the head of an executive or military department, or the head of a bureau thereof whose appointment is not vested in the head of the department. The term "executive department" is statutorily defined in section 101 of title 5 to include only cabinet level organizations, the names of which are set out. The designation of Mr. Alderson as Acting GSA Administrator was made pursuant to the statutory authority granted to the President in 40 U.S.C. § 751(c) to fill a vacancy in the office of the GSA Administrator. Therefore, the Vacancies Act does not apply to this designation. There is no time limitation contained in 40 U.S.C. § 751(c).

Accordingly, we conclude that the continued service of Mr. Alderson as Acting Administrator of the General Services Administration is appropriate under 40 U.S.C. § 751(c) and that the actions taken by him as Acting Administrator are legal. This conclusion is consistent with an earlier opinion by our Office on the same issue. See B-150136, April 11, 1973 (copy enclosed).

Sincerely yours,


for Comptroller General
of the United States

Enclosure