

UNITED STATES GOVERNMENT

GENERAL ACCOUNTING OFFICE

## Memorandum

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TO : Comptroller General

THRU : Director, LCD - F. J. Shafer

FROM : Associate Director, LCD -

SUBJECT: Legal Submission Concerning Pricing of Publications by the Superintendent of Documents (Code 947096)

We are reviewing the Government Printing Office's (GPO) recent price increases for publications sold by the Superintendent of Documents. This review is in response to a congressional request arising from complaints about the large increases in price. The request contains two questions: (1) Do the recent price increases involve the same financial philosophy which has prevailed in the past? and (2) Do the price increases change the relationship between the current pricing structure and the Superintendent of Documents' annual appropriation as contrasted with past relationships? In addressing the request, two legal issues exist.

Determination of cost basis

Title 44, U.S.C. 1708, states that:

"The price at which additional copies of Government publications are offered for sale to the public by the Superintendent of Documents shall be based on the cost thereof as determined by the Public Printer plus 50 percent."

The question arising from this provision is: What should be included as cost? The current interpretation in GPO appears to be that "cost" includes the printing and binding costs and all distribution costs such as order processing, warehousing, and postage. The legislative history of the provision, however, seems to indicate that only printing and binding costs should be included.

Legislative excerpts on the above follow.

--The public resolution approved May 11, 1922 (U.S.C., title 44, secs. 72 and 220) provided for the sale of documents "at the cost of printing and binding plus 10 per centum."

- In hearings before the Subcommittee of House Committee on Appropriations, 1933, page 138, the Superintendent of Documents states that pricing publications at the cost of printing and binding plus 10 percent was not intended to pass the full cost to the public, but only to make a nominal charge to insure that the purchaser valued the publication.
- Section 315 of House of Representatives bill (72d Congress, 1st session, H.R. 11597 [Report No. 1126], dated April 25, 1932, provides for the sale price of documents to be based on the cost of printing and binding plus 30 per centum.
- Section 307 of Senate act (72d Congress, 1st session, H.R. 11267) provides for the sale price of documents to be based on the cost of printing and binding plus 30 per centum.
- A Senate amendment to H.R. 11267, dated June 1, 1932, deleted "of printing and binding, plus 30 per centum" and added "thereof as determined by the Public Printer plus 50 per centum."

As can be seen, the amendment deleted the definite reference to printing and binding. However, GPO's Annual Report, in 1934, shows that during that year printing and binding costs were the costs to which 50 percent was added. Since that time, however, GPO has progressively added other expenses in determining cost. For example:

- A Superintendent of Documents memorandum dated August 7, 1936, states that the cost of publications sold is printing and binding cost plus 25 percent to cover any loss that would be incurred in returning to press. The 50 percent required by the Economy Act of 1933 would be added to the above cost. Reference is also made to the fact that publications not sold are properly an overhead on copies sold and should be included in the sale price.
- GPO's Accounting Procedure No. 111, dated November 1, 1953, provides that the sale price of documents is to be computed on the cost of printing and binding, plus 75 percent, representing 25 percent for postage costs, 25 percent for administrative expenses, and 25 percent as a reprint cost factor; to which is added a profit surcharge of 50 percent. Accordingly, the price of publications was cost of printing and binding plus 162.5 percent  $(P\&B + .75 P\&B) + .50 (P\&B + .75 P\&B) = P\&B + 162.5 P\&B$ .

--A GPO memorandum dated June 28, 1968, states that "The 50 percent markup is an earnings surcharge \* \* \* to cover all sale and distribution costs of publications, labor, materials, and overhead, which is financed from the Treasury as an annual Congressional appropriation." This apparently meant that cost plus 50 percent should cover all costs of the sales program.

In August 1973, the add on to the printing and binding cost was changed from 162.5 percent to a sliding factor of 125 percent for expensive publications to 200 percent on lower priced publications. This change was made to produce more revenue.

Currently, GPO apparently interprets the law as requiring a 50 percent profit on the sale of publications. However, GPO officials state that, under the current pricing arrangement, revenue from the sales programs will not recover all costs until fiscal year 1976. At that time, a decision is to be made by the Public Printer as to whether or not Superintendent of Documents should make a 50 percent profit. Recent questions during Senate Appropriation hearings brought up the point that Superintendent of Documents was not making the 50 percent profit required by law. Since the hearings, the GPO Pricing Committee has made recommendations to the Public Printer for increasing the revenue from the sale of publications.

Deposit of receipts  
and annual appropriation

The question of the relationship of recent price increases to the annual appropriation for the Superintendent of Documents is a corollary issue to the first question. Title 44, U.S.C. 1708 provides that "Surplus receipts from sales shall be deposited in the Treasury of the United States to the credit of miscellaneous receipts." Annual reports by the Public Printer in the 1932 through 1936 timeframe indicate that surplus receipts were the receipts from sales remaining after paying the printing and binding costs of publications sold. During more recent times, however, surplus receipts were the receipts from sales remaining after paying the printing and binding costs of publications sold, postage for mailing documents sold, and certain other expenses. The expenses paid from receipts have apparently coincided with the definition of cost used in determining sale prices. Throughout this period of time, other expenses of the sales program not paid from receipts have been paid from appropriated funds.

Our question in this area is: What costs should be paid from sales receipts and what costs should be paid from appropriated funds? Based on the above, it appears that costs which are included in determining sale prices are to be paid from receipts with the other expenses being paid from appropriations. If this is true, then the answer to question one--What is to be included in cost?--is necessary prior to addressing this matter.

This question becomes critical when considering the current policy for pricing sales publications. The current pricing policy is designed to recover full cost with consideration at a later date of recovering full cost plus 50 percent. If this policy is consistent with the provisions of 44 U.S.C. 1708, then there would apparently be (1) no justification for an appropriation and (2) no surplus receipts for deposit.

If further discussions on these matters are desired, please contact David Childress on 557-2151.

cc: Mr. H. L. Krieger (FOD-Washington)

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Indorsement

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Director, LCD

Returned. Prior to 1932, the statutory pricing formula had been established as the cost of printing and binding plus 10 percent. Section 307 of the ~~Economy Act of 1932~~, enacted as part of the legislative branch appropriations for fiscal year 1933, 47 Stat. 382, 409, amended the formula and provided in part as follows:

44 USC  
 72a  
 (1964 ed.)

"After the date of the enactment of this Act, the price at which additional copies of Government publications are offered for sale to the public by the Superintendent of Documents shall be based on the cost thereof as determined by the Public Printer plus 50 per centum: Provided, That a discount of not to exceed 25 per centum

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may be allowed to authorized book dealers and quantity purchasers, but such printing shall not interfere with the prompt execution of work for the Government. The surplus receipts from such sales shall be deposited in the Treasury of the United States to the credit of miscellaneous receipts. \* \* \*

Title 44, United States Code, was recodified in 1968 by Public Law 90-620, 82 Stat. 1238, and the above-cited provision, with minor changes not intended to affect substance, became § 1703. *44 1703*

The 1932 formula evolved from a proposal originated by the Public Printer, set forth in a letter to the House Committee on Printing dated April 12, 1932, providing for "sale at cost plus not less than 25 per centum, as determined by the Public Printer who shall fix the prices, discounts, and terms therefor \* \* \*." Hearings on H.R. 11267 before a Subcommittee of the House Committee on Appropriations, 72d Cong., 1st Sess., part II, at 34, 36 (1932). In this letter, the Public Printer explained his proposal as follows:

"The present law \* \* \* fixes the sales price of Government publications at cost of printing and binding plus 10 per cent. \* \* \*

"Section 2 of the bill \* \* \* increases the selling price of Government publications from a margin of 10 per cent above cost, as now fixed by law, to not less than 20 sic per cent above cost and authorizes the Public Printer to fix the prices, discounts, and terms. \* \* \*

"I have in mind, if the bill becomes a law, to add approximately 50 per cent to the cost charged in fixing the regular sales price \* \* \*."

In a letter to the Senate Committee on Appropriations dated May 13, 1932, the Public Printer revised his draft bill to base the sales price of Government publications on the "cost thereof as determined by the Public Printer plus 50 per centum." The following explanation was offered:

"Under the existing law, which requires that only 10 per cent be added to the cost of printing and binding, the Superintendent of Documents has been able to turn into the Treasury for miscellaneous receipts an average of \$200,000 per year, and I feel certain that by the increase of this percentage over cost the amount returned to the Treasury could be more than doubled. \* \* \*" Hearings on H.R. 11267, supra, at 39-40.

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It seems clear from the above excerpts that "cost" as used by the Public Printer was intended to mean the cost of printing and binding.

The amendment proposed by the Public Printer in his May 13 letter was introduced in the Senate by Senator Moses on June 1, 1932. 75 Cong. Rec. 11705. In a brief debate on June 9, Senator Moses stated that his amendment was--

"\* \* \* designed merely to extend the sale of Government publications by making them more readily available to people in all parts of the country through having them placed on sale with authorized book sellers in different sections of the country \* \* \*."

In response to the question of how the amendment related to the subject matter of the legislation under consideration, the Senator said:

"\* \* \* My amendment merely provides that the added price, which by the bill is 30 per cent, to the cost of printing shall be made 50 per cent, and that that sum shall be divided with authorized dealers throughout the country who buy the books and sell them to local purchasers.  
Id. at 12342.

The legislative history cited above, although admittedly sparse, appears to indicate that the 1932 amendment was intended to increase revenue by raising the percentage mark-up to 50 percent, and that "cost thereof" meant the cost of printing and binding, or at most, the cost to the Superintendent of Documents of acquiring publications for sale from the Public Printer. There is no indication that the 1932 amendment was ever intended to allow a 50 percent pure profit over and above the cost of the entire sales operation.

Noting that the statutory pricing formula has remained essentially unchanged for over 4 decades, however, we must recognize the well-established principle that a consistently applied administrative interpretation or practice is to be given great weight in construing a statute, especially if the interpretation or practice has been brought to the attention of Congress. See, e.g., Norwegian Nitrogen Co. v. United States, 288 U.S. 294, 315 (1933); Helvering v. Eirmill, 303 U.S. 79, 82 (1938); United States v. American Trucking Associations, 310 U.S. 534, 549 (1940); Douglas v. Commissioner, 322 U.S. 275, 281 (1944); Boehm v. Commissioner, 325 U.S. 287, 291 (1945). In evaluating the applicability of this principle to the present situation, we examined Government Printing Office (GPO) testimony before the House and Senate appropriations committees, and our own annual audit reports of the financial statements of GPO, copies of which are submitted to the Joint Committee on Printing.

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Your memorandum points out that, as far back as 1936, GPO began adding 25 percent to the cost of printing and binding as a reprint cost factor, and then computing the 50 percent surcharge on this total. In hearings on legislative branch appropriations for 1952, the Superintendent of Documents stated:

"\* \* \* We operate a sales program under which we buy publications from the Public Printer and pay him the cost of the publications.

"Then under provisions of law we are allowed to add 50 percent to the cost to establish the sales price."  
Hearings on H.R. 4496 before a Subcommittee of the Senate Committee on Appropriations, 82d Cong., 1st Sess. 55 (1952).

In 1953, GPO began to add 75 percent to the cost of printing and binding before computing the 50 percent surcharge, to cover certain administrative and overhead expenses as well as the reprint cost factor. Our audit report for fiscal year 1956 (B-114829, August 5, 1957) discussed this as follows:

"In our audit report for fiscal years 1954 and 1955, we questioned the practice of financing a portion of the operating expenses of the Public Documents Division out of the revenue from sales of publications. The Public Printer recognizes the validity of our question, but has pointed out that the practice is of long standing and that he would not feel justified in changing the practice without an expression from the Congress since a change would necessitate additional appropriations."

GPO modified its financial statements at our suggestion to more accurately reflect its practice, and we dropped our objection in subsequent years. GPO has explained this situation in appropriations hearings. See Hearings on Legislative Branch Appropriations for 1958 before the Subcommittee of the House Committee on Appropriations, 85th Cong., 1st Sess. 229 (1957); Hearings on Legislative Branch Appropriations for 1959 before the Subcommittee of the House Committee on Appropriations, 85th Cong., 2d Sess. 84-85 (1958). In subsequent audit reports, we set forth the GPO pricing formula without comment. See, e.g., our audit reports for fiscal years 1968, 1969, and 1970 (B-114829, August 4, 1969, April 3, 1970, and February 26, 1971). GPO apparently adhered to the same formula until 1973, at which time it substantially increased its selling prices.

In appropriations hearings for 1969 (before a Subcommittee of the House Committee on Appropriations, 90th Cong., 2d Sess. 174 (1968)),

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the following exchange took place between Representative Andrews and Public Printer James L. Harrison:

"Mr. ANDREWS. It looks to me like you put 50 percent on the cost. That would be making a profit of 50 percent.

"Mr. HARRISON. Not necessarily. The actual cost of the publication is not the entire cost of distributing the publication. There is the handling of the publication and--

"Mr. ANDREWS. The law says the price must be 50 percent above the actual cost of the publication."

"Mr. HARRISON. The costs the plant charges the Document Division.

"Mr. ANDREWS. Plus 50 percent?"

"Mr. HARRISON. Plus 50 percent.

"Mr. ANDREWS. So much of that 50 percent goes for distribution?"

"Mr. HARRISON. That is right. Cost of handling, mailing."

In contrast to the above passage, GPO has expressed the view in recent years that "cost" means the cost of the entire sales operation and that the 50 percent surcharge should be pure profit. The following statements are typical.

"\* \* \* The 50 percent was enacted to be applied to the actual cost of all operations in the sales program." Hearings on Legislative Branch Appropriations for 1970 before a Subcommittee of the House Committee on Appropriations, 91st Cong., 1st Sess. 305 (1969).

"\* \* \* [The formula set up by law] includes the cost of printing the publication, the cost of handling, mailing, and maintaining the mailing operations plus 50 percent added as required by law." Hearings on H.R. 13763 before a Subcommittee of the Senate Committee on Appropriations, 91st Cong., 1st Sess. 220 (1969).

"\* \* \* According to title 44, we are required to recover costs as determined by the Public Printer, plus 50 percent. We have chosen to interpret cost as the cost incurred within the Government Printing Office complex.



"\* \* \* The additional cost of printing and binding the sales copies is the first element of cost.

"The next element is the cost incurred in the distribution process within the documents department plus postage." Hearings on Legislative Branch Appropriations for 1975 before a Subcommittee of the House Committee on Appropriations, 93d Cong., 2d Sess. 365 (1974).

However, in 1973, the Acting Superintendent of Documents told the Subcommittee that the "present legislation for establishing selling prices, I guess, goes back as far as 1895." Hearings on Legislative Branch Appropriations for 1974 before a Subcommittee of the House Committee on Appropriations, 93d Cong., 1st Sess. 1163 (1973).

We conclude from the foregoing that, while GPO has been somewhat inconsistent as to detail, it has consistently taken the position that the Public Printer is authorized to determine the elements of cost to be included in fixing sales prices, and that those elements include, to a greater or lesser extent, handling and distribution costs and other administrative expenses. These views have been made known to the House and Senate Appropriations Committees through the annual hearings, and to a somewhat lesser extent to the Joint Committee on Printing through our own audit reports. While the range of current price increases may reflect a change in the mathematics of the pricing formula, it nevertheless represents a continuation of GPO's belief, held since at least 1953, that the includible elements of cost are within the discretion of the Public Printer and are not limited to the basic costs of printing and binding. Accordingly, although we do not believe the statutory pricing formula, as presently contained in 44 U.S.C. § 1708, was originally intended to allow a 50 percent pure profit, we are unable to conclude that GPO's interpretation is improper or that it has not received tacit congressional approval. If Congress should now feel that the formula no longer serves its intended purpose, clarifying legislation would appear to be the appropriate course of action.

The second question in your memorandum is the meaning of the provision in 44 U.S.C. § 1708 that "Surplus receipts from sales shall be deposited in the Treasury of the United States to the credit of miscellaneous receipts." As stated in the memorandum, this is a corollary to the first question since what constitutes "surplus" logically depends on what costs are properly recoverable from sales receipts. The amount of appropriations, if any, needed to finance the sales program will follow from the answer to this question.

The statute does not define "surplus receipts" in this context, nor could we find any guidance in the legislative history. Given the history of GPO's pricing policy, however, and its present interpretation of

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§ 1708, the sensible construction appears to be to equate "surplus receipts" with "pure profit," i.e., the amount of sales receipts over and above the total cost of the entire sales operation. Under this view, until such time as GPO is in fact recovering the entire cost, there would be no surplus receipts for deposit. When GPO does recover the entire cost plus 50 percent--assuming Congress chooses to retain the present for us--"surplus receipts" will amount to one-third of total sales receipts, and there will be no need for appropriations for the sales program. Any other construction (i.e., to hold that only certain costs are recoverable from sales receipts and that others are to be financed through appropriations) would be artificial and illusory, since it would involve depositing money into the Treasury as miscellaneous receipts and returning it to GPO in the form of appropriations.

Although we feel that the construction suggested above is a more meaningful one, this appears to be more properly an accounting determination than a legal one since the distinction in terms of ultimate cost to the Government is largely academic--in the one case sales receipts are deposited into GPO's revolving fund and expenses drawn from that fund with any remaining balance being deposited into the Treasury, while in the other, a portion of sales receipts are deposited into the Treasury (using the revolving fund as an intermediate receptacle) and some or all of these receipts are returned to GPO as appropriations. Thus, this would appear to be primarily a policy matter for determination by Congress.

Paul G. Dembling

Paul G. Dembling  
General Counsel

Attachment