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DECISION

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

FILE: B-177610 DATE: July 23, 1982

MATTER OF: Reconsideration of decisions on services provided to Federal credit unions

DIGEST: Decisions in B-177610, August 17, 1981; 58 Comp. Gen. 610 (1979); and B-164310, August 28, 1968, concerning the services that Federal agencies may provide to Federal credit unions under section 124 of the Federal Credit Union Act, 12 U.S.C. § 1770, are affirmed. Both the language of section 124 and its legislative history show that the services authorized only are those that normally would accompany the allotted space. Such special services as security alarms and telephones may not be provided by agencies either at no charge or on a reimbursable basis, although we have no objection if credit unions can save money by tying in their lines with those of the host agencies provided that the credit unions are billed directly; the feasibility of that alternative should be explored with the telephone company.

The Credit Union National Association, Inc., 1/ has requested reconsideration of several decisions--B-177610, August 17, 1981; 58 Comp. Gen. 610 (1979); and B-164310, August 28, 1968--pertaining to the services that Federal agencies may provide Federal credit unions under section 124 of the Federal Credit Union Act, as amended, 12 U.S.C. § 1770. The effect of these decisions is to allow Federal agencies to provide Federal credit unions with only those services that normally accompany space allotted under section 124, but to require the credit unions to procure directly special services such as telephones and security alarm systems. For the reasons given below, we affirm those decisions.

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1. The National Credit Union Administration has joined in the request for reconsideration. The National Association of Federal Credit Unions has submitted a similar request.

A Federal credit union is a cooperative association organized pursuant to the Federal Credit Union Act, as amended, 12 U.S.C. §§ 1751 et seq., for the purpose of promoting thrift among its members and creating a source of credit for provident or productive purposes. Id. § 1752(1). Although Federal credit unions are organized under Federal law and are subject to supervision by the National Credit Union Administration Board, id. § 1756, they are private organizations whose funds are obtained from private sources rather than from appropriations of the Federal Government.

Section 124 of the Federal Credit Union Act provides:

> "Upon application by any credit union organized under State law or by any Federal credit union organized in accordance with the terms of this [Act], at least 95 per centum of the membership of which is composed of persons who either are presently Federal employees or were Federal employees at the time of admission into the credit union, and members of their families, which application shall be addressed to the officer or agency of the United States charged with the allotment of space in the Federal buildings in the community or district in which such credit union does business, such officer or agency may in his or its discretion allot space to such credit union if space is available without charge for rent or services." 12 U.S.C. § 1770 (Emphasis added).

Since the word "services" neither was defined in the Act nor discussed to any extent in the Act's legislative history, questions have arisen about its meaning.

In B-164310, August 28, 1968, we held that Federal agencies could provide credit unions services necessary to meet normal space needs, but that special services such as security alarm systems were not authorized to be funded by the host agency and had to be funded from credit union monies. Subsequently, we applied the same reasoning to telephones and telephone services, and also suggested that those services could be provided by Federal agencies to credit unions on a reimbursable basis. 58 Comp. Gen. 610, 611 (1979). In 1981, we modified our 1979 decision, and held that Government agencies could not provide telephone services to Federal employee credit unions on a reimbursable basis, but that instead credit unions must procure telephone services directly. B-177610, August 17, 1981.

The Credit Union National Association, Inc., an association representing numerous Federal and state credit unions, challenges our decisions on numerous grounds. First, the Association contends that our decisions violate Congress' intent to allow each Federal agency to provide all services necessary to operate a credit union on an agency's premises. In this regard, the Association maintains that our distinction between normal and special services is arbitrary and without legislative justification.

The Association's argument, depends, to some extent, on its view that the legislative history of section 124 of the Federal Credit Union Act, as amended, 12 U.S.C. § 1770, shows that the word "services" probably was intended to include telephone and security alarm systems. The Association points out that one of the bills considered by the Congress—S. 651, 75th Cong., 1st Sess. (1937)—provided that "a reasonable charge may be collected for heat, light, care, and services furnished to the [credit] union." Although this language was deleted, the Association contends that "services" must have meant something in addition to heat, light, and maintenance care. Regarding the change to the language subsequently enacted—"without charge for rent or services"—the Association argues:

> "[I]f the Congressional intent were to narrow the scope of the term 'services' by deleting the specific mention of types of services, a number of less ambiguous methods of doing so were available. * * * "

We consider our distinction between normal and special services to be more consistent with the language of section 124 than the Association's position that the section authorizes "all services necessary to operate a credit union on the Federal premises." Section 124 grants Federal agencies discretion to allot space to credit unions without charge for rent or services. It is evident from the language that the discretion involved is the discretion to allot space, but not to provide services. The phrase "without charge for rent or services" cannot be read independently; it merely modifies the word "space." Thus, it follows that the only services authorized are those normally accompanying use of the space. If the Congress had intended to authorize Federal agencies to provide credit unions services independent of those necessary for use of the space, it would have done so expressly.

Our distinction between normal and special services, in part, is based on the fact that services necessary to maintain the allotted space would have to be paid for by the Government, whether allotted to credit unions or used by the agency itself. On the other hand, providing special services such as telephones and security alarm systems would result in additional costs to the Government.

Our position is supported by the legislative history. The bills initially introduced in the 75th Congress, S. 651 and H.R. 1984, provided both that no rent be charged for use of the allotted space and that "a reasonable charge may [S. 651]/shall [H.R. 1984] be collected for heat, light, care, and services furnished to the union." S. 651 and H.R. 1984 appear to have been superseded by S. 1306 and H.R. 6287. S. 1306 deleted entirely the language in the earlier bills about services. Although H.R. 6287 originally contained the above-quoted language, it was amended and enacted as section 124 without that language.

The hearings conducted by the House Committee on Public Grounds and Buildings on H.R. 6287 show that the provision enumerating the services was put in the bill at the Treasury Department's suggestion so that a reasonable charge could be imposed for the services described. The following colloquy between the Committee Chairman and other Representatives indicates that Treasury did not insist on that language being included in the bill as enacted "because heat and light are part of their supplies for the building generally, and there would be no appreciable extra cost."

> "THE CHAIRMAN. The House bill makes provision that a reasonable charge shall be collected for heat, light, care, and services furnished to the union.
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> "MR. EBERHARTER. The Senate bill does not contain that.
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> "MR. COCHRAN. I would be absolutely opposed to charging anything if they are going to give them any space in Federal buildings. You do not charge anything to the individual that sells fruit, papers, and so forth, to the employees in Federal buildings for the space they occupy. Why should we charge the Federal Credit Union for any space they might occupy?

"THE CHAIRMAN. I wondered why you put that provision in the bill.

"MR. COCHRAN. I put it in so that no rent shall be charged.

"THE CHAIRMAN. But a reasonable charge for heat, light, and service.

"MR. COCHRAN. That was put in at the suggestion of the Department [Treasury]. Personally, I would like to see it eliminated.

"THE CHAIRMAN. You do not favor any charge for heat and light?

"MR. COCHRAN. I do not think we ought to have any charge whatsoever. I think we should give that space and encourage the employees to do business with the Federal Credit Union rather than go to a money lender.

"THE CHAIRMAN. My understanding is that these letters from the Department do not insist on that feature, because heat and light are part of their supplies for the building generally, and there would be no appreciable extra cost, so I do not see any particular reason why that charge should be in the bill. It seems to me we might eliminate that.

"MR. COCHRAN. I spoke to one man about it in the Procurement Division, and he said that he thought that the Department would approve it with that provision in it, and that is the reason I put it in there, but I would like to see it eliminated. I wanted to get a favorable report out of the Department on the bill, and that is the reason I put that language in, because I knew it would be referred to the Procurement Division if it went to the Treasury Department.

* * * * *

> "MR. STEFAN. I am very much in favor of holding this down exclusively to Government employees. I favor the elimination of the charge for light and heat, and as long as it is exclusively a Government organization, I think they are entitled to it." Hearings on H.R. 6287 Before the House Comm. on Public Buildings and Grounds, 75th Cong., 1st Sess. 5-6, 13 (1937) (Emphasis added).

Based on the above, we cannot agree that the word "services" at the end of the phrase "heat, light, care, and services" meant services other than those that would normally accompany the allotted space. In our view, normal services were the only ones that would have been considered part of the building supplies that involved no appreciable extra cost to the Government. Furthermore, we could not find any reference to telephones or security alarm systems in the legislative history nor any suggestion that they were the kind of services intended to be covered by section 124.

The Association's second contention is that our decisions abrogate the discretionary authority granted Federal agencies in section 124, and questions whether the Comptroller General can establish a uniform policy regarding the "allotment of all space in all Federal buildings." In this regard, it argues that our conclusions in B-164031(4), July 1, 1971, are inconsistent with our distinction between normal and special services.

We disagree with the Association that we have established a uniform policy regarding the "allotment of all space in all Federal buildings." Federal agencies may allot space to credit unions as they wish. The only restriction we have imposed is limiting the services that can be provided by the host agency to those necessary to meet normal space needs.

Moreover, in B-164031(4), July 1, 1971, to which the Association refers, the issue considered was whether section 124 of the Federal Credit Union Act granted agencies discretion to charge credit unions for allotted space and accompanying services. Although we had concluded in an earlier report that section 124 did authorize such charges (B-164031(4), February 17, 1971), in our July 1, 1971, decision we stated that we would not pursue the matter "in view of the doubts raised by the legislative history of the 1937 Act and the resulting need for legislative clarification of the actual

wording of the act . . . . " Our conclusion in the July 1, 1971, decision only concerned the question of charging credit unions for space and services. It had nothing to do with the scope of the services authorized by section 124, and thus is not applicable to the issue considered in this case.

The Association also maintains that monies appropriated to Federal agencies for utility and telephone services can be used to provide telephone services to credit unions; that since Federal agencies generally fund employee stores and other employee associations, it follows that funds are available for providing services to credit unions; that requiring credit unions to purchase their own telephone services would result in additional costs both to the Government and the credit unions; and, that the effect of requiring credit unions to pay for their security alarm systems would result in credit unions not being able to tie into agency security systems, thereby creating a security problem.

We agree with the Association that agencies have appropriations to fund such things as telephone services and security alarm systems. However, absent statutory authority to the contrary, the appropriations are only for the agency's own services and not for those of credit unions. Since section 124 does not authorize agencies to provide to credit unions those services we have designated as special, expending agency appropriations for them on behalf of credit unions would violate 31 U.S.C. § 628, which requires appropriated funds to be used solely for the purposes for which they were appropriated. As we held in B-177610, August 17, 1981, this would be so even if a credit union reimbursed an agency for those services. Absent statutory authority permitting reimbursement to an agency's appropriation, the reimbursements would have to be deposited in the miscellaneous receipts account of the Treasury pursuant to 31 U.S.C. § 484. The result is that the agency's funds would be diminished because of expenditures which were not related to its mission or purpose.

We recognize that Federal agencies assist employee stores and other employee associations. However, the statutory and administrative relationships between those institutions and the agencies concerned vary, and are not necessarily the same as that between Federal credit unions and the agencies in which they function. Since the questions presented to us in the decisions under reconsideration pertain only to Federal credit unions, our holdings necessarily are limited to those institutions.

We realize that requiring credit unions to pay for their telephone services directly will result in additional costs to those credit unions who have been receiving such services free of charge. Absent a statute authorizing agencies to pay for those services, however, we cannot allow appropriated funds to be used for their provision. Although Federal agencies may be charged more for calls from their employees to on-premises credit unions, it is possible that the savings to agencies resulting from credit unions being required to pay for their own phone line installations, servicing and accompanying administrative work, would exceed the additional charges. This does not mean that we would object to the provision of telephone services to the credit union and its host agency on the same line or lines if the result would be a savings to the credit union. The only proviso is that the telephone company be willing to bill the credit union directly for all charges attributable to its use of the line. The feasibility of this suggestion should be explored with the telephone company.

Similarly, we have no objection to credit unions tying in their security alarm system to those used by Federal agencies, as long as the credit unions pay the required costs directly.

While considering the issues discussed above, we held several meetings with representatives or credit union associations, the National Credit Union Administration, the General Services Administration, and the Senate Committee on Banking, Housing and Urban Affairs. The purpose of one of the meetings was to consider proposals that would be consistent with our rulings but also would allow Federal agencies to continue to provide telephone services to credit unions on a reimbursable basis. Although a number of suggestions were made, ultimately we concluded that they could not be implemented since they required the unauthorized expenditure of appropriated funds or were otherwise unauthorized.

for Shelton J. Gordon
Comptroller General
of the United States