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DECISION



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

Authorization for Payment of Vouchers Involving

FILE: B-197682

DATE: June 5, 1980

MATTER OF: *[* Interagency Property Damage Liability *]*

- DIGEST:
1. Government Printing Office (GPO) may not reduce Standard Level User Charge (SLUC) payments to General Services Administration (GSA) by amount of loss suffered by GPO when its supplies were damaged by water leaking through roof while stored at a GSA Stores Depot. In authorizing SLUC payments Congress intended to generate revenue and not to create a landlord-tenant relationship with all the attendant legal rights and duties.
 2. Regulation authorizing GSA to recover expenses connected with repair of vehicles damaged in accidents while used to provide interagency motor pool service is proper under 40 U.S.C. § 491 (Act) since it is part of the cost of establishing, operating, or maintaining a motor vehicle pool or system. Furthermore, one purpose of Act was establishment of procedures insuring safe operation of motor vehicle on Government business. Charging agency for losses caused by employee misconduct or improper operation of vehicle might help to promote vehicular safety, since it is agency not GSA which has direct control over employee using vehicle.

Duwayne D. Brown, authorized certifying officer of the Government Printing Office, requests an advance decision on whether vouchers may be certified for payment under circumstances he describes as follows

"The first voucher concerns the General Services Administration's system of charging commercial rates for rental space utilizing the Standard Level User Charge (SLUC). Subsequent to implementation of GSA's SLUC system, the Government Printing Office incurred damages to property stored in the GSA

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Stores Depot, Franconia, Virginia. Roof leaks damaged paper stored in the warehouse, recurring incidents going back to November 1976. Accordingly, over \$20,000 of Government Printing Officer paper was damaged by the water from these roof leaks. Deductions were made from current SLUC billings. Subsequent correspondence with GSA and our own legal staff denied the right of recovery from GSA based on Comptroller General Decision (B-177610 dated December 15, 1977 [57 Comp. Gen. 130] .)

"The other instance concerns GSA Invoice No. 985702 that includes \$473.30 which represents repairs to a GSA rental vehicle damaged in an accident in which a Government Printing Office employee was the driver. Under 41 CFR 101-39.704 (Amendment C-28, November 1973) and 101-39.807(b) which were promulgated pursuant to 40 U.S.C. § 491, our legal staff recommends payment."

Because he believed that the advice he had received from GPO's counsel was conflicting, Mr. Brown sought an advance decision from this Office. For the reasons discussed below, we agree with the advice given by GPO's legal staff.

The issue presented in your first question was considered and decided in the case you cite, 57 Comp. Gen. 130 (1977). There we were asked by the Defense Department:

"whether GSA should reimburse agencies 'for damage to or losses of furniture, furnishings, or equipment which result from building failures' where a commercial landlord would be liable 'either by recovery from a lessor, where one is involved, or through a set-aside for that purpose in the Federal Buildings Fund.' As an alternative to reimbursement for damages, DOD suggests that GSA 'reduce its Standard Level User Charges to the Agencies by an amount equivalent to the premiums paid by the commercial landlords for liability coverage so that the agencies could then underwrite their position as self-insurers.'"

In rejecting both proposals, we pointed out the general rule against interagency reimbursements for property damage, but then went on to say:

"Given the general rule which prohibits claims for damages between Federal agencies, recovery of damages from GSA would depend upon whether, in providing that rental rates 'shall approximate commercial charges for comparable space and services,' rather than providing that such rates be based on cost alone, Congress intended to invest tenant agencies with all the rights that the agencies would have against a commercial landlord * * *. On this issue, both the legislative history of section 490(j) and our comments on the draft bill are instructive.

* * * * *

"In view of the above, it seems clear that Congress intended by the reference to 'commercial' charges only to create extra revenue, not to invest tenant agencies with all rights they would have against a 'commercial' landlord.

"For the same reasons, it is also clear that GSA is not required to lower its rental charges by an amount equal to that which a commercial landlord would pay for liability insurance since the rental charges are not based on cost. There are many expenditures that go into a commercial rental charge for space that are not applicable to GSA. Among these are taxes, depreciation, interest on a long-term debt, and profit, as well as liability insurance. Since it was the intent of Congress that the funds representing the difference between rates based on cost and commercial rates be used to finance new buildings, the rental charges should not be lowered." Id. at 131-132. Emphasis supplied.

Since the first question presented is the same in all material aspects as that presented in 57 Comp. Gen. 130, we hold that GSA is entitled to payment of SLUC's assessed GPO without reduction. The voucher to reimburse GSA for deductions made from SLUC charges may be certified for payment.

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As to the second question, we note that GSA's interagency motor vehicle pools are operated and maintained under a revolving fund established by 40 U.S.C. § 491(d), which provides:

"(1) The General Supply Fund provided for in section 756 of this title shall be available for use by or under the direction and control of the Administrator for paying all elements of cost (including the purchase or rental price of motor vehicles and other related equipment and supplies) incident to the establishment, maintenance, and operation (including servicing and storage) of motor vehicle pools or systems for the transportation of property or passengers, and to the furnishing of such motor vehicles and equipment and related services pursuant to subsection (b) of this section.

"(2) Payments by requisitioning agencies so served shall be at prices fixed by the Administrator at levels which will recover, so far as practicable, all such elements of cost, and may, in the Administrator's discretion, include increments for the estimated replacement cost of such motor vehicles, equipment and supplies."
(Emphasis supplied.)

Thus, the law authorizes the payment of all costs connected with the establishing, maintaining, and operating of motor vehicle pools or systems from the General Supply Fund established under 40 U.S.C. § 756, and the recovery of these costs from agency users.

GSA has issued regulations, as authorized by 40 U.S.C. § 486(c) and subject to Executive Order 10579, December 1, 1957, 19 Fed. Reg. 7925 (40 U.S.C. § 436 note), to implement the provisions of 40 U.S.C. § 491 which are set forth in 41 C.F.R. Part 101-39, entitled "Interagency Motor Vehicle Pools." 41 C.F.R. § 101-39.704 provides:

"Whenever vehicle damage results through misconduct or improper operation by an employee, the agency employing the vehicle operator shall be financially responsible. (See § 101-39.807.) Misconduct includes but is not limited to vehicle operation under the influence of alcohol or narcotics and willful abuse or misuse of a vehicle. Improper operation by the driver shall include driving the vehicle in a willfully wrong, negligent (including inattentive), or careless manner."

41 C.F.R. § 101-39.807 provides:

"(a) Except as provided in (b), below, GSA will be responsible for the costs incurred whenever an interagency motor pool vehicle is damaged.

"(b) When an employee damages an interagency motor vehicle through misconduct or improper operation as defined in § 101-39.704, GSA will charge all costs to the agency employing the operator, including the fair market value of the vehicle less any salvage value, if the vehicle is damaged beyond economical repair. GSA will furnish the agency an accident report regarding the incident. Each agency shall be responsible for disciplining its employees who are guilty of damaging motor pool vehicles through misconduct or improper operation.

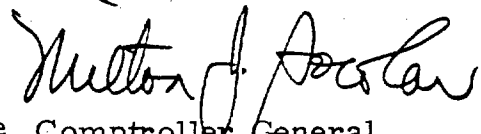
"(1) The costs chargeable to the agency include costs for removing and repairing the vehicle or in the case of total loss, the replacement of the vehicle, including travel and other costs attributable to the accident.

"(2) If an agency has information or facts which would have a bearing on the accident, the agency may furnish the data to GSA and request that the costs charged to and collected from the agency be credited to the Agency. The final determination of agency responsibility will be made by GSA, based upon Government as well as police accident reports and any available witness statements."

It is clear that expenses connected with the repair of a vehicle used to provide interagency motor pool service is part of the cost of establishing, operating, or maintaining a motor vehicle pool or system and therefore is proper for recovery under the law. Furthermore, in our opinion, charging such losses directly to the agency whose driver is responsible for the loss is properly within GSA's discretion. Since one of the purposes in enacting 40 U.S.C. § 491 was to establish procedures to insure safe operation of motor vehicles on Government business and since it is the agency which uses the vehicle, and not GSA, which has direct control of the employees using the vehicle, charging the employing agency for losses caused by employee misconduct or improper operation might help to promote vehicular safety. In addition, since the GSA revolving fund is intended to be operated on a businesslike basis, it is inequitable to impose upon the revolving fund a loss for which the managing agency is in no way responsible.

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Consequently, in answer to the second question, GPO is required to reimburse GSA for damage to vehicles which are a part of the interagency motor pool operated by GSA. If otherwise proper, the voucher covering this cost may be certified for payment.

A handwritten signature in cursive script, appearing to read "Milton J. Fowler".

For the Comptroller General
of the United States