

Memorandum

DATE: October 19, 1988

TO: Associate Director, GGD - L. Nye Stevens

THRU: Assistant General Counsel, OGC - Martin E. Sloane *in 1988*

FROM: Senior Attorney, OGC - Raymond J. Wyrsh

SUBJECT: Disposal and Recycling of Wastepaper
(B-232827; Code 014505)

This responds to your memorandum of August 2, 1988, concerning the possible application of 40 U.S.C. § 485a to agencies' sales of wastepaper, to permit agency reimbursement for collection, storage, start-up, and other costs associated with wastepaper recovery and sale programs. You noted the apparent conflict between this statute and a General Services Administration (GSA) regulation (41 C.F.R. § 101-45.307), and request our assistance in resolving this apparent conflict.

Background: Your question stems from a GGD review of civilian agencies' activities regarding the disposal and recycling of wastepaper. A major focus of that review is to examine ways in which agencies' recycling efforts might be improved.

Guidelines issued by the Environmental Protection Agency (EPA) for solid waste recovery, collection, separation, and disposal systems, with which agencies are required to comply, require agencies to maintain such efforts.^{1/}

^{1/} See 42 U.S.C. §§ 6907 and 6964, and the implementing EPA Source Separation For Materials Recovery Guidelines, 40 C.F.R. Part 246. None of these references explicitly address the disposition of agency sales proceeds.



However, we understand that representatives of several agencies have told GGD staff that the agencies lack sufficient incentive to develop wastepaper recovery programs. The representatives stated that the agencies are required to spend appropriated funds for collection and separation purposes, but the gross proceeds from wastepaper sales must be deposited into the Treasury as miscellaneous receipts.

You pointed out that this situation results from the general requirement of a GSA regulation. 41 C.F.R. § 101-45.307. This regulation was issued by GSA pursuant to the Federal Property and Administrative Services Act of 1949, specifically 40 U.S.C. § 485(a). This statutory provision, like the GSA regulation that implements it, requires the deposit of all sales proceeds into the Treasury as miscellaneous receipts.

You raise the question of possible continued applicability of 40 U.S.C. § 485a which, by its terms, permits agencies to deposit only the net proceeds (i.e., the gross proceeds less certain expenses) from the sale of certain property into the Treasury as miscellaneous receipts. You state that, if this statute may be applied to agencies' wastepaper recovery programs, it would facilitate the implementation of any GAO recommendations proposing that agencies be reimbursed for the collection, storage, start-up, and other costs associated with the operation of such programs. Your question raises the following legal issue:

Question: Does 40 U.S.C. § 485a have any application to agencies' wastepaper recycling programs, so as to permit agencies to deduct certain expenses from the proceeds of the sale of wastepaper?

Answer: At one time 40 U.S.C. § 485a authorized deduction of certain expenses incurred in the sale of agencies' wastepaper. That authority has been superseded by section 204(a) of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. § 485(a) and the GSA regulation implementing the 1949 statute. 41 C.F.R. § 101-45.307. Moreover, it is doubtful whether 40 U.S.C. § 485a at any time provided sufficient financial incentives for facilitating a wastepaper disposal and recycling program. Decisions of the Comptroller of the Treasury and the Comptroller General have consistently ruled that the statute allowed only deduction of those expenses directly related to the sales.

Explanation: The statute you cite was enacted in 1896 and was originally codified as 31 U.S.C. § 489, being recodified as 40 U.S.C. § 485a in 1982. 2/ Until 1951 the statute read as follows:

"From the proceeds of sales of old material, condemned stores, supplies, or other public property of any kind, before being deposited into the Treasury, either as miscellaneous receipts on account of 'proceeds of Government property' or to the credit of the appropriations to which such proceeds are by law authorized to be made, there may be paid the expenses of such sales, as approved by the General Accounting Office, so as to require only the net proceeds of such sales to be deposited into the Treasury, either as miscellaneous receipts or to the credit of such appropriations, as the case may be." (Emphasis added.)

The express terms of the above section appear to authorize the deduction of certain expenses from the proceeds of sales of old material and supplies, so that only the net proceeds need be deposited into the Treasury as miscellaneous receipts. However, the Comptroller of the Treasury^{3/} consistently interpreted this section as allowing agencies to deduct only those expenses that directly pertained to the sale in question. These were limited to such expenses as auctioneers' fees, advertising, cartage to place of sale, and the cost of inspection. See e.g., 3 Comp. Dec. 744, 746 (1897). Indirect expenses, such as the cost of purchasing machines or other items used for the handling and preparation of property for sale, were not deductible. See 18 Comp. Dec. 5 (1911) and 20 Comp. Dec. 20

2/ June 8, 1896, c. 373, 29 Stat. 268. Public Law 97-258, enacted on September 13, 1982, transferred 31 U.S.C. § 489 to 40 U.S.C. § 485a. The language of this statute remained the same from 1896 to 1951, when Public Law 82-247, enacted on October 31, 1951, amended the statute by adding the following words at the beginning thereof: "Subject to applicable regulations under the Federal Property and Administrative Services Act of 1949, as amended." The significance of this amendment is discussed later on in this memorandum.

3/ The Comptroller of the Treasury originally had the authority to approve the deduction of such expenses. This authority was later transferred to the General Accounting Office.

(1913), which specifically disallowed the purchase of such items incident to the sale of wastepaper.

The Comptroller General also adopted this view through the years. For example, in 1926, the Comptroller General ruled that the Government Printing Office (GPO) could not retain some of the proceeds from the sale of wastepaper for the purpose of paying the salaries of employees who collected and prepared wastepaper for sale. Such expenses were not considered to be directly related to the sale of the wastepaper. Further, the individuals were regular GPO employees and funds for the payment of their salaries were provided for in GPO's annual appropriation. 5 Comp. Gen. 680 (1926). See also 28 Comp. Gen. 594 (1949); 33 Comp. Gen. 31 (1953).

Moreover, in 1949 the Congress enacted the Federal Property and Administrative Services Act of 1949. This was comprehensive legislation designed to centralize and streamline the procurement, use, and disposal of Government property. Pub. L. No. 81-152, 63 Stat. 377 (1949), 40 U.S.C. § 471 et seq. Section 203 of this Act vests in the Administrator of GSA broad authority over the sale of excess property, but GSA may delegate authority to an agency to handle a particular sale. 40 U.S.C. § 484(a)-(c). See 56 Comp. Gen. 754 (1977).

Section 204(a) of the Act provides as follows:

"All proceeds under this title from any transfer of excess property to a Federal agency for its use, or from any sale, lease, or other disposition of surplus property, shall be covered into the Treasury as miscellaneous receipts, except as provided in subsections (b), (c), (d), and (e) of this section." 40 U.S.C. § 485(a) (Emphasis added).

None of the exceptions provided in subsections (b), (c), (d) and (e) apply in the context of the question addressed in this memorandum.

Further, in 1950 the Congress enacted legislation providing that all laws or parts of laws in conflict with the 1949 Act or any amendments thereto, are repealed to the extent such conflict exists. Section 11 of Pub. L. No. 81-754, 64 Stat. 578, 591 (1950). In addition, in 1951, as part of its legislative effort to conform the various property statutes to the 1949 Act, Congress enacted legislation repealing and amending various property statutes that had been affected by the 1949 Act. Pub. L. No. 82-247, 65 Stat. 701 (1951). The overall purpose of this law was explained in the pertinent House report as follows:

"The purpose of S. 1952 is to repeal, in whole or in part, laws which have become obsolete, inoperative, or are in conflict with recent legislation [i.e., the Federal Property and Administrative Services Act of 1949] enacted to provide the Government with a more efficient system of procurement and distribution of supplies and materials, property management, utilization of surplus property"
H.R. Rep. No. 82-1105 at 1-2 (1951).

Section 2 of Public Law 82-247 amended the 1896 law in question by adding the following words at the beginning thereof: "Subject to applicable regulations under the Federal Property and Administrative Services Act of 1949, as amended."^{4/} (Emphasis added). Thus, the 1896 law, although not repealed outright by the 1951 legislation, was expressly made subject to regulations that GSA would issue pursuant to the 1949 Act. The purpose of this amendment was explained as follows:

" Note. The addition by this section of the words 'subject to applicable regulations under the Federal Property and Administrative Services Act of 1949, as amended' to the enumerated provisions of law will remove any doubt and ambiguity and problems of legal interpretation concerning the authority of the President and the Administrator of General Services under 205 of the act to issue regulations under the act to issue regulations affecting the enumerated provisions."
H.R. Rep. No. 82-1105 at 29 (1951).

The 1951 amendment to 40 U.S.C. § 485a^{4/} subjecting that law to GSA regulations implementing the 1949 Act, plainly evidenced a congressional intent that the 1949 Act and the GSA regulation take precedence over 40 U.S.C. § 485a^{4/} to the extent a conflict or other inconsistency exists. This intent is also evidenced by the 1950 amendments, section 11 of which provided that all laws in conflict with the 1949 Act were repealed to the extent such conflict exists. Finally, the Congress vested the GSA Administrator with discretion to issue regulations under the Federal Property and Administrative Services Act of 1949, for the purpose of resolving ambiguities and other interpretative questions regarding the relation of the 1949 act and the amended statutes, including 40 U.S.C. § 485a.^{4/}

^{4/} Section 2 amended many other property statutes in the same manner.

In summary, a conflict clearly exists between the 1896 law (40 U.S.C. § 485a) which permits the net proceeds of property sales be deposited into the Treasury as miscellaneous receipts, and the 1949 Act (40 U.S.C. § 485(a) which requires that all proceeds from the sale of excess property be deposited into the Treasury as miscellaneous receipts. GSA, justifiably concluding that the 40 U.S.C. § 485(a) takes precedence over 40 U.S.C. § 485a has issued a regulation implementing the 1949 statute--requiring the deposit of all sales proceeds unless otherwise excepted--and is silent regarding any continued applicability of the 1896 statute (See 41 C.F.R. § 101-45.307) 5/

Further, an internal memorandum recently issued by GSA's Office of General Counsel specifically addressed this question and concluded that 40 U.S.C. § 485(a) takes precedence. In reaching this conclusion, the memorandum refers to the language and legislative history of the 1951 amendment to 40 U.S.C. § 485a (see above), and the general rule of statutory construction that where there is an irreconcilable conflict between two statutes relating to the same subject matter, the more recently enacted legislation controls (i.e., 40 U.S.C. § 485(a)). See 2A: Sutherland, Statutes and Statutory Construction 51.02 (Sands 4th ed. 1984 Revision).

Conclusion:

Based on the above general rule of statutory construction and the specific amendments to 40 U.S.C. § 485a subjecting that statutes to GSA regulations issued under the 1949 Act (40 U.S.C. § 485(a)), we agree with GSA's position that 40 U.S.C. § 485(a) and GSA's regulation take precedence over 40 U.S.C. § 485a. Accordingly, even though 40 U.S.C. § 485a could have applied to the instant situation at one time, authorizing agencies to deduct certain limited expenses from the proceeds of wastepaper sales (see our above discussion

- 5/ By its terms, the GSA regulation in question applies only to the sale of personal property, and not to the sale of real property, being contained in Subpart 101-45.3 of Chapter 41, C.F.R. In responding to your specific question, we have limited our opinion to the sale of personal property (wastepaper) and have not addressed the application of the 1896 law--40 U.S.C. § 485a--to the sale of real property. But see 33 Comp. Gen. 31 (1953); 37 Comp. Gen. 59 (1957); 42 Comp. Gen. 12 (1962).

concerning the Comptroller of the Treasury and the Comptroller General decisions), the statute is no longer provides such authority.

In any case, even if 40 U.S.C. § 485a⁴ could be applied to the present situation, allowing agencies to deduct certain expenses from the proceeds of wastepaper sales, we doubt that it would be helpful for the purpose of funding a wastepaper recycling program. As discussed above, this statute has long been interpreted as allowing agencies to retain only the direct expenses of such sales, which we understand is a relatively small amount in relation to the amount needed to maintain an effective wastepaper recycling program.

cc: Mr. Pierson, OGC
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APPROPRIATIONS/FINANCIAL MANAGEMENT

Budget Process
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