



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON 25

B-119846

September 8, 1955

Dear Mr. Secretary:

Reference is made to your letters of October 26, 1954, and March 8, 1955, requesting that consideration be given the matters discussed in memorandums attached thereto, addressed to you by the Director, National Bureau of Standards.

The Director's memorandum attached to the letter of October 26 contains comments relating to that portion of our letter of July 23, 1954, B-119846, wherein question was raised whether, under section 601 of the Economy Act of June 30, 1932, the Bureau was "in a position to supply or equipped to render" tire-testing services for the Department of the Army inasmuch as the Bureau did not have the facilities to conduct such tests but had to design, construct, and house a testing device at a cost of approximately \$150,000. The Director contends, in effect, that the work in question is authorized by section 2 of the act of March 3, 1901, 31 Stat. 1449, as amended by the act of July 22, 1950, 64 Stat. 371. It is contended further that reimbursement therefor is authorized by section 11 as added by the act of July 22, 1950, the reference to section 601 of the Economy Act of June 30, 1932, contained therein being only to the payment procedures prescribed in said section 601.

Section 2 of the act of March 3, 1901, as amended, authorizes the Secretary of Commerce to undertake the following functions:

"(a) The custody, maintenance, and development of the national standards of measurement, and the provision of means and methods for making measurements consistent with those standards, including the comparison of standards used in scientific investigations, engineering, manufacturing, commerce, and educational institutions with the standards adopted or recognized by the Government.

"(b) The determination of physical constants and properties of materials when such data are of great importance to scientific or manufacturing interests and are not to be obtained of sufficient accuracy elsewhere.

"(c) The development of methods for testing materials, mechanisms, and structures, and the testing of materials, supplies, and equipment, including items purchased for use of Government departments and independent establishments.

"(d) Cooperation with other governmental agencies and with private organizations in the establishment of standard practices, incorporated in codes and specifications.

"(e) Advisory service to Government agencies on scientific and technical problems.

"(f) Invention and development of devices to serve special needs of the Government."

And sections 11 and 12 as added to the act of March 3, 1901, provide as follows:

"Sec. 11. For all services rendered for other Government agencies by the Secretary in the performance of functions specified herein, the Department of Commerce may be reimbursed in accordance with section 601 of the Economy Act of June 30, 1932.

"Sec. 12. In the absence of specific agreement to the contrary, equipment purchased by the Department of Commerce from transferred or advanced funds in order to carry out an investigation authorized herein for another Government agency shall become the property of the Department of Commerce for use in subsequent investigations."

The above provisions of law may at first glance seem to support the view that the Bureau might perform work for other agencies and be reimbursed therefor without regard to the provisions of section 601 of the Economy Act, other than those relating to the payment procedures prescribed therein. However, an examination of the legislative history of such provisions and prior legislation relating to inter-agency services fails to disclose any basis for such view.

The National Bureau of Standards was established by the act of March 3, 1901. Section 2 of this act set forth the functions of the Bureau and directed that the Bureau should exercise its functions for the Government of the United States and, upon request, for State and municipal governments and for certain private parties. Section 3 thereof, as amended by section 312 of the Economy Act of June 30, 1932, provides that fees shall be charged for services performed for private parties but specifically exempts the United States Government from the payment of such fees.

It is clear, therefore, that under the act of March 3, 1901, all functions of the Bureau were to be financed from appropriations

made to the Bureau and that no provision was made for reimbursement from other agencies for work performed at their request. However, the act of May 29, 1920, 41 Stat. 631, 663, making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year 1921, contained a provision as follows:

"During the fiscal year 1921, the head of any department or independent establishment of the Government having funds available for scientific investigations and requiring cooperative work by the Bureau of Standards on scientific investigations within the scope of the functions of that Bureau and which it is unable to perform within the limits of its appropriations, may, with the approval of the Secretary of Commerce, transfer to the Bureau of Standards such sums as may be necessary to carry on such investigations. The Secretary of the Treasury shall transfer on the books of the Treasury Department any sums which may be authorized hereunder and such amounts shall be placed to the credit of the Bureau of Standards for the performance of work for the department or establishment from which the transfer is made."

Similar provisions appeared in pertinent appropriation acts for each subsequent fiscal year until the fiscal year ending June 30, 1947.

Since the authority to transfer funds to the Bureau of Standards for scientific investigations was predicated upon the inability of the Bureau to perform such investigations "within the limits of its appropriations," it would seem obvious that the Bureau must be lacking in funds for the purpose of hiring personnel or purchasing equipment or both. In other words, as long as the scientific investigations were "within the scope of the functions of the bureau," the Bureau did not necessarily have to "be in a position to supply or equipped to render" services to other departments or agencies of the Government.

As stated above, the specific authority to transfer funds to the Bureau was contained in annual appropriation acts only for the fiscal years 1921 through 1947. Such authority did not appear in the appropriation acts for subsequent fiscal years. During the fiscal years 1948 through 1950, scientific investigations, as well as other work for other departments and agencies of the Government, apparently were performed under the general provisions of section 601 of the Economy Act of June 30, 1932. That section authorizes the various agencies of the Government, if funds are available therefor, to place orders for work, services, etc., with other agencies of the

Government when such other agencies are in a position to perform such work or services and to reimburse the performing agency for the cost thereof in the manner prescribed therein.

While, as pointed out by the Director, the Congress was aware of the fact that the Bureau was furnishing considerable services for other agencies ostensibly under authority of section 601 of the Economy Act, the propriety of many of such transactions might well have been open to question since the act of March 3, 1901, specifically provided that the Bureau should exercise its functions for the Government of the United States. In other words, if such functions constituted the normal operations of the Bureau for which the Congress made appropriations, the propriety of recovering the cost of such services from other agencies under the provisions of section 601 of the Economy Act could have been questioned by agencies from which reimbursement was requested. See 16 Comp. Gen. 333; 17 id. 728.

That the Bureau recognized that such question existed is evident from certain statements contained in the "Statement of Purpose and Need for Proposed Legislation" submitted by the Department of Commerce to the Congress in connection with the legislative proposals subsequently enacted as the act of July 22, 1950. In explaining the purpose of section 11 of the legislation it is stated that--

"* * * The first proposed section, section 11, would specifically authorize the Bureau of Standards to be reimbursed for all services rendered for other Government agencies, pursuant to section 601 of the Economy Act of June 30, 1932. This specific reference is deemed necessary to preclude the possibility that at some future date an agency might claim that the services performed for them by the Bureau of Standards was a specific duty of the Bureau of Standards and not a function for which reimbursement would be due under the Economy Act, since the service rendered was a function which the National Bureau of Standards was specifically authorized to perform by section 2. The phrase 'reimbursed in accordance with section 601 of the Economy Act of June 30, 1932' is intended to include payments in advance as well as reimbursements."

Furthermore, the House Committee and the Senate Committee on Interstate and Foreign Commerce in reporting on the legislation (see Reports Nos. 2349 and 795, respectively, 81st Congress, 1st Session) stated that the legislation would clarify existing ambiguities with respect to bookkeeping transfer of funds from other departments or agencies

of the Government for which the Bureau performs specific duties. And with particular reference to section 11 it was stated that such section would authorize the Bureau to be reimbursed for services rendered to other Government agencies and, also, that such practice had been followed under existing law but there was some question regarding interpretation of language.

Also, the legislative history of the act of July 22, 1950, discloses that the primary purpose of the amendment to section 2 of the act of March 3, 1901, was to provide basic statutory authority for the activities of the Bureau by restating the functions provided in the earlier act and consolidating therein activities which were provided for in appropriation acts over a number of years.

In view of the foregoing, it is apparent that the Congress did not consider that the act of July 22, 1950, conferred upon the Bureau any new authority but rather intended merely to remove any doubt concerning the authority of the Bureau to render services for other Government agencies under the provisions of section 601 of the Economy Act and to receive reimbursement in the manner prescribed therein.

The Director further contends that, in any event, the Bureau should be considered as being "in a position to supply or equipped to render" services under section 601 of the Economy Act, even though additional equipment may be necessary for the completion of the services requested.

In view of the provisions of section 12 of the act of March 3, 1901, as amended, it appears, as stated by the Director, the Congress recognized that, in order to perform the functions set forth in section 2 of the act for other Government agencies, it would be necessary in proper cases for the Bureau to acquire new equipment, and contemplated that the cost of developing or acquiring such additional equipment might be paid with funds received from other agencies. Accordingly, you are advised that this aspect of the transactions of the Bureau will not be questioned further. However, with regard to recruitment of personnel to perform services for other departments and agencies, we do not believe that the authority of the Bureau is unlimited. Otherwise, no effect would be given to the requirement contained in section 601 of the Economy Act that the performing agency "be in a position to supply or equipped to render" such services. In this matter we are aware that the Bureau submitted legislation to the 84th Congress (S. 2060) to amend the act of March 3, 1901. One of the provisions of the bill would repeal section 11 relating to services rendered pursuant to section 601 of the

Economy Act. The proposed legislation also would provide basic authority to perform services for other departments and agencies and provide for payment for such services. The legislation was passed by the Senate on July 28, 1955, and referred to the House Committee on Interstate and Foreign Commerce on July 29, 1955. That being the case, and pending final action of the Congress in the matter, we will not raise any further objection to the apparently now established practice of the Bureau "to recruit a considerable portion of the professional staff" in the performance of services for other departments and agencies of the Government.

The Director's memorandum attached to your letter of March 8 concerns certain expenditures incurred in constructing the tire-testing building. It is stated therein that in order for the Bureau to construct the tire-testing machine it was necessary to construct a building to house the machine. It is stated further that the authority to construct the machine was considered as carrying with it the implied authority to construct the building, citing 10 Comp. Gen. 1140. In the circumstances no further question in the matter will be raised by us.

Sincerely yours,

Frank H. Weitzel

Acting Comptroller General
of the United States

The Honorable
The Secretary of Commerce