

**DECISION**



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

FILE: B-130961

DATE: APR 21 1976

MATTER OF: Federal Election Commission - Administrative  
Support Services Agreement

- DIGEST: (1) General Services Administration (GSA) may continue to provide administrative support services to Federal Election Commission (Commission), pursuant to agreement between GSA and Commission, on basis of specific provision in Federal Election Campaign Act Amendments of 1974 granting Commission authority to seek and receive personnel, facilities, and other assistance from other agencies and departments of United States. GAO need not, therefore, consider effect of Supreme Court decision in Buckley v. Valeo, 423 U.S. \_\_\_\_ (1976) on question of whether Commission is executive department or independent establishment of Government for purposes of Economy Act, 31 U.S.C. § 686 (1970), which is authority generally relied on for such inter-agency agreements.
- (2) General Services Administration may continue to provide administrative support services to Federal Election Commission (Commission) and salaries of Commissioners may continue to be paid despite expiration of stay of judgment of Supreme Court in Buckley v. Valeo, 423 U.S. \_\_\_\_ (1976). Court held in that case that, although appointment of Commissioners was not in compliance with U.S. Const., art. II, § 2, cl. 2, and, therefore, Commission could not perform executive department functions, Commission continued to exist in law, retaining authority to carry out functions which could be performed by Congress itself.

This decision is in response to a letter from the Administrator of General Services requesting our views concerning the continuing authority of the General Services Administration (GSA) to provide administrative support services to the Federal Election Commission (Commission), in light of the decision of the United States Supreme Court in Buckley v. Valeo, 423 U.S. \_\_\_\_, 96 S. Ct. 612 (1976), that the Commission could not exercise certain of its statutory duties consistent with the U.S. Constitution.

"Is the Commission as presently constituted a Federal entity within the definition contained in 31 U.S.C. 686 so as to permit GSA to rely on that provision of law to continue to provide administrative support services to the Commission on a reimbursable basis? If your response to this question is no, could subsection (f) (3) of section 310 of the Commission's enabling act, P. L. 93-443, permitting the Commission to obtain assistance, including personnel and facilities, from other agencies and departments of the Government, serve as the legal basis for the current arrangement between the Commission and GSA?"

It appears that GSA is currently providing administrative support services to the Commission pursuant to a Memorandum of Understanding and Agreement, dated April 18, 1975, and renewed on July 10, 1975. Pursuant to this agreement, GSA is to provide to the Commission " \* \* \* payroll, financial reporting, budget, personnel, legal, security investigations and other office services and perform all necessary accounting functions related thereto \* \* \*."

We understand that GSA has entered into similar agreements with several other agencies. Section 601 of the Economy Act of 1932, as amended, 31 U.S.C. § 686 (1970), provides authority for the execution of such agreements in the case of "Any executive department or independent establishment of the Government, or any bureau or office thereof \* \* \*." The agreement between GSA and the Commission, however, cites both 31 U.S.C. § 686 and the Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93-443, 88 Stat. 1263 (October 15, 1974) as authority for its execution.

Section 310(f)(3) of Pub. L. No. 93-443, 2 U.S.C. § 437c(f)(3) (Supp. IV, 1974) provides as follows:

"In carrying out its responsibilities under this Act, the Commission shall, to the fullest extent practicable, avail itself of the assistance, including personnel and facilities, of other agencies and departments of the United States Government. The heads of such agencies and departments may make available to the Commission such personnel, facilities, and other assistance, with or without reimbursement, as the Commission may request."

This subsection clearly authorizes the Commission to seek and accept assistance, including "personnel, facilities, and other assistance" from agencies and departments of the United States, such as GSA. The administrative support services agreement between GSA and the Commission seems clearly within the ambit of this authority. Accordingly, we find it unnecessary to consider the question of whether the Economy Act, supra, would provide similar authority to the Commission.

GSA also asks whether the Commission would continue to exist in law so that GSA may continue to provide administrative support services on a reimbursable basis, after the expiration date of the Supreme Court's stay of judgment granted in Buckley v. Valeo, supra, and later extended. Moreover, GSA asks specifically whether there is any legal basis to continue after the expiration of the stay to pay the salaries and expenses of the Commissioners under their present appointments.

In Buckley v. Valeo, supra, the Supreme Court concluded that the appointment of the Commissioners was not accomplished in compliance with U.S. Const., art. II, § 2, cl. 2. It did not, however, conclude that their appointment was invalid. Indeed, the Court, at pages 130-135 of the slip opinion, specifically addresses the question of which of the Commissioners' statutory powers may be exercised "\* \* \* by the present Commissioners, none of whom was appointed as provided by that Clause\* \* \*." The Court concludes that:

"Insofar as the powers confided in the Commission are essentially of an investigative and informative nature, falling in the same general category as those powers which Congress might delegate to one of its own committees, there can be no question that the Commission as presently constituted may exercise them.\* \* \*"  
Slip opinion, at 131.

Moreover, the Court concluded that the Commissioners:

"\* \* \* may, therefore, properly perform duties only in aid of those functions that Congress may carry out by itself, or in an area sufficiently removed from the administration and enforcement of the public law as to permit them being performed by persons not 'Officers of the United States.'"  
Id., at 132.

See also pages 136 and 137 of the slip opinion where the Court refers to " \* \* \* the Commission's inability to exercise certain powers \* \* \*," and concludes that " \* \* \* most of its powers \* \* \* cannot be exercised by the Commission as presently constituted. \* \* \*" (Emphasis added.)

This language clearly indicates that the Commission has authority, which would continue even after the expiration of the stay of judgment, to exercise powers akin to those which may be appropriately exercised by the Congress itself. Slip opinion, at 131. Likewise, although the Commissioners are precluded from exercising the functions of "Officers of the United States" within the meaning of Article II of the Constitution, they may exercise such powers granted them by Pub. L. No. 93-443 as might appropriately be exercised by the Congress itself.

Accordingly, we would have no objection to GSA's continued provision of administrative support services to the Commission, nor to the continued payment of salaries and expenses of the Commissioners as appointed under present law.

(SIGNED) ELMER B. STAATS

Comptroller General  
of the United States