

# DECISION



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

60645

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DATE: MAR 17 1976 98479

## MATTER OF:

Parking Fees and Charges for GSA Provided Space  
and Services

- DIGEST:
1. Where General Services Administration pursuant to 40 U.S.C. § 490(j) charges Veterans Administration for parking space for use of employees, and related services, VA appropriations are available to pay such charges subject to 90 percent limitation contained in VA annual appropriations.
  2. Where executive agency other than General Services Administration provides parking space or related services to employees, or to others, agency is authorized by 40 U.S.C. § 490(k) to charge occupants therefor if, but only if, rates are approved by Administrator of General Services and the Office of Management and Budget.
  3. Under 40 U.S.C. § 490(k), fees collected by an executive agency for space provided to "anyone" pursuant to that provision, including parking fees collected from employees, if rates therefor are approved, are generally to be credited to appropriations initially charged for such services, except that amounts collected in excess of actual costs must be remitted to the Treasury as miscellaneous receipts.
  4. General Services Administration does not assert, nor does it have, authority to force agencies to accept and pay for parking space in excess of their stated needs.

The Deputy Administrator of Veterans Affairs requests our decision on several questions concerning the propriety of payments to the General Services Administration (GSA) and the collection of fees from employees for parking space and services, where parking is provided at Veterans Administration (VA) facilities other than Hospitals.

The VA states that the General Services Administration is utilizing the "Standard Level User Charge" (SLUC) to assess charges for parking

spaces under CSA control allocated to the VA and related services including some parking spaces provided directly to individual VA employees. The Deputy Administrator questions whether Congress contemplated "that such payments would, in effect, provide free parking to government employees" and asks whether VA can recoup parking costs by charging its employees. He also states that in some instances space has been assigned, although not requested by VA.

Four specific questions are propounded:

"1. Can the Veterans Administration appropriation, without specific approval from Congress, be used to pay charges levied by the General Services Administration for employee parking?

"2. If the foregoing question is answered in the affirmative, can the Veterans Administration, by virtue of the authority set out in section 210(k) of the Federal Property and Administrative Services Act of 1949, as amended, charge Veterans Administration employees for the parking spaces provided to them, notwithstanding the fact that the General Services Administration has failed to establish rates for this purpose?

"3. If it is determined that the Veterans Administration is authorized to charge its employees for the parking spaces provided to them, what disposition may be made of the receipts? In other words, could these receipts be retained by the agency in an account in the nature of a parking revolving fund, returned to the appropriation from which expended, or must such receipts be deposited in the Miscellaneous Receipts Account of the United States Treasury?

"4. Finally, if the agency determines that no parking spaces are needed, or spaces above a given number are not needed or required to accomplish the day-to-day operations at a particular facility (including employee parking), does the General Services Administration possess authority to allocate parking spaces to individual agency employees or to the agency in excess of the number of parking spaces deemed necessary by it; and thereafter require the agency to bear the charges for such parking spaces?"

With reference to VA's first question, as indicated in our decision in 52 Comp. Gen. 957, 958 (1973), one of the major purposes of the

Public Buildings Amendments of 1972, Pub. L. No. 92-313, June 6, 1972, 86 Stat. 219, was the creation of the Federal Buildings Fund to finance real property management and related GSA activities. Among the sources of revenue to be paid into the fund are user charges, assessed under 40 U.S.C. § 490(j)(Supp. IV, 1974). Section 490(j) provides, inter alia:

"The Administrator of General Services is authorized and directed to charge anyone furnished services, space, quarters, maintenance, repair, or other facilities (hereinafter referred to as space and services), at rates to be determined by the Administrator from time to time and provided for in regulations issued by him. Such rates and charges shall approximate commercial charges for comparable space and services.\* \* \*"

Section 609 of the act approved August 9, 1975, Pub. L. No. 94-91, 89 Stat. 459, provides in part that:

"Appropriations available to any department or agency during the current fiscal year and the period of July 1, 1976, through September 30, 1976, for necessary expenses, including maintenance or operating expenses, shall also be available for payment to the General Services Administration for charges for space and services\* \* \*."

Section 405 of the act approved October 17, 1975, Pub. L. No. 94-116, 89 Stat. 600, making appropriations for, inter alia, the Veterans Administration for the current fiscal year, and through September 30, 1976, further provides that:

"No part of any appropriation, funds, or other authority contained in this Act shall be available for paying to the Administrator of the General Services Administration in excess of 90 per centum of the standard level user charge established pursuant to section 210(j) of the Federal Property and Administrative Services Act of 1949, as amended, for space and services."

Such a provision has been routinely included in appropriation acts since enactment of Pub. L. No. 93-381, § 506, August 21, 1974, 88 Stat. 630. This restriction was explained in the report of the House Committee on Appropriations, on the legislation enacted as Pub. L. No. 93-381, H. Rep. No. 93-1132, 39(1974), as follows:

"After consideration of the budget and proposals of the General Services Administration, the Committee reached the following conclusions:

"1. The standard level user charges established by GSA are in excess of comparable commercial rates for space and services.

"2. A reduction of 10% in these rental charges was assessed and each appropriation act will reduce the amount allowed for such charges by that amount."

In view of the foregoing authorities, we are of the opinion that moneys appropriated for the use of the Veterans Administration for necessary expenses, including maintenance or operating expenses, for the current fiscal year and through September 30, 1976, are available for payment of 90 percent of GSA's standard level user charges for space and services, assessed pursuant to 40 U.S.C. § 490(j), including charges attributable to employee parking spaces. Accordingly, the first question submitted is answered in the affirmative.

With reference to the second question, section 490(k) of Title 40, United States Code (Supp. IV, 1974) provides that:

"Any executive agency, other than the General Services Administration, which provides to anyone space and services set forth in subsection (j) of this section, is authorized to charge the occupant for such space and services at rates approved by the Administrator. Moneys derived by such executive agency from such rates or fees shall be credited to the appropriation or fund initially charged for providing the service, except that amounts which are in excess of actual operating and maintenance costs of providing the service shall be credited to miscellaneous receipts unless otherwise authorized by law."

VA suggests that, notwithstanding use of the term "anyone" in this subsection, the legislative history of the Public Buildings Amendments of 1972 appears to limit its applicability to charging other Federal agencies for space, thereby precluding recoupment of parking space charges from employees. However, the VA did not cite the legislative history on which it relies, and we are not aware of any supporting

materials on this point. Following general rules of statutory construction, the term "anyone" as used in section 210(k) /40 U.S.C. § 490(k)/ should be given the same meaning as in the preceding section 210(j) which deals with charges by the Administrator to "anyone" furnished space or services. The legislative history of section 210(j) indicates that the term anyone was substituted for the term eligible agency in H.R. 10488, 92nd Congress, by the House Committee on Public Works. Eligible agency was defined in the bill to include private persons and organizations. S. 1736, 92nd Congress, a similar Bill authorized CSA to charge any "Federal agency, \* \* \* Federal employee, private persons, or organization" furnished space. The conference report accompanying S. 1736 adopted the House language, H. Rept. No. 92-1097. Thus it seems clear that the term "anyone" is not limited to other Federal agencies but may also include individual Federal employees or others, to whom parking privileges are accorded. See 52 Comp. Gen. 957, 960-961, in which we treated the statutory provisions for leasing space at SLUC rates as being equally applicable, whether the occupant is a Federal agency or private concessionaire.

Concerning VA's authority to charge employees for parking spaces notwithstanding the fact that CSA has not established rates for this purpose, 40 U.S.C. § 490(k) expressly limits charges thereunder to "rates approved by the Administrator /of General Services/." Moreover, CSA is authorized to adopt regulations to "carry out the provisions of the Public Buildings Amendments of 1972," to be:

"\* \* \* coordinated with the Office of Management and Budget, and the rates established by the Administrator of General Services pursuant to § 490(k) of the Act shall be approved by the Director of the Office of Management and Budget." Pub. L. No. 92-513, § 7, 86 Stat. 221, 40 U.S.C. § 603 note (Supp. IV, 1974) (Emphasis supplied.)

In our view, the foregoing provisions necessarily have the effect of making approval of rates by CSA and the Office of Management and Budget a prerequisite to an agency's imposition of charges under § 490(k). Thus, in response to the second question, 40 U.S.C. § 490(k) authorizes VA to impose charges for employee parking if, but only if, rates therefor have been approved by CSA and OMB. While VA apparently has not sought approval of rates for employee parking charges, according to a report furnished to us from CSA, it is "not inclined" at this time to approve rates for such purpose pending development of a national policy in this regard. CSA states:

"\* \* \* Since the enactment of the 1972 amendments to the \* \* \* /Federal Property and

Administrative Services Act of 1949, 40 U.S.C. §§ 490(j), (k) (Supp. IV, 1974) the only agency request received by GSA for approval of such rates for parking was not approved by GSA following discussions with the agency and our Office of Federal Management and Policy, which has been delegated responsibility to establish a national parking policy by the Office of Management and Budget. Pending development of a national policy, GSA is not inclined \* \* \* to approve parking rates to be assessed against individual Government employees. We believe that if such a policy is adopted it should be applied on a uniform basis, without regard to the preferences of a single agency."

If employee parking charges eventually obtain the requisite approvals, VA's third question concerning the disposition of receipts from such charges seems to be answered by the express terms of 40 U.S.C. § 490(k). This subsection states that, unless otherwise authorized by law, moneys derived from charges thereunder shall be credited to the appropriation or fund initially charged for providing the service, except that amounts in excess of actual costs shall be treated as miscellaneous receipts. We have not been referred to any statute which would supersede § 490(k) in the case of VA. Receipts credited to an agency appropriation or fund pursuant to § 490(k) would, of course, take on the identity of that appropriation or fund and therefore become subject to its period of availability. Thus, assuming that the applicable VA appropriations would be available on a fiscal year basis, and in the absence of any specific statutory authority to the contrary, "an account in the nature of a parking revolving fund" could not be created.

The fourth question is directed to the propriety of GSA's allocation of parking spaces either to the agency or directly to individual employees for which the agency is charged although the agency feels these spaces are in excess of their needs. In response to our inquiry on this point, GSA's report stated:

"\* \* \* It is not GSA policy to require agencies to accept and pay for parking spaces in any number in excess of its /sic/ needs.\* \* \* Generally, the number of parking spaces available for assignment is less than the demand for such spaces. In the event \* \* \* the Veterans Administration believes that it is assigned parking spaces in excess of its needs, it is suggested that it contact our Public Buildings Service to discuss the matter in order that appropriate adjustments can be made."

Note that GSA refers to employee parking spaces assigned to and accepted by agencies. Thus GSA does not--and, in our view, could not--assert a right to force agencies to accept and pay for parking space which they do not need. Cf., 52 Comp. Gen. 957, supra, at 961.

In this regard, we note that the Administrator has provided by regulation, as follows:

"The space utilization program is designed to effect maximum efficient utilization of Government-controlled space. Space for which there is no current foreseeable need will be relinquished." Federal Property Management Regulations, § 101-17.203.

"GSA shall be notified by an agency occupying space assigned by GSA at least 60 days prior to the date on which the space, or portion thereof, will no longer be needed.\* \* \* Such notification shall be in writing to the GSA regional office responsible for the geographical area in which the space is located \* \* \*. When a portion of space is released, it must be consolidated and accessible for reassignment.\* \* \* The appropriate GSA regional office may reassign or dispose of the space." Id., § 101-17.204(a).

Accordingly, it would appear that where a Government agency occupies parking space assigned by the GSA for which there is no current or foreseeable agency need, the agency may relinquish that space by giving the notice required.

With respect to GSA's authority to allocate parking spaces directly to individual agency employees and to charge the agency therefor, we considered this question in 52 Comp. Gen. 237, supra, in connection with proposed regulations by GSA to implement the standard level user charge. We concluded, inter alia, that GSA had authority to assign parking spaces to agencies for assignment to employees, or to agency employees directly and that it could impose the SLUC in either case. However, in neither instance may an agency be compelled to pay for a parking space which it has determined is not necessary and which it has declined to accept. Id., at 200-01.

R. F. KELLER

Deputy

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of the United States