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United States General Accounting Office
Washington, DC 20548

Office of
General Counsel

In Reply
Refer to: B-196981
January 16, 1981

[Procurement Authority of Office of Special Counsel]

The Honorable Mary Eastwood
Acting Special Counsel
Office of the Special Counsel
1717 H Street, NW.
Washington, D.C. 20414

Dear Ms. Eastwood:

As you know, the Office of Special Counsel has requested our opinion on whether it has its own procurement authority that it can exercise without clearance or approval from the Merit Systems Protection Board (MSPB).

This question had been under active consideration by our Office for some time. However, before we were able to complete our analysis and reach a final decision, we learned that on November 21, 1980, a suit was filed in the United States District Court for the District of Columbia by the MSPB against you individually and in your official capacity as Acting Special Counsel. In essence, the complaint alleges that although the Chairwoman of the MSPB is by statute MSPB's chief administrative and budgetary officer with responsibility for its fiscal administration, you, as Special Counsel -- the head of a sub-unit of the MSPB -- have refused to comply with the Chairwoman's directives, asserting that you have independent administrative and budgetary authority.

Since procurement authority is obviously part of the general administrative authority with which the lawsuit is involved, it would appear that any substantive judicial disposition of the lawsuit would necessarily resolve your question to us. It is the consistent position of our Office not to express our views with respect to matters which are currently the subject of pending litigation. See Sovereign Construction Company, LTD; City of Philadelphia, B-185874, March 8, 1977, 77-1 CPD 168; Union Carbide Corporation, 56 Comp. Gen. 487 (1977), 77-1 CPD 243; Nartron Corporation, 53 Comp. Gen. 730 (1974), 74-1 CPD 154; Lametti & Sons, Inc., 55 Comp. Gen. 413 (1975), 75-2 CPD 265; Cubic Western Data, Inc., B-189578, October 7, 1977, 77-2 CPD 279; and other cases cited in these decisions.



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Accordingly, we must decline to answer the question posed in your submission. However, we might add that in the event the judicial disposition of MSPB's complaint does not resolve the question you submitted to us, we would certainly be willing to consider the matter further should your office indicate that it still wished us to do so.

Sincerely yours,

(Mr) Rollee Efros

Rollee Efros
Associate General Counsel