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

*Contract Dispute Involving Government Printing Office*

B-198198.2

February 18, 1981

The Honorable Paul N. McClosky, Jr.  
House of Representatives

Dear Mr. McClosky:

We refer to your additional correspondence concerning a contract dispute between your constituent, Microform Data Systems, Inc., and the Government Printing Office (GPO).

On July 18, 1980, in response to your initial correspondence requesting an opinion as to the authority of the Public Printer to redelegate the resolution of the Microform dispute to a contract appeals board within the executive branch, we advised you of our belief that the Public Printer was bound by the decision of the GPO Board of Contract Appeals which dismissed Microform's complaint for lack of jurisdiction. We stated that we did "not believe an aggrieved contractor is legally entitled to 'shop' for an administrative forum once it receives an administrative ruling from a board empowered to act on 'behalf' of the Federal Government with which it disagrees."

Your most recent letter first requests our opinion of Microform's suggestion that administrative due process was not satisfied by the composition and procedures of the GPO Board in this case. Microform argues that the Public Printer's initial delegation of the contract dispute to the GPO Board was so improvident as to warrant convocation of a new board to rehear the Microform dispute. Microform's conclusions rest for the most part on the provisions of the Contract Disputes Act, 41 U.S.C. § 601 et seq. (Supp. III 1979). Microform, while conceding that the Act is not applicable to legislative branch agencies, nonetheless submits that the Act establishes a standard for the legislative branch against which administrative due process is to be measured. Secondly, you request our opinion on the Public Printer's ability to delegate his decision-making authority in future contract dispute matters to an established board of contract appeals in the executive branch.

With regard to the first matter, Microform asserts that the GPO Board was required to satisfy a Contract Disputes

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Act standard of administrative due process and failed to do so because the GPO board in question was neither a full time board with no 'inconsistent' duties, nor staffed by members who were believed "qualified" under the standards of the Act. We do not agree with Microform's assertions.

First, there is no indication in the Act or its legislative history that the Contract Disputes Act was intended to create a new general standard of due process applicable to agency contract appeals boards which are not included within the terms of the legislation. The legislative history and the language of the Act, in fact, suggest a contrary result.

For example, with respect to legislative branch agencies, the Congress recognized that the procurement volume of these agencies is small and found it unnecessary to include these agencies within the terms of the Act. We believe that there is at least an implicit recognition by the Congress that none of these agencies has a sufficient volume of contract disputes to support a full time contract appeals board.

With respect to the appointment of individual members of agency boards, we note for example that the Tennessee Valley Authority is specifically exempted from the requirement that board members be "appointed to serve in the same manner as administrative law judges with the additional requirement that such members have five years experience in public contract law." 41 U.S.C. § 607(b)(1). The TVA is thus included in the Act for many purposes, but is nonetheless exempted from the qualification requirements established for executive agency boards. Therefore, in view of the clear language of the statute and the Congressional recognition of the status of legislative branch contract appeals boards vis-a-vis those in the executive branch, we are not convinced that the Act can be viewed as creating a general standard of due process which Microform asserts must be met by all boards of contract appeals.

We recognize the concern you have expressed regarding the alleged lack of public contract law experience of the board members, and Microform's belief that some board members' normal duties are inconsistent with appeals board duties. We note that Microform appears not to have objected to the panel's qualifications prior to the time a decision was rendered.

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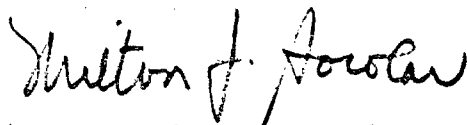
In any event, absent any legislative or judicial requirement which imposes specific standards on the appointment and composition of legislative branch board appointees, it is within the discretion of the agency head to appoint those persons he believes are appropriate to act on his behalf, and it is not appropriate for this Office to substitute its judgment for that of the Public Printer in this regard. We do note that as one board member, the Public Printer appointed an experienced lawyer who had no duties otherwise in connection with GPO contracting and two other educated professionals. That they allegedly lack in-depth public contract law experience would not be a bar to a reasoned judgment in connection with a contract matter.

With regard to your question concerning the Public Printer's right to delegate his decision-making authority to an executive branch board of contract appeals in future contract disputes, we note that GPO has taken the position that the Public Printer will not delegate future decision-making authority to an executive branch board without specific statutory approval because of GPO's concern that such a delegation would violate the Constitutional separation of powers doctrine. This same concern is expressed in the legislative history of the Contract Disputes Act.

Without addressing the merits of the separation of powers issue, we believe that both the Public Printer's and the Congressional concern with this issue is enough to provide a reasonable basis for the Public Printer's choice not to delegate his decision-making function to an executive branch board.

We trust this advice is responsive to your request.

Sincerely yours,



Acting Comptroller General  
of the United States