18413 GGM Rogers

DECISION

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

FILE: B-199921 **DATE:** June 10, 1981

MATTER OF: The General Services Administration's General Supply Fund

DIGEST:

1. The inventory in the General Services Administration's (GSA) General Supply Fund does not constitute a budgetary resource against which obligations may be incurred. The Antideficiency Act, 31 U.S.C. § 665, is violated when obligations are incurred in excess of budgetary resources.

2. GSA is authorized to pass on to requisitioning agencies the costs of terminating contracts for the convenience of the Government which the General Supply Fund might incur as a result of order cancellations by those agencies.

The General Counsel of the General Services Administration (GSA) has requested our opinion on two questions concerning GSA's General Supply Fund. First, how should the provision of the Antideficiency Act contained in 31 U.S.C. § 665(a) be applied to the General Supply Fund? Second, is it proper for GSA to pass on the costs of terminating contracts for the purchase of furniture to the agencies which cancelled their furniture orders with the General Supply Fund?

GSA has a statutory duty to procure personal property and nonpersonal services for the use of Federal agencies. 40 U.S.C. § 481 (1976). Congress established the General Supply Fund to assist GSA in carrying out this duty. 40 U.S.C. § 756 (1976). Through the Fund, GSA makes consolidated and bulk purchases of goods and services that are commonly used by the agencies.

Apparently, GSA's normal procurement procedure is as follows. First, GSA accepts orders, sometimes accompanied by advances, from its customer agencies. Second, it makes contracts with suppliers to fill those orders. Third, it receives the goods from the supplier and makes payment for them. Fourth, it delivers the goods to the customer agencies and seeks reimbursement from them to the extent that previously received advances are not sufficient to pay for them.

Because GSA maintains substantial inventories and because suppliers are paid before customers make reimbursement, the General Supply Fund frequently has cash flow problems. GSA reports that these problems have recently become acute for a number of reasons. First, an extraordinary demand was placed on the General Supply Fund to provide funds for disaster and refugee relief in advance of reimbursement. Second, there has been a general decrease in customer orders for items already in inventory. Third, Congress rescinded $220 million which had been available for the purchase of furniture by Federal agencies in fiscal year 1980. This appropriation rescission means that agencies that ordered furniture through the General Supply Fund will be unable to pay for their orders or will be required to seek the return of the advances they made to the Fund.

In the context of the General Supply Fund's current cash flow problems, GSA asks our opinion on the applicability of the Anti-deficiency Act to the Fund. The relevant provision of the Anti-deficiency Act reads as follows:

> "No officer or employee of the United States shall make or authorize an expenditure from or create or authorize an obligation under any appropriation or fund in excess of the amount available therein; nor shall any such officer or employee involve the Government in any contract or other obligation, for the payment of money for any purpose, in advance of appropriations made for such purpose, unless such contract or obligation is authorized by law." 31 U.S.C. § 665(a) (1976).

GSA wants to know if a violation of this provision occurs at the moment when the cash assets, including advances, of the General Supply Fund are exceeded by the amount of obligations which the Fund has to its suppliers. It is GSA's position that no violation would occur at this time because the General Supply Fund would not have been obligated "in excess of the amount available therein." GSA believes that the amount available for obligation in the Fund includes inventory as well as cash, accounts receivable, and unfilled agency orders. GSA states that when the value of the inventory is treated as an asset, the total value of the Fund's assets easily exceeds the obligations at any given time.

We cannot agree with GSA that it can obligate against the value of inventory in the General Supply Fund. Office of Management and Budget Circular No. A-34 specifically states that the inventory of a revolving fund is not an asset which is available for obligation. The relevant provision of that circular reads as follows:

> "66.3 Distinction between types of assets.
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> "For purposes of budgetary accounting, a distinction is made between those assets that

> constitute a budgetary resource (i.e., are available for obligation) and those that do not. Budgetary resources include cash, balances on deposit with the Treasury, accounts receivable, and unfilled customers' orders, including advances received from others (to the extent described elsewhere in this Circular). Other assets, whether of a working capital nature such as inventories of stock or of a fixed asset nature, are not considered a budgetary resource. Such assets, therefore, do not enter into the determination of the unobligated balances.* * *"

In addition, this Office has held that obligations cannot be charged against anticipated proceeds from the sale of property. 35 Comp. Gen. 356 (1955).

Therefore, it seems clear that a violation of 31 U.S.C. § 665 occurs at the moment that obligations are incurred which exceed available budgetary resources as defined by the OMB Circular. Of course, if ordering agencies cancel existing orders, no violation for previously recorded obligations occurs. GSA in that case may terminate contracts entered on the strength of ordering agency orders. As discussed below, such termination costs may be passed on to the ordering agency.

GSA's second question concerns the consequences of congressional rescission of funds for the purchase of furniture. GSA believes that the appropriation rescission may cause agencies to cancel furniture orders placed with GSA but not yet filled. GSA states that in this event it would have to terminate contracts for the convenience of the Government. If this happens, GSA plans to apportion the termination costs among the agencies that cancelled orders.

GSA cites as its authority for passing on termination costs the following provision of the Federal Property and Administrative Services Act.

> "Payment by requisitioning agencies shall be at prices fixed by the Administrator. Such prices shall be fixed at levels so as to recover so far as practicable the applicable purchase price, the transportation cost, inventory losses, the cost of personal services employed directly in the repair, rehabilitation, and conversion of personal property, and the cost of amortization and repair of equipment utilized for lease or rent to executive agencies.* * *"
> 40 U.S.C. § 756(b) (1976).

For the reasons that follow, we believe that GSA is authorized to pass on its termination costs.

The General Supply Fund is intended, for the most part, to be a self-sustaining revolving fund for the purchase of items for the Government. Further, unfilled customer orders are classified by Circular No. A-34 as "budgetary resources" which may be relied upon to support General Supply Fund obligations and presumably such orders have been recorded as obligations by the requisitioning agency. We believe therefore, that the requisitioning agency, and not the Fund, should bear the loss (i.e., the termination costs) when it cancels an order for items for which the Fund has entered into a procurement contract or has placed an order under an existing contract on behalf of the requisitioning agency. On the other hand, the Fund should bear the termination costs when it cancels orders entered into in anticipation of agency needs, such as to build up the Fund's furniture inventory. In other words, when an agency causes the contract termination costs by placing a specific order and then cancelling it, that agency's appropriations should bear the expense. This procedure maintains the integrity of the General Supply Fund.

Milton J. Socolar

Acting Comptroller General
of the United States