



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

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November 14, 1980

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The Honorable George Danielson
Chairman, Subcommittee on Administrative Law
and Governmental Relations
Committee on the Judiciary
House of Representatives

Dear Mr. Chairman:

There is enclosed, in response to a request by William Shattuck, counsel for the subcommittee, a draft of a bill "To repeal certain provisions of law relating to the procurement of advertising for the Government."

This draft bill would repeal 44 U.S.C. §§ 3702 and 3703 and 5 U.S.C. § 302(b)(2) (1976). Also enclosed is a summary of the rationale for the repeal of these statutes. We hope that this will fulfill your requirements.

Sincerely yours,

Milton J. Fowler

For the Comptroller General
of the United States

Enclosures - 2

20 1980 make available to public

A BILL

To repeal certain provisions of law relating to the procurement of advertising for the Government.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that sections 3702 and 3703 of title 44, United States Code, and section 302(h)(2) of title 5, United States Code, are hereby repealed.

FOR THE COMMITTEE REPORT

It is recommended that 44 U.S.C. §§ 3702 and 3703, which refer to the procurement of advertising for the Government, have outlived their usefulness and should be repealed, along with 5 U.S.C. § 302(b)(2). 44 U.S.C. § 3702 provides that procurement of newspaper advertising for the Government must be supported by written authority for publication from the head of the department, and that no bill for such advertising shall be paid unless a copy of the written authority is presented with the bill. 5 U.S.C. § 302(b)(2) gives the head of an agency the express authority to delegate to subordinates this responsibility to approve publication of advertisements. 44 U.S.C. § 3703 provides that advertising for the Government must be paid for at prices not to exceed the commercial rates charged to private individuals, with the usual discounts.

These statutes involve an administrative procedure of delegating authorities and the maintenance of records thereon which is troublesome and of no particular value, particularly in terms of the intent of the legislation as originally enacted. The requirements prescribed by 44 U.S.C. §§ 3702 and 3703 may well have been salutary when the statutes were enacted 100 years ago, at a time when Government procurement was far from its present systematized form. The legislative history of the 1870 act (44 U.S.C. § 3702) reveals that the reason for its enactment was to prevent District of Columbia newspapers from republishing and collecting fees for advertisements appearing in distant newspapers. Furthermore, this law was enacted at a time when the Government establishment was small and the department head could review personally the routine operations under his control. Today, however, the procedures are not in keeping with the complexities of Government operations and there appears to be no good reason for continuance of such requirements. Advertising needed by Government agencies in newspapers could satisfactorily be procured and paid for through application of the procurement procedures available under such modern statutory authorities as title III of the Federal Property and Administrative Services Act of 1949, 41 U.S.C. § 251 et seq., and the Armed Services Procurement Act of 1947 codified in 10 U.S.C. § 2301 et seq.

Under these authorities, Government officials are required to effect procurement of property and services, whether by formal advertising or by negotiation, on a competitive basis to the maximum extent practicable, from responsible sources at fair and reasonable prices, calculated to result in the lowest overall cost to the Government. Thus, the requirement in 44 U.S.C. § 3703 is no longer significant or necessary. Similarly, the requirement in 44 U.S.C. § 3702 calls for outmoded, special and time-consuming administrative actions in the procurement process.

Additionally, the provisions of 44 U.S.C. § 3702 serve to require the denial of any payment to a publisher who has furnished advertising in good faith to the Government where the Government agent through error or oversight has not complied with the statute in procuring advertising. As a result, on numerous occasions there have been transmitted to the Congress, pursuant to the Meritorious Claims Act, 31 U.S.C. § 236, the claims of various newspapers for advertising procured under procedures which did not fully meet the requirements of 44 U.S.C. § 3702, but which otherwise would properly be for payment. Repeal of this provision would permit payment of such relatively small claims without having to take up the time of the Congress and the expenses related thereto, and would promote economy and efficiency in Government procurement.