



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

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Released

B-150136

JUN 2 1978

The Honorable Robert Lipshutz
Counsel to the President
The White House

Dear Mr. Lipshutz:

Your May 18, 1978, letter to Robert F. Keller, Deputy Comptroller General of the United States, has been brought to my attention. We had originally written to the Secretary of Energy advising him of our decision B-150136, May 16, 1978, which held that four officials of the Department of Energy were improperly appointed since they were neither nominated by the President, nor confirmed by the Senate. We so found because they were not appointed in accordance with the requirements of section 902 of the Department of Energy Organization Act, 42 U.S.C. § 7342, which we consider to be the exclusive legal authorization for interim appointments of officials to the positions there in question. You enclosed with your letter a legal opinion by the Assistant Attorney General, Office of Legal Counsel, Department of Justice, wherein he disagrees with the result reached in our decision. You concluded that in view of the contradictory legal positions found in the Assistant Attorney General's memorandum and our decision, you must recommend to the Secretary of Energy that he follow the advice given by the Department of Justice.

In this regard we have reviewed the unsigned memorandum concerning the question of "conflicting opinions" which you forwarded to us, which states that "the view of the Department of Justice with regard to the interpretation of a federal statute must be regarded as controlling within the Executive Branch."

The law clearly establishes the authority of the General Accounting Office to determine the legality of Federal expenditures. In this connection, 31 U.S.C. § 74 states, in part:

"Balances certified by the General Accounting Office, upon the settlement of public accounts, shall be final and conclusive upon the Executive Branch of the Government * * *."

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The GAO is thus the final administrative authority to rule on questions of the propriety of expenditures of appropriated funds. Pettit v. United States, 488 F.2d 1026, 1031 (Ct. Cl., 1973); 21 Op. Atty. Gen. 178 (1895); 22 id. 581 (1899); 33 id. 265 (1922); and 33 id. 268 (1922).

The power of the Congress to place conditions on the availability of appropriations, within constitutional limits, cannot be questioned. As noted, GAO is charged by law with the responsibility of determining the propriety of expenditures of appropriated funds. In this context, while we would as a practical matter always consider any views the Department of Justice may wish to present, they are not controlling.

We would submit, therefore, that there is no basis in law for the Department of Energy not following our decision in this matter.

Sincerely yours,

SIGNED A. J. ...

Comptroller General
of the United States