

DECISION



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

8035

FILE: B-114874

DATE: October 13, 1978

**MATTER OF: Government Losses in Shipment Act - Purchase
of Postal Insurance**

- DIGEST:**
1. Neither the Government Losses in Shipment Act, 40 U.S.C. § 726 (1970), nor the Government's general self-insurance policy prohibit Federal agencies from using registered mail where administratively determined necessary in order to obtain the "special" service of greater protection in the handling and delivery of mail rather than to obtain the insurance coverage also offered.
 2. Federal agencies are prohibited from using insured mail under both 40 U.S.C. § 726 and the Government's self-insurance policy since insured mail provides no "special" or "additional" service in addition to the indemnity offered.

The Administrator, General Services Administration (GSA), requests our decision as to whether the Government Losses in Shipment Act, 40 U.S.C. §§ 721 et seq. (1970), prohibits Federal agencies from purchasing postal insurance to obtain indemnity, unless specifically required by law.

Under the Federal Records Management Amendments of 1976, Pub. L. No. 94-575, October 21, 1976, § 2(a)(2), 90 Stat. 2725, the Administrator of GSA is responsible for providing Federal agencies with guidance and assistance in the creation, maintenance, use and disposition of records. Pursuant to this authority, GSA recently examined the use of insured and registered mail by Federal agencies and concluded that, unless specifically required by law, agencies should not obtain indemnity by purchasing postal insurance. This conclusion was based both on the well-established policy that the Government is its own insurer and on the requirements of the Government Losses in Shipment Act (40 U.S.C. § 725).

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GSA has proposed to the United States Postal Service (USPS) certain changes in USPS fees and procedures which would discourage Federal agencies from obtaining postal insurance, including the suggestion that USPS establish a separate fee schedule that would eliminate any charge for indemnity insurance from the registered mail services provided Federal agencies. If implemented, GSA projects that these changes could save the Government up to \$1.9 million annually.

USPS, however, does not entirely agree with either GSA's basic position or its proposals. Even though it recognizes that it is the policy of the Federal Government to self-insure against the risk of loss, and concedes that the extra cost for insured mail provides a low limit of liability and only a minimal degree of protection above that given ordinary mail, USPS maintains nevertheless that registered mail continues to provide a valuable and necessary service to many agencies. This service is the feature of "secure" mail service which provides not only added protection in handling but evidence of mailing and delivery as well. According to USPS, this is the primary purpose of registered mail, with the indemnity feature being of secondary importance. Thus while USPS agrees that Federal agencies should not use insured mail, it does not agree that these agencies should also cease using registered mail. USPS apparently believes that the "security" offered by registered mail is the overriding factor in favor of its continued use by Federal agencies.

With respect to the Government Losses in Shipment Act, USPS cites our decisions at 3 Comp. Gen. 391 (1923) and 22 Comp. Gen. 832 (1943) to support the argument that the Act does not apply to the purchase of postal insurance. USPS also points out that, even though it has been considering the feasibility of selling indemnity as a separate feature of registered mail, it does not believe that it can legally offer such service to only Federal mailers, as GSA proposes, but must make any new fee structure that it develops applicable to all registered mail users.

Against this background, the question presented is whether the Federal Government's self-insurance policy, in conjunction with the specific restraints imposed by the Government Losses in Shipment Act, prohibits Federal agencies from using either insured or registered mail, unless otherwise authorized by law.

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It is a well-settled policy that the Government will not insure its property, but will assume its own risks of loss. 13 Comp. Dec. 779 (1907); 19 Comp. Gen. 211 (1939); 55 id. 1321 (1976). This policy arose because it was felt that the magnitude of the Government's resources makes it more advantageous for the Government to carry its risks than to have them assumed by private insurers at rates sufficient to cover all losses, to pay the insurer's operating expenses (including agency or broker's commissions) and to leave such insurers a profit. See, e.g., 55 Comp. Gen. 1343, 1345 (1976). Thus, it has been held consistently that appropriated monies are not available for the payment of insurance premiums on Government-owned property in the absence of specific statutory authority for the payment of such premiums. 17 Comp. Gen. 419, 421 (1937); 21 id. 928, 929 (1942); 34 id. 175, 177 (1954).

Exceptions to the rule have been recognized in situations where the reasons for the rule were not applicable. Thus, exceptions have been allowed where the economy sought under the rule would be defeated; sound business practice indicates that a saving can be effected; or services or benefits not otherwise available can be obtained by purchasing insurance. 55 Comp. Gen. 1321, 1323; B-151876, April 24, 1964.

In addition, section 4 of the Government Losses in Shipment Act, 40 U.S.C. § 726, provides in pertinent part:

"[N]o executive department, independent establishment, agency, wholly owned corporation, officer, or employee shall expend any money, or incur any obligation, for insurance, or for the payment of premiums on insurance, against loss, destruction, or damage in the shipment of valuables except as specifically authorized by the Secretary of the Treasury. * * *" (Emphasis added.)

This prohibition, like the general policy, is based on the theory that the Government's vast resources make it far more economical for it to assume its own risks of loss than to pay for insurance coverage from private sources. See S. Rep. No. 738, 75th Cong., 1st Sess. 6 (1937). With respect to this prohibition, we have indicated that services which incidentally include in their costs a charge for insurance, but whose principal goal is to minimize the risks of loss, damage or destruction to the valuables being shipped, may be obtained since such services are compatible with the objectives of the Act. See 34 Comp. Gen. 175.

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In response to GSA's proposed charges in the Government's use of insured and registered mail, USPS believes that neither the general policy against the Government's purchase of insurance nor the Government Losses in Shipment Act clearly prohibit the use of either of these services. To support this position, as noted above, USPS relies on our decisions at 3 Comp. Gen. 391 and 22 Comp. Gen. 832.

In our 1923 decision (3 Comp. Gen. 391), we held that despite the Federal policy against the Government's purchase of insurance, parcel-post insurance was not of the general class at which this policy was directed, since parcel-post insurance could be considered "more as an additional service performed by one branch of the Government, the Post Office Department, for the other branches of the Government." Moreover, we also noted that the purchase of this insurance was justified by the increased security the mail received during handling and delivery.

The Government Losses in Shipment Act became law on July 8, 1937. In our 1943 decision (22 Comp. Gen. 832), we considered whether the purchase of postal insurance contravened the Act's prohibition against the procurement of insurance in the shipment of "valuables" (as defined by the Act). We concluded that since "postal insurance involves not only indemnity against loss or damage but a special service which minimizes the risk of loss," the procurement of such insurance did not contravene the provisions of the Act. Thus, as indicated in these decisions, the principal justification for the exception to the Government's practice of self-insurance was the "additional" or "special" service offered in conjunction with the insurance and which presumably provided greater care in the handling and delivery of the mail as a means of minimizing the risk of loss.

GSA points out, however, that the Postal Reorganization Act, 39 U.S.C. § 101 et seq. (1970), abolished the Post Office Department, formerly an executive department, and replaced it with the United States Postal Service, an independent establishment within the executive branch. As a consequence, Federal agencies are now treated as USPS customers. This development, in GSA's opinion, has materially altered that special relationship between the "branches" of Government which our earlier decisions--now relied on by USPS--found significant. GSA argues that it is no longer accurate to characterize the relationship as "one branch" of the Government performing a service for "the other branches," and therefore implies that reconsideration of our earlier decisions is warranted.

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Regardless of the status of USPS with regard to other Government agencies, it nevertheless appears that insured mail provides a service only slightly beyond that offered for ordinary mail. This is borne out, as GSA observes, by the instruction in USPS Postal Service Manual § 162.74 that all insured mail is to be dispatched as ordinary mail and handled as such while in transit. Thus, only the indemnity feature of this service distinguishes it from ordinary mail. USPS does not appear to dispute this.

We conclude, therefore, that since insured mail offers no "special" or "additional" service apart from the indemnity feature, the general rule requiring the Government to self-insure prohibits its use unless a particular situation falls within one of the exceptions noted in 55 Comp. Gen. 1321, *supra*, or unless otherwise specified by law. See in this connection our report entitled "Federal Agencies Could Do More to Economize on Mailing Costs," GGN-75-99, August 25, 1975, page 6. We further conclude that due to this absence of any "special" or "additional" service, the Government Losses in Shipment Act (40 U.S.C. § 726) also prohibits the use of insured mail in the shipment of "valuables"--defined in 40 U.S.C. § 729(a) and 31 C.F.R. § 262.1. To the extent they are inconsistent with this decision, 3 Comp. Gen. 391 and 22 Comp. Gen. 832 are hereby modified.

On the other hand, insurance is not the only feature offered by registered mail since it also provides "added protection for valuable and important mail plus evidence of mailing and delivery." Postal Service Manual § 161.11. Thus registered mail provides "special" or "additional" service, in addition to indemnity in case of loss. In appropriate cases, the use of registered mail may enable the Government to obtain protective features not otherwise available.

Finally, the Government Losses in Shipment Act does not bar the use of registered mail since the insurance obtained through this service is only incidental to the safeguards it provides to minimize the risks of loss, damage or destruction in the shipment of valuables. See, *e.g.*, 34 Comp. Gen. 175.

Accordingly, while registered mail should not be used for the sole or primary purpose of obtaining indemnity, we conclude that neither the self-insurance rule nor the Government Losses in Shipment Act prohibits Government agencies from using registered mail as a

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means of safeguarding important or valuable mail, if the use of registered mail for such purpose is administratively determined to be necessary.


Acting Comptroller General
of the United States