

13076 CAM



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

B-95136

March 10, 1980

The Honorable Herman ^EB. Talmadge
Chairman, Committee on Agriculture,
Nutrition, and Forestry
United States Senate

SEN 06100

[INTERPRETATION of]

AGC00017

Dear Mr. Chairman:

You requested a ruling from our Office on whether the General Services Administration (GSA) is correctly interpreting Executive Order 12072, signed by the President on August 16, 1978. Your concern is that GSA is carrying out the Executive Order in a manner which is inconsistent with section 901(b) of the Agricultural Act of 1970 and amended by section 601 of the Rural Development Act of 1972, 42 U.S.C. § 3122 (1976). We reported to you on the conflict between the Department of Agriculture and GSA in "Colocating Agriculture Field Offices--More Can Be Done," CED 79-74, April 25, 1979 (copy enclosed). After careful consideration of the issue you have raised, we do not object to the way in which GSA has interpreted the Executive Order.

The Executive Order, as interpreted, does not necessarily conflict with ^{AGC} 42 U.S.C. § 3122. This point was emphasized by both GSA and the Department of Agriculture (Agriculture) when we solicited their views in response to your request. Section 3122 of 42 U.S.C. was an attempt by Congress to improve the economy and living conditions in rural America. H.R. Rep. No. 835, 92nd Cong., 2nd Sess. 1, reprinted in [1972] U.S. Code Cong. and Ad. News 3147. In order to accomplish this purpose, Congress required Executive departments and agencies to give first priority in locating new Federal offices and relocating old Federal offices to rural areas.

The Executive Order, on the other hand, has as its purpose the strengthening of the Nation's cities. It requires:

"Except where such selection is otherwise prohibited, the process for meeting Federal space needs in urban areas shall give first consideration to a centralized community business area and adjacent areas of similar character, including other specific areas which may be recommended by local officials." Emphasis added.

The purpose of the program established by the Executive Order was to put Federal buildings in centralized business districts of urban areas in order to revitalize the economy of the Nation's cities. See, 14 Weekly Comp. of Pres. Doc. 1427-1428, August 16, 1978. While at first glance it might seem inconsistent to expect "first priority" to be given to rural areas and at the same

008908

time require "first consideration" to be given to urban areas, this is not the way the requirements are interpreted in practice. The rural priority, since it is contained in statutory law, is given first consideration. Once it is determined that a Federal office should be located in a rural area, as defined by the Act, the GSA attempts to satisfy the urban area mandate, as defined in the Executive Order, as well. This is possible because the definitions of urban and rural areas are not the same in the Executive Order and 42 U.S.C. § 3122. The definition given to the term "urban area" by the GSA, in proposed FPMR amendment 101-17.003-33 (44 Fed. Reg. 18, 707, March 29, 1979) is as follows:

"§ 101-17.003-33 Urban area.

"* * *any Standard Metropolitan Statistical Area (SMSA) as defined by the Department of Commerce. An area which is not an SMSA is classified as an urban area if it is one of the following:

"(a) A geographical area within the jurisdiction of any incorporated city, town, borough, village or other unit of general local government, except county or parish, having a population of 10,000 or more inhabitants;

"(b) that portion of the geographical area within the jurisdiction of any county, town, township, or similar governmental entity which contains no incorporated unit of general local government, but has a population density equal to or exceeding 1,500 inhabitants per square mile; or (c) that portion of any geographical area having a population density equal to or exceeding 1,500 inhabitants per square mile and situated adjacent to the boundary of any incorporated unit of general local government which has a population of 10,000 or more inhabitants."

Basically, this means that any incorporated community with a population of 10,000 or more is considered by GSA to be an "urban area." This definition is taken from the one included in the Federal Urban Land-Use Act, 40 U.S.C. § 535 (1976).

Section 3122(b) of 42 U.S.C., however, defines the term "rural area" (by incorporating the "business enterprise" exception in 7 U.S.C. § 1926(a)(7)), as any community with a population of less than 50,000 which is not immediately adjacent to a city with a population of 50,000 or more. When the two definitions

are both used, a community with a population of between 10,000 and 50,000 may be considered to be urban by the GSA for the purposes of the application of the Executive Order, and rural as defined by 42 U.S.C. § 3122(b). Once it is determined that an agency has an "urban" space need, as defined in the Executive Order, GSA requires the placement of Federal office space in the centralized business districts of those areas.

We might note that GSA would have the authority, even in the absence of the Executive Order, to establish a policy which required that whenever possible, the location of any Federal offices in urban areas be placed in centralized business districts. Section 490(e) of 40 U.S.C. states:

"Notwithstanding any other provision of law, the Administrator is authorized, in accordance with policies and directives prescribed by the President under section 486(a) of this title and after consultation with the heads of the executive agencies affected, to assign and reassign space of all executive agencies in Government-owned and leased buildings in and outside the District of Columbia upon a determination by the Administrator that such assignment or reassignment is advantageous to the Government in terms of economy, efficiency, or national security. * * *"

Agriculture has consistently felt that to make its programs readily accessible to those concerned, at least some of its offices need to be placed outside the centralized business district. Although GSA has broad authority to locate Federal offices in centralized business districts, Agriculture has much more flexibility than other agencies about the location of its offices in rural areas and would be in a position to locate its offices in other than a centralized business district if it thought it was necessary to enhance rural development. In addition to the preference given to rural areas by 42 U.S.C § 3122(b), section 603(c) of the Rural Development Act of 1972, 7 U.S.C. § 2204a, provides:

"(1) The Secretary of Agriculture shall utilize to the maximum extent practicable State, regional, district, county, local, or other Department of Agriculture offices to enhance rural development, and shall to the maximum extent practicable provide directly, or, in the case of agencies outside of the Department of Agriculture, through arrangements with the heads of such agencies, for--

"(A) the location of all field units of the Federal Government concerned with rural development in the appropriate Department of Agriculture offices covering the geographical areas most similar to those covered by such field units, and

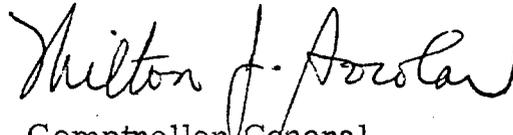
B-95136

"(B) the interchange of personnel and facilities in each such office to the extent necessary or desirable to achieve the most efficient utilization of such personnel and facilities and provide the most effective assistance in the development of rural areas in accordance with State rural development plans. * * *"

In light of this authority, the Secretary may determine that it is necessary to locate his offices in rural areas of less than 50,000 which may not be in the centralized business district of that area. Given the clientele which Agriculture deals with and its subject matter, the location of its offices in areas outside of the centralized business district would not be improper.

We are enclosing a copy of the recently concluded agreement between Agriculture and GSA which provides for the locating of Agriculture's offices in central business areas where consistent with program requirements but in other areas where they are more suitable. This arrangement apparently resolves the conflict in views to the satisfaction of both GSA and the Department of Agriculture.

Sincerely yours,



For the Comptroller General
of the United States

Enclosures