



**U.S. Department of
Transportation**

Office of the Secretary
of Transportation

GENERAL COUNSEL

400 Seventh St., S.W.
Washington, D.C. 20590

September 6, 2002

Ms. Beverly Pheto
Subcommittee on Transportation
Committee on Appropriations
U.S. House of Representatives
1016 Longworth House Office
Washington, DC 20515

Dear Ms. Pheto:

You have asked us to review the applicability of Section 614 of the Treasury, Postal Service and General Government Appropriations Act for FY 2002 to the construction and furnishing of the Office of the Under Secretary of Transportation for Security. This letter is provided in response to your request.

As you know, Section 614 of Public Law 107-67 (November 12, 2001) prohibits the expenditure of appropriated funds in excess of \$5,000 to furnish or redecorate the office of a Presidential appointee unless the Committees on Appropriations expressly approve advance notice of the expenditure. For purposes of this letter, we have not addressed the provision's Constitutional infirmity.¹ Without considering that issue, we have reviewed whether the provision required the Transportation Security Administration (TSA) to notify the appropriations committees in advance of the intended expenditures for construction and furnishing of the headquarters office suite for the newly established TSA. As discussed below, the creation of an executive office suite to serve as the headquarters for the TSA does not implicate the notice requirement of Section 614.

The text of Section 614 of Public Law 107-67 provides:

During the period in which the head of any department or agency, or any other officer or civilian employee of the Government appointed by the President of the United States, holds office, no funds may be obligated or expended in excess of \$5,000 to furnish or redecorate the office of such department head, agency head, officer, or employee, or to purchase furniture or make improvements for any such office, unless advance notice of such furnishing or redecoration is expressly approved by the Committees on Appropriations. For the purpose of this section, the word "office" shall include the entire suite of offices assigned to the individual, as well as any other space used primarily by the individual or the use of which is directly controlled by the individual.

¹ See *Immigration and Naturalization Service v. Chadha et al*, 462 U.S. 919 (1983).

It is our understanding that the intent of Congress in enacting this restriction annually since the 1980's has been to limit expenditures by new Presidential appointees to redecorate, refurbish, or remodel existing office space that was previously occupied by their predecessors. The provision appears to have been initially motivated by specific instances of perceived "wasteful" refurbishing at the IRS, which prompted a similar IRS-specific limitation in the early 1980s. See B-210922 (*Matter of: Internal Revenue Service—Limitation Under Fiscal Year 1983 Continuing Resolution*). Senate Report 102-353, Treasury, Postal Service, and General Government Appropriations Bill, 1993, described the intent of Congress in first enacting the provision as "to prevent such waste of taxpayers money in the future by requiring agencies to fully justify to the Congress planned redecorating projects that would exceed the cost limit." This Senate Report also referred to the provision as pertaining to the "use of appropriated funds for decoration and improvement purposes."

Prior to fiscal year 1990, the activities to which the prohibition applied were "renovation, remodeling, furnishing and redecoration." See B-245097 (Decision concerning remodeling of the office of the Director of the U.S. Marshals Service) at n.2. The words "renovation" and "remodeling" were specifically deleted in 1990. While we have located no legislative history explaining the deletion of "renovation" and "remodeling," it appears that the deletion of the terms "renovation" and "remodeling" reflects the intent that construction and repair costs, which are likely to be more expensive than furnishing and decorating costs, are not encompassed by the current \$5,000 limitation. In any event, we believe the remaining term "redecoration" makes clear the intent of Congress to limit expenditures with respect to *pre-existing* Presidential appointee offices. We do not believe that Congress intended to impose a \$5,000 limit on the first-time creation (including construction, decoration and furnishing) of a headquarters suite for an entirely new entity, where no pre-existing executive office suite space and furnishings were available.

The Aviation and Transportation Security Act (ATSA), Public Law 107-71 (November 19, 2001) established the TSA as an administration of the Department of Transportation and provided broad general authority to the Under Secretary for Transportation Security to establish the new Operating Administration. Pursuant to section 101(a) of ATSA, the Under Secretary is authorized to acquire such real property and to acquire, construct, repair, operate and maintain such personal property, including office space, as the Under Secretary considers necessary. 49 U.S.C. 114(j). Prior to the construction of this suite, the Under Secretary and his most senior staff (i.e., the Deputy Under Secretary, Chief of Staff and Associate Under Secretaries) occupied an existing suite of offices reserved for the vacant Presidential appointee position of Assistant Secretary for Transportation Policy. This was the only vacant suite of existing executive level offices in the DOT headquarters building. When that position was filled, the TSA executives were required to vacate that space. Because TSA was an entirely new Administration within the Department of Transportation, new executive level offices were required in the DOT headquarters

building to house TSA's head along with his deputy, chief of staff and special assistants.² The first-time creation of the executive office suite for this newly established Operating Administration does not constitute a "redecorating, refurbishment or improvement" of a pre-existing office as was contemplated by Congress in section 614.

The costs associated with the creation of the Under Secretary's office suite as reported in the press are largely construction-related and pertain not only to the creation of space occupied by the Under Secretary and his secretary but also costs associated with the creation of space occupied by the Deputy Under Secretary (in addition to his secretary and special assistant), the TSA Chief of Staff, and two special assistants.³ The costs also included the construction of a conference room, with associated electronic equipment, which is utilized by all TSA personnel hosting meetings in the DOT building, a kitchen used by all staff in the suite and the furnishing of a small reception area for the entire suite. The only portion of that suite used exclusively by the Under Secretary was his personal office.

The suite was constructed from space that previously consisted of five individual offices and a large area furnished with systems furniture. The existing office space was of the same size and type provided to SES level managers rather than Executive Level appointees. To construct an Executive Level suite, original walls were removed and new walls were constructed. The expenditures also included standard electrical wiring, computer and telephone wiring, plumbing, upgrading of air conditioning, carpeting, and painting. The installation of telecommunications equipment was necessary to ensure TSA's ability to teleconference with Federal security directors and other TSA personnel stationed at airports and other duty stations throughout the country. The cost to purchase, stain and install pine doors was significantly less than the cost of the double glass doors installed in other Operating Administration headquarters suites in the building. The carpeting is the same grade of carpeting used in Executive Level suites throughout the building. Approximately ninety percent of the furnishings for the suite were purchased from the GSA schedule. Employees or contractors of the building owner performed all labor associated with the creation of the suite at standard commercial rates established under the existing GSA lease agreement governing modification of space in the DOT headquarters building.

² In contrast, when the Federal Motor Carrier Safety Administration was established, it was possible to utilize pre-existing executive space made available as a result of the Federal Railroad Administration's move out of the DOT headquarters building.

³ Upon his appointment in June, the Deputy Under Secretary for Transportation for Security/Chief Operating Officer occupied office space outside the TSA headquarters suite. That individual, who is currently serving as Acting Under Secretary of Transportation for Security, continues to occupy office space outside the TSA suite.

Because all the foregoing costs were associated with the initial creation of an Executive Level headquarters suite for a newly-established Operating Administration within DOT, where no pre-existing Executive Level space was available in the DOT headquarters building, section 614 of P.L. 107-67 did not apply. We have consulted with the Department's Inspector General on this matter and he concurs in the analysis set forth above.

Sincerely,

A handwritten signature in black ink, appearing to read "Kirk K. Van Tine". The signature is fluid and cursive, with a large, stylized initial "K" and a distinct "V" and "T".

Kirk K. Van Tine