

DECISION



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

r. Maquire
32053

FILE: B-217869

DATE: August 22, 1985

MATTER OF: Purchase of decorative items for
individual offices at the United
States Tax Court

DIGEST:

1. GAO has no objection to purchase by U.S. Tax Court of paintings and other art objects for individual judges' offices and chambers, provided that each purchase "is consistent with work-related objectives and the agency mission, and is not primarily for the personal convenience or personal satisfaction of a Government officer or employee." 63 Comp. Gen. 110, 113 (1983).

2. U.S. Tax Court advised to develop internal regulations governing purchase of decorative items for individual judges' offices and chambers which provide adequate administrative controls to assure that purchases are not made solely to please the individual judges involved. Present Tax Court policy of allocating fixed sum of money to each judge and allowing him or her to select the objects to be procured does not provide such controls.

3. U.S. Tax Court, a legislative court of record, is not bound by GSA regulation on personal convenience items (41 C.F.R. § 101-26.103-2) which applies only to executive branch agencies, nor by an Administrative Office of the United States Courts regulation (Title VIII of the "Guide to Judiciary Policies and Procedures") since the Tax Court is not part of the judicial branch. Nevertheless both regulations, as well as GAO decisions, can provide useful guidance for Tax Court in developing its own regulation on the expenditure of its appropriations for art objects.

This is in response to a request from the Administrator of the United States Tax Court, joined by the Chief Judge of the Court, for a decision on the propriety of the use of appropriated funds for the purchase of artwork and other decorative items for the individual offices and chambers of "regular" judges and special trial judges of the Tax Court. The Administrator seeks guidance on "the appropriateness of the Court's present policies" and asks for rulings on five specific questions. The answers to these questions are presented below, roughly in the order submitted.

Present Policies

From the information submitted by the Administrator, it appears that the Tax Court has never developed internal regulations governing the purchase of artwork and related objects for individual offices and chambers. Instead, it has relied primarily on the applicable Federal Property Management Regulation (issued by the General Services Administration (GSA) and codified at 41 C.F.R. § 101-26.103-2), and until October of 1984, on a similar policy set out in Title VIII of the "Guide to Judiciary Policies and Procedures," published by the Administrative Office of the United States Courts (A.O.).

The Administrator points out that the A.O. considerably relaxed its restrictions on these sorts of purchases in October of 1984, which he attributes to the influence of three GAO legal decisions. Because it was not clear that the new A.O. policy was consistent with the GAO decisions, the Tax Court has not followed the A.O. policies to date. Nevertheless, the Administrator states that it is at least arguable that Tax Court judges should be allowed the same leeway since their status is so similar in many ways to Federal district court judges.

At any rate, based on its interpretation of the GSA regulation, a Judges' Committee on Building and Court Facilities decided to allocate \$2,000 to each judge to spend on artwork for his or her office and chambers in connection with the move into a new Government-owned Tax Court building in 1974. All subsequently appointed new judges were also allocated a maximum of \$2,000 each for this purpose. In August of 1984, the Judges' Committee voted to allocate each judge an additional \$2,000 each to purchase new artwork. Finally, special trial judges, who are appointed by the Chief Judge of the Tax Court, were allocated \$800 each to decorate their offices in a separate building leased by the GSA.

DISCUSSION

As a preliminary matter, GAO has no objection to the purchase of paintings and other objects of art for individual judges' offices and chambers, provided that each purchase "is consistent with work-related objectives and the agency mission, and is not primarily for the personal convenience or personal satisfaction of a Government officer or employee." 63 Comp. Gen. 110, 113 (1983). See also 60 Comp. Gen. 580, 582 (1981).

We asked the A.O. whether the purchase of decorative items for the offices and chambers of the judges under its jurisdiction was consistent with the above-mentioned decisions. The Acting Director replied:

"It is the position of the Administrative Office of the United States Courts that this policy is fully consistent with the cited decisions * * *. [T]he purchase of decorative items would constitute a permanent feature of judicial office decor, resulting in improved efficiency and morale and adding to the dignity of the Federal courts."

We have no difficulty in accepting this rationale and note that the justification offered may apply to the Tax Court as well. There is one major difference. It is not related to a difference in the necessity for the art objects, but rather to the presence or absence of administrative controls to be sure that no purely personal convenience items are purchased under this authority.

The A.O. has a set of carefully crafted regulations governing the purchase of these and other items from the furniture and furnishings appropriation. The number of decorative items for each office is limited to four, at a cost of not to exceed \$200 for each item, including framing. Moreover, no funds may be expended to purchase "expensive or valuable pieces of art, nor for items of a personal nature such as family portraits." A special form is prescribed to procure these items, which must be accompanied by a written justification, and submitted to the Procurement and Property Management Branch, Administrative Services Division, where the approval authority resides.

In contrast (although the Tax Court submission did not make its procedures too clear), it appears that a committee of judges is responsible for making an allocation of funds for the purchase of art items for Tax Court judges' offices and chambers, notwithstanding the fact that the judges on the

committee have an obvious interest in the outcome. Of equal concern is the fact that once the allocation is made, the individual judge is presumably free to purchase any item he feels is suitable, as long as he does not exceed the funding ceiling. (This may account for the situation described by the Administrator, in which a \$2,000 painting selected by a former judge is languishing in a basement storeroom because no one else wanted to hang it on his wall.)

In summary, it is not our function to tell the Tax Court how to write its regulations but only to urge that it develop and adopt some administrative controls to assure compliance with Government policies and GAO decisions on the purchase of decorative items.

Questions (1), (2), and (3)

In the light of the above discussion, we would discourage the practice of turning over specific funds to individual judges, allowing each judge to decorate his or her own space without subjecting these actions to any administrative review as to suitability and necessity. In this connection, we see no significant distinction between the judges' office space and the judges' chambers. Although a larger number of employees have desks in the latter space, in both cases the rooms are under the control of and serve the needs of the individual judge. It is also immaterial whether the judges are "newly appointed" or have served for many years, for purposes of avoiding the appearance of purchases made solely to satisfy the personal wishes of an individual official. (See question 5 for a discussion of an overall "plan for decoration of Federal buildings.") In other words, the request for a "lighted globe" is neither more nor less objectionable because it came from a relatively new judge rather than from an "old timer." Again, the question must be whether the purchase serves the agency's mission or is made solely to satisfy the wishes of the individual judge.

Questions (4) and (5)

We are not aware of any existing regulations in the legislative branch which would "govern" the Tax Court in establishing its policies on property management.

The Tax Court submission offers, as justification for the \$2,000 allocation for each regular judge and the \$800 allocation for each special trial judge at the time of their respective moves into new buildings, the authority provided in the first sentence of 41 C.F.R. § 101-26.103-2, the GSA Federal Property Management Regulation. That sentence states:

"Government funds may be expended for pictures, objects of art, plants, or flowers (both artificial and real), or any similar type items when such items are included in a plan for the decoration of Federal buildings approved by the agency responsible for the design and construction." (Emphasis added.)

The Tax Court evidently assumed that it, rather than GSA, was "the agency responsible for design and construction" of the buildings, and that the approval of its Judges' Committee satisfied the above requirement. We think the court is mistaken. This function has clearly been delegated to the GSA. See 40 U.S.C. Chapter 10. Although we conclude (see discussion, infra), that this particular regulation is not binding on the Tax Court insofar as no public corridors or lobbies are concerned, we offer two observations about the impact of this regulation on agencies to which it applies.

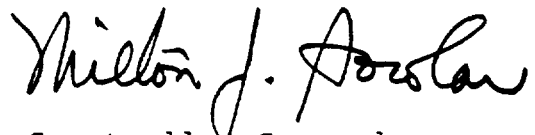
In 60 Comp. Gen. 580 (1981), we construed the "plan" requirement of the regulation as applying only to new Federal construction or to major renovations of existing Federal buildings. In contrast, we said, the second sentence of the regulation which applies to "space assigned to any agency" refers to existing space, including leased space. Determinations as to the need to purchase decorative items in such space are left to the discretion of the occupying agency.

After receiving the Tax Court submission, we consulted informally with knowledgeable officials at the GSA about the above distinction. We were told that as "landlords," GSA has no particular concern about the manner in which its tenants decorate their individually assigned space, whether the building concerned is new or has been in existence for some time. (The GSA would, of course, be concerned if any agency's decorating scheme intruded inappropriately in the public areas of the buildings.) Moreover, we were told, the GSA has not developed its own decorating plan for individually occupied space nor does it generally require that such plans be submitted by its tenants for GSA review and approval. Nevertheless, the regulation is still on the books and until modified by the GSA, executive department agencies should continue to consult with the GSA before embarking on an ambitious decorating effort in new buildings.

As mentioned above, we do not think that the GSA regulation in question applies to the Tax Court, which is a legislative court of record specifically removed from the executive branch of the Government by section 951 of the Tax Reform Act

of 1969, 26 U.S.C. § 7441. The authority cited for the subpart in which the above regulation appears is 40 U.S.C. § 486(c), which specifically limits the applicability of its policies and directives to heads of executive agencies. This does not mean that none of the Federal Property Management Regulations have any applicability outside the executive branch of the Government. The Federal Property and Administrative Services Act defines the term "Federal agency" to apply broadly to all three branches of the Government (with certain exceptions not relevant here). 40 U.S.C. § 472(b). Applicability of a particular regulation to the Tax Court depends, therefore, on whether, by its terms, it purports to bind all "Federal agencies" or only "executive agencies."

As the Administrator correctly surmised in his submission, regulations promulgated by the A.O. are similarly non-binding since the Tax Court is not a part of the judicial branch. Nevertheless, it is quite appropriate to follow the A.O. regulations as guidance to the extent the Tax Court regards them as useful. In answer to the Administrator's specific question, while we take no position on the details of the A.O. regulations--for example, on the amount authorized for expenditure in each office--we regard the regulations as setting forth "a proper, lawful policy regarding the expenditure of agency appropriations for artwork."



Acting Comptroller General
of the United States