

MEMORANDUM

July 7, 2008

TO: Prudence Adler
Association of Research Libraries
Washington, DC

FR: Anthony J. Zagami, Esquire
General Counsel Emeritus, Retired
United States Government Printing Office
Washington, DC

On the Matter Of: Provisions within Title 44, United States Code, requiring modification in order to facilitate the sharing of resources and responsibilities, primarily the sharing of publication collections, among federal regional depository libraries.

Introduction

The Association of Research Libraries (ARL) has asked for my opinion concerning the sections of Title 44 of the United States Code that would require legislative modifications in order to allow for the sharing of resources and responsibilities among the nation's federal regional depository libraries. Specifically, the ARL wishes to know what provisions in Chapter 19 of Title 44 would need to be amended to alleviate the need for federal regional depository libraries to retain, on a permanent basis, all publications provided them pursuant to law by the Superintendent of Documents, United States Government Printing Office (GPO) thus permitting the sharing of collections. This Memorandum will address the specific concerns of the ARL in responding to the inquiries highlighted above.

Discussion

As you well know, the federal depository library program is governed by Chapter 19 of Title 44, United States Code. The federal regional depository system as we know it today was established in the 1962 Depository Act.¹ I will not go into a lengthy discussion of the legislative history surrounding the federal regional depository library system, suffice it to say that when Congress created the program, it intended for institutions designated as federal regional depositories to act as permanent repositories for all publications of the United States Government placed in their custody. Unlike other depository libraries that are permitted to dispose of certain publications on a periodic basis, federal regional depositories are required by law to retain their collections in virtual perpetuity.²

¹ Pub. L. No. 87-579 § 9, 76 Stat. 355 (1962)

² 44 U.S.C. § 1912 (2006) (States that "regional depository libraries must retain at least one copy of all Government publications.")

It is understood by those closely related to the Program, that notwithstanding the more recent addition and availability of federal documents in electronic formats, “[d]epository libraries, particularly regionals, face challenges providing access to and delivering Government information to library users while continuing to maintain and preserve legacy collections of tangible depository resources for permanent availability.”³ Given the retention difficulty and related problems, the Superintendent of Documents and other concerned parties have sought alternative models and methods for the sharing of resources and responsibilities among regional depository facilities. Many such plans have been instituted successfully in the past within the statutory framework of Title 44.

However, GPO’s most recent attempt to alleviate problems associated with the storage of federal collections in federal regional depository libraries proved unsuccessful when GPO’s Congressional oversight panel, the Joint Committee on Printing (JCP), denied a request from the Acting Public Printer that would have permitted the federal regional depository libraries located at the Universities of Kansas and Nebraska to consolidate their collections to serve constituencies across state lines.⁴ In his letter denying the GPO’s request, the Chairman of the JCP cited an opinion by the Congressional Research Service stating that the JCP lacks the authority to approve such consolidation plans.⁵ The Chairman’s letter went on to direct the GPO to study the issue “in consultation with all concerned elements of the library community,” and to report its findings to the Joint Committee “together with any legislative recommendations for improvements to the program that you may choose to offer.”⁶

Conclusion

There are two provisions in Chapter 19 of Title 44 that speak directly to the federal regional depository library system. Section 1911 allows depository libraries served by a regional depository to dispose of their federal Government publications after five years. The provision goes on to state that “depository libraries not served by a regional depository library, or that are regional depositories themselves, shall retain [federal] government publications permanently...” Section 1912, which establishes the method for designating federal regional depository libraries, further mandates that libraries so designated “will, in addition to fulfilling the requirements for depository libraries, retain at least one copy of all [federal] Government publications...”

³ U.S. Government Printing Office, *Regional Depository Libraries in the 21st Century: A Time for Change*, p. 17. (draft report).

⁴ Letter from William H. Turri, Acting Public Printer, to Hon. Robert A. Brady, Chairman, Joint Committee on Printing, September 13, 2007.

⁵ Opinion of Congressional Research Service, November 6, 2007. *GPO Authority Over Regional Depository Libraries*. By T.J. Halstead, Legislative Attorney.

⁶ Letter to Hon. Robert Tapella, Public Printer, from Hon. Robert A. Brady, Chairman, Joint Committee on Printing, February 27, 2008.

Any legislative modification proposing to change publication retention requirements for federal regional depository libraries, or to create flexibilities to include the sharing of regional responsibilities and publication collections across state lines, should focus on both sections 1911 and 1912 of Title 44. To amend only one section or the other could lead to confusion and the possibility of conflicting language within the controlling provisions of law.

I would like to close this memo with the following comment and observation. During my years as General Counsel to the Joint Committee on Printing, and later as the General Counsel for GPO, I had ample opportunity to review the legislative history surrounding Title 44. Those reviews led me to conclude that Congress reserved broad authority to the JCP to allow it to address contemporary issues and concerns that might arise in connection with Title 44 matters. As the Joint Committee on Printing considers modernizing sections of the statute that have become outdated or do not meet today's needs, I would encourage it to do so along with a thorough examination of its broad plenary authority under Section 103 of Title 44.⁷

I hope that this memo addresses the ARL's concerns and responds to your inquiries concerning the federal regional depository library program. Should you have further questions or require additional information on the subject matter of Title 44, please do not hesitate to contact me.

Sincerely,



Anthony J. Zagami, Esquire⁸

⁷ 44 U.S.C. §103. (2006). States that "The Joint Committee on Printing may use any measures it considers necessary to remedy neglect, delay, duplication, or waste in the public printing and binding and the distribution of Government publications."

⁸ The views and opinions expressed in this memorandum are strictly those of the author, and do not represent the official views or opinions of the U.S. Government Printing Office.