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**DECISION**



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

**FILE: B-114839**

**DATE: December 28, 1976**

**MATTER OF: Section 311, Public Law 94-387**

**DIGEST:** Notwithstanding enactment of section 311 of Panama Canal Zone fiscal year 1977 appropriations, which prohibits use of appropriations to implement 2 C.Z.C. § 155, relating to establishment of employment conditions, this Office will not object to expenditure of such appropriations to pay expenses of offices and bureaus established to provide employment services in accordance with directives issued by Civilian Policy Coordinating Board, and salary of Canal Zone Governor while participating in making employment policy decisions. Due to a misunderstanding of its legislative effect, section 311 does not accomplish its intended purpose. Literal application of its terms would either leave employment personnel unable to function for lack of employment standards to follow in providing services, or under an alternative interpretation would bar the Governor from participation in setting such standards. Since we do not believe Congress intended either result, further clarification must be obtained before implementing the amendment.

By letter dated September 8, 1976, the Governor of the Canal Zone has requested our opinion concerning the effect of section 311 of Pub. L. No. 94-387, 90 Stat. 1171, 1185, approved August 14, 1976. Title II of that act contains appropriations for the Panama Canal Zone Government and makes funds of the Panama Canal Company available for expenditure for the fiscal year ending September 30, 1977. Section 311 of Pub. L. No. 94-387 reads in its entirety:

"No funds appropriated or made available by this Act shall be used to implement the provision of section 155 of title 2 of the Canal Zone Code relating to the establishment of employment standards, pay levels and other conditions of employment within the Canal Zone."

The Governor specifically questions whether, in view of section 311, the Canal Zone Government may, using fiscal year 1977 funds, continue its practice of sharing in the expenses of the Central Examining Office and of the executive office of the Canal Zone Civilian Personnel Policy Coordinating Board. The Governor also requests our decision on whether he may continue, during fiscal year 1977, to sit as a member of the Board.

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Section 155 of title 2 of the Canal Zone Code, the provision referred to in section 311 of Pub. L. No. 94-387, provides:

"(a) The President shall coordinate the policies and activities of the respective departments under this subchapter [relating to wage and employment practices] and may promulgate regulations necessary and appropriate to carry out the provisions and accomplish the purposes of this subchapter.

"(b) The President may delegate any authority vested in him by this subchapter, and may provide for the redelegation of any such authority."

Certain authority vested in the President by section 155, including the power to coordinate the wage and employment policies and activities of the respective departments involved in the Canal Zone, has been delegated to the Secretary of the Army, and the Secretary has been given the power to redelegate that authority. 35 C.F.R. § 251.2(a), (b) (1976). We have solicited and considered, in deciding these questions, the views of the Department of the Army, which are essentially similar to those of the Governor.

The Secretary has issued regulations on employment and compensation in the Panama Canal Zone, those regulations appearing in Part 253 of title 35, C.F.R. The Secretary has established the Canal Zone Civilian Personnel Policy Coordinating Board (Board) which is composed of a chairman--now the Assistant Secretary of Army (Civil Works)--appointed by the Secretary of the Army, the Governor of the Canal Zone, and the Commander-in-Chief, United States Southern Command (SOUTHCOM). 35 C.F.R. § 253.4. The Board's principal function, according to the Governor, is to achieve uniformity among Federal agencies in the Panama Canal Zone, with respect to wage and employment practices, in areas in which the regulations of the President and Secretary of the Army are silent. In this respect, the Governor concedes, the Board can be said to be concerned with "\* \* \* the establishment of employment standards, pay levels, and other conditions of employment within the Canal Zone \* \* \*."

In addition to the Board itself, the other entities operating in the Canal Zone under 35 C.F.R. § 253 which may be subject to the restriction of section 311 are the executive office of the Board and the Central Examining Office (CEO). In his letter, the Governor explains that the CEO and the executive office of the Board--

"\* \* \* serve the various Federal agencies operating on the Isthmus in a manner analogous, with respect to

certain functions, to the Civil Service Commission in the United States: for example, testing of job applicants and preparation of pay schedules. Neither the CEO nor the executive office of the Board, however, has any authority with respect to establishment of personnel policy. At present, the CEO operates on an annual budget of approximately \$350,000 and employs 19 persons; the executive office of the Civilian Personnel Policy Coordinating Board employs three persons and has an annual budget of approximately \$88,000. Both entities are funded cooperatively by the five principal agencies to whom they provide services (Panama Canal Company, Canal Zone Government, Department of the Army, Department of the Air Force, and Department of the Navy). Withdrawal of funding by the Canal Zone Government (and the Panama Canal Company, whose funds are also limited by Pub. L. 94-387) would deprive the CEO and the Board's executive office of approximately 78% of their present budget. Such a result would require either that additional financial support be obtained from the appropriated funds of other agencies or that the staff of the CEO and Board be reduced and services curtailed."

Section 311 was added to H.R. 14234, 94th Congress, the bill which was the derivative source of Pub. L. No. 94-387, by the Senate Committee on Appropriations. S. Rep. No. 94-1017, 42 (1976). There is no clarifying discussion of the intent of section 311 in either the Senate Report or the Conference Report. (H. Rep. No. 94-1361, (1976).) We therefore explored three alternative constructions of the statutory language in question, testing each against the only available expressions of congressional intent, as found in the respective floor debates of the House and Senate at the time H.R. 14234 was being considered.

Section 311 could be read to prohibit the use of any funds appropriated or made available by Pub. L. No. 94-387 to pay the employees of the CEO and the executive office of the Board, who perform functions involving application of the wage and employment practices regulations contained in parts 251 and 253 of title 35, C.F.R., as implemented by supplementary regulations and directives issued by the Board itself, pursuant to 35 C.F.R. 253.5(a). The Governor contends that the Congress did not intend to affect the activities of the CEO or the executive office of the Board. The Governor refers to the floor debate to

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support his contention that Congress intended to affect only the entities in the Panama Canal Zone established pursuant to 2 C.Z.C. § 155 which set policy and not those which carry it out.

Congressman Snyder stated with respect to the amendment that became section 311 that--

"The amendment is not intended to impair the functions of bureaus or offices which coordinate the administration of employment and compensation in the zone, or which provide services for employment but have nothing to do with the establishment of policy." 122 Cong. Rec. H 8207 (daily ed., August 3, 1976). (Emphasis supplied.)

Senator Birch Bayh, chairman of the subcommittee of the Appropriations Committee which considered H.R. 14234, explained to the Senate that section 311--

"\* \* \* is not intended to affect the promulgation by the Secretary of the Army of regulations governing wage and employment practices in the Canal Zone, the responsibility for which is vested in the President. What section 311 does affect is the establishment of employment standards, pay levels, and other conditions of employment pursuant to such regulations. At present, certain standards, levels, and conditions are being established by a personnel policy coordinating board, consisting of the designee of the Secretary of the Army, the Governor, and the Commander of SOUTHCOM.  
\* \* \*

"The amendment is not intended to impair the functioning of bureaus or offices which coordinate and administer employment services, but which are not responsible for establishing of policy."  
122 Cong. Rec. S13337-38 (daily ed., August 4, 1976).  
(Emphasis supplied.)

At present, the Bylaws of the Board, Annex A, Part I, September 30, 1975, provide, in essence, that the Executive Officer of the Board discharge various essentially ministerial functions. The Board, in Part II of Annex A, similarly directs the Manager of the CEO to perform various administrative functions. The Governor therefore concludes that since these entities play no policy-establishing role, the appropriation restriction does not affect them.

We do not believe that these congressional statements necessarily lead to the Governor's conclusion, in the light of other indications of congressional intent. For example, in the course of the same floor debate, Representative Snyder stated:

"This bill \* \* \* would deny any funds appropriated or made available by this act for the Board as the establishing authority with the intent that the personnel policymaking authority traditionally exercised by the Governor and the SOUTHCOM Commander be restored or continued." 122 Cong. Rec. H8206-07 (daily ed., August 3, 1976). (Emphasis added.)

Similarly, Senator Bayh observed:

"This bill \* \* \* would prohibit the use of any funds appropriated or made available by this act for such board to function as the establishing authority, with the intent that the personnel policy-making authority traditionally exercised by the individual agency heads be restored and continued." 122 Cong. Rec. S13337-8 (daily ed., August 4, 1976). (Emphasis added.)

It seems clear to us that the overriding purpose of the appropriation restriction in Pub. L. No. 94-387 is to remove the Board's power to affect personnel policy in the Canal Zone. To give this purpose effect, no one paid with Canal Zone appropriations would be free to implement the wage and employment, or any other personnel-related, standards prescribed by the Board. We read the statements quoted earlier (which say that the amendment does not impair the functioning of bureaus or offices that coordinate and administer employment services) to mean that such bureaus and offices are not to follow the Board's directives but are to continue to provide employment services in accordance with the Secretary's regulations.

The problem is that the Secretary's regulations are not self-executing. For example, the Secretary's regulations require that appointments, re-employment actions, and other personnel actions be based on uniform qualification standards and rating guides. These standards and guides, however, are to be established and issued by the Board. The Congress evidently believed that if the Board's role was eliminated, the power and duty to implement the broad general policies of the Secretary would revert to the Governor or to the individual agency heads. This is not correct.

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In response to a request from our Office to comment on the effect of section 311, the General Counsel of the Department of the Army, by letter dated October 14, 1976, discussed Senator Bayh's comment (quoted above) as follows:

"\* \* \* The last sentence of this quote adds somewhat to the confusion because there are a number of different Federal agencies that operate in the Canal Zone. The use of the words 'traditionally exercised,' however, precludes an interpretation that each and every agency head is to exercise personnel policy-making authority. Prior to the addition of the designee of the Secretary of the Army, the Board consisted of two members, the Governor and the SOUTHCOM, rather than three members as presently constituted. Thus, 'traditionally' the Governor was a member of the Board."

It thus appears that individual agency heads did not exercise the functions now performed by the present Board and that the Governor himself exercised such functions only as a member of a two person Board. Thus the CEO and the Executive Office of the Board have nowhere to turn to receive the guidance and directives necessary to provide continuing employment services in the Canal Zone, since they are precluded from implementing past directives issued by the Board and there is no one, except the Secretary of the Army, who is presently authorized to fill the gap.

The language of the amendment is susceptible of another interpretation. It can be read as affecting only the use of the appropriation in question for the establishment (as opposed to implementation) of wage and employment policy through the medium of the Board. In other words, the restriction would be deemed to apply only to salaries and expenses attributable to the operations of the Board itself. This interpretation would bring about a result we are quite sure the Congress never intended. As the Governor himself points out:

"The only member of the Civilian Personnel Policy Coordinating Board who administers, or is paid by, funds appropriated or made available by Pub. L. 94-387 is the Governor of the Canal Zone \* \* \*."

Therefore, it is only so much of the Governor's salary as is ascribable to his service on the Board that would be affected by the

appropriation restriction in question. To give literal effect to section 311 would be to take away from the Governor what voice he now has in the deliberations of the Board, leaving only the Assistant Secretary of the Army and Commander-in-Chief, to function as both the Assistant Secretary and the Commander are paid with Department of Defense funds and not funds "made available by Pub. L. 94-387." Instead of returning the authority to the Governor to establish personnel policies for the Canal Zone, as the Congress evidently intended to do, the Governor would have no such authority at all since he could not sit on the Board.

Finally, it could be argued that section 311 has repealed by implication so much of section 135 of title 2 of the Canal Zone Code as would permit the President, through regulations of his own or by delegation or redelegation, to vest the authority to establish wage and employment policy in anyone other than the Governor or individual agency heads. We are unable to adopt so drastic a construction, in the absence of any specific indication in the statute or its legislative history that the Congress intended such repeal. There is a long standing body of judicial precedent firmly enunciating a presumption against repeal by implication. Cf. IA Sutherland, Statutory Construction, sections 22.30 and 23.10, and cases cited therein.

Since we reject this last option, it appears that if we are to give any effect at all to the legislation in question, we must construe it as either precluding any employees paid with Canal Zone appropriations from putting into effect the wage and employment policies and standards issued by the Board or as precluding the Governor of the Canal Zone from sitting on the Board to establish such policies and standards. If we adopt the first alternative, we have created an administrative hiatus since no other entity (except for the Secretary) is presently authorized to provide alternative directives and guidance, without which employment services cannot be rendered. If we adopt the second alternative, we compound the very problem Congress hoped to remedy because instead of restoring the Governor's personnel policymaking authority, we would prevent him from participating in such policymaking altogether.

We believe that because of a misunderstanding about the legislative effect of the language of the section in question, the section does not accomplish its intended purpose. We do not think that the Congress ever intended to produce the results which we believe necessarily follow under either interpretation of this legislation. Accordingly, unless or until the Congress takes further legislative

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action to clarify its intent with respect to Canal Zone personnel policies, we will not object to the use of fiscal 1977 funds appropriated to the Canal Zone for the expenses of the CEO, the executive office of the Board, or the Governor's salary while he sits as a member of the Board.



Comptroller General  
of the United States