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United States General Accounting Office
Washington, DC 20548

B-319414

June 9, 2010

The Honorable Roger F. Wicker
United States Senate

Subject: *Amtrak—Permanence of the 2010 Consolidated Appropriations Act
Provision on Firearm Storage and Carriage on Trains*

Dear Senator Wicker:

This is in response to your letter of February 22, 2010, requesting our opinion regarding whether a provision in the 2010 Consolidated Appropriations Act pertaining to Amtrak is permanent law or expires at the end of the fiscal year. The provision requires Amtrak to (1) evaluate and report on the security issues surrounding the implementation of a checked firearms program, and (2) develop and implement guidance and procedures to carry out the duties and responsibilities of firearm storage and carriage in checked baggage cars and at Amtrak stations that accept checked baggage. For the reasons stated below, we conclude that this provision is permanent law.

Our practice when issuing opinions is to obtain the views of the relevant office to establish the office's legal position on the subject matter of the request. GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), *available at* www.gao.gov/legal/resources.html. In this regard, we requested the legal views of the Amtrak General Counsel. Letter from Assistant General Counsel for Appropriations Law, GAO, to Vice President, General Counsel, and Corporate Secretary, Amtrak, Mar. 26, 2010. The General Counsel provided a response stating Amtrak's position on the permanence of section 159. Letter from Vice President, General Counsel and Corporate Secretary, Amtrak, to Assistant General Counsel, GAO, Apr. 19, 2010 (General Counsel Letter).

BACKGROUND

During the deliberations on the appropriations legislation for fiscal year 2010 (H.R. 3288, 111th Cong. (2009)), you introduced amendment number 2366 that would

have limited Amtrak's funding unless Amtrak permitted passengers to safely transport firearms and ammunition in their secured and checked baggage on Amtrak trains after March 31, 2010. *See* 155 Cong. Rec. S9349–50 (2009) (statement of Senator Wicker). Amtrak's policy prohibits any type of firearm, explosive, or weapon from being checked or carried on in baggage. *Id.* The amendment passed the Senate, was modified during conference, and was enacted as section 159 in the 2010 Consolidated Appropriations Act, Pub. L. No. 111-117, div. A, title I, 123 Stat. 3034, 3061 (Dec. 16, 2009).¹ Section 159(b)(1) provides, “*Not later than one year after the enactment of this Act, Amtrak, in consultation with the Assistant Secretary, shall develop and implement guidance and procedures to carry out the duties and responsibilities of firearm storage and carriage in checked baggage cars and at Amtrak stations that accept checked baggage.*” (Emphasis added.)²

In your letter, you stated your view that this provision meets the standards for futurity of an appropriations provision because the time provision for Amtrak to comply with the law is outside of the 2010 fiscal year and the section has prospective language.

DISCUSSION

There is a presumption that any provision in an annual appropriations act is effective only for the covered fiscal year because appropriations acts are, by their nature, nonpermanent legislation. 31 U.S.C. § 1301(c); B-316510, July 15, 2008; B-309704, Aug. 28, 2007; B-271412, June 13, 1996; 65 Comp. Gen. 588 (1986). For this reason, a provision in an appropriations act will be considered to be permanent only if the statutory language or the nature of the provision makes it clear that Congress intended the provision to be permanent. B-271412, at 2; 65 Comp. Gen. at 589.

The most important factor in ascertaining Congress's intent is the language of the statute itself. B-316510; B-309704. Permanency is indicated most clearly when the provision in the appropriations act uses so-called “words of futurity.” While “hereafter” is a common word of futurity, we have afforded language such as “after the date of approval of this act” and “subsequent to the date of enactment of this Act” the same treatment. *See, e.g.*, B-277719, Aug. 20, 1997; B-225832.5, May 26, 1987; 36 Comp. Gen. 434 (1956). We have also considered permanent a substantive provision in an appropriations act providing that an action occur by a certain date because it was prospective in character. 9 Comp. Gen. 248 (1929). The emphasized language in section 159 quoted above illustrates that same prospective character of the provision. “Not later than one year” after enactment of the act (December 16,

¹ In the 2010 Consolidated Appropriations Act, Congress provided over \$1 billion to the Secretary of Transportation to make grants to Amtrak for capital investment, including \$264 million for debt service. Pub. L. No. 111-117, 123 Stat. at 3059.

² The full text of section 159 is contained in the Enclosure to this letter.

2010) falls after the end of fiscal year 2010 (September 30, 2010), which indicates an intention that the provision survive past the end of the fiscal year.

Other considerations support the conclusion that Congress intended section 159 to be permanent legislation. The provision is of a general nature, bearing no relation to the object of an appropriation. *See, e.g.*, 26 Comp. Gen. 354 (1946). The language of section 159, unlike its predecessor amendment number 2366, is not a restriction on the use of appropriations enacted in the 2010 act. It is a substantive provision requiring Amtrak to develop and implement procedures to permit Amtrak passengers to carry firearms in checked baggage. Its language, standing alone, is permanent in nature. *See* B-277719; 36 Comp. Gen. at 436. Also, while not controlling, it is noted that the codifiers have included section 159 in the United States Code. 49 U.S.C. § 24305 note. *See, e.g.*, 24 Comp. Gen. 436 (1944); B-248926, May 29, 1992.

More importantly, an interpretation that section 159 was not permanent would strip the section of any legal effect. If the section was meant to expire at the end of the fiscal year, the section 159(b) requirement that Amtrak implement procedures beyond that point creates an absurd result. There is a presumption against interpreting a statute in a way which renders it ineffective. B-277719; 65 Comp. Gen. 352 (1986); 62 Comp. Gen. 54 (1982). For the phrase “not later than one year after the enactment” to have effect, it must mean that section 159 is permanent law beginning with the date of enactment of the 2010 appropriations act.

The legislative history of section 159 also provides some support for considering it permanent. The conference report contained the following description: “Section 159 modifies a provision proposed by the Senate requiring Amtrak to allow the transportation of firearms and ammunition in checked baggage.” H.R. Rep. No. 111-366, at 416 (2009). This statement clearly presents section 159 as a prospective, substantive piece of legislation. Interestingly, in debates on amendment number 2366, which was restrictive and related to the appropriation, Members seemed to believe that the amendment would result in a permanent change of policy. The following excerpt from the *Congressional Record* for September 15, 2009, provides an example of this point: “This amendment would essentially impose upon Amtrak the standards for checking guns and ammunition that currently applies to airplanes. . . . If this amendment becomes law, Amtrak would have to let guns checked in baggage onboard . . .” 155 Cong. Rec. S9355 (statement of Sen. Durbin). Debate on section 159 on December 10, 2009, contained similar sentiments that the section would require Amtrak to change its policy permanently. *See, e.g.*, 155 Cong. Rec. H14455–56, H14458-59 (statements of Rep. Bennie Thompson and Rep. Corrine Brown).

As is our usual practice, we requested the views of the organization involved, in this case Amtrak. In response, Amtrak’s General Counsel also expressed the view that section 159 is a permanent enactment. In support of this position, the General Counsel referred to the following factors: “futurity is present because Congress mandated the start of the carriage of firearms in checked baggage ‘not later than one year after the enactment of this Act,’” the provision was included in the United States

Code, “the phrasing of the provision as a positive authorization rather than as a restriction on the use of an appropriation,” and “construing the provision as temporary would produce an absurd result.” General Counsel’s Letter, at 2.

For the reasons discussed above, we conclude that section 159 is permanent law. I trust the foregoing will be of assistance.

Sincerely yours,

A handwritten signature in cursive script that reads "Lynn H. Gibson". The signature is written in black ink and is positioned above the typed name.

Lynn H. Gibson
Acting General Counsel

Enclosure

ENCLOSURE

The following is section 159 of the 2010 Consolidated Appropriations Act as it appears in Pub. L. No. 111-117, div. A, title I, 123 Stat. 3034, 3061 (Dec. 16, 2009):

“(a) AMTRAK SECURITY EVALUATION.—No later than 180 days after the enactment of this Act, Amtrak, in consultation with the Assistant Secretary of Homeland Security (Transportation Security Administration), shall submit a report to Congress that contains—

- (1) a comprehensive, system-wide, security evaluation; and
- (2) proposed guidance and procedures necessary to implement a new checked firearms program.

(b) DEVELOPMENT AND IMPLEMENTATION OF GUIDANCE AND PROCEDURES.—

(1) IN GENERAL.—Not later than one year after the enactment of this Act, Amtrak, in consultation with the Assistant Secretary, shall develop and implement guidance and procedures to carry out the duties and responsibilities of firearm storage and carriage in checked baggage cars and at Amtrak stations that accept checked baggage.

(2) SCOPE.—The guidance and procedures developed under paragraph (1) shall—

(A) permit Amtrak passengers holding a ticket for a specific Amtrak route to place an unloaded firearm or starter pistol in a checked bag on such route if—

(i) the Amtrak station accepts checked baggage for such route;

(ii) the passenger declares to Amtrak, either orally or in writing, at the time the reservation is made or not later than 24 hours before departure, that the firearm will be placed in his or her bag and will be unloaded;

(iii) the firearm is in a hard-sided container;

(iv) such container is locked; and

(v) only the passenger has the key or combination for such container;

(B) permit Amtrak passengers holding a ticket for a specific Amtrak route to place small arms ammunition for personal use in a checked bag on such route if the ammunition is securely packed—

(i) in fiber, wood, or metal boxes; or

(ii) in other packaging specifically designed to carry small amounts of ammunition; and

(C) include any other measures needed to ensure the safety and security of Amtrak employees, passengers, and infrastructure, including—

(i) in fiber, wood, or metal boxes; or

(ii) in other packaging specifically designed to carry small amounts of ammunition; and³

(c) DEFINITIONS.—

(1) For purposes of this section, the term “checked baggage” refers to baggage transported that is accessible only to select Amtrak employees.”

³ This is as it appears in the text of the public law; (i) and (ii) are identical in both subsections (b)(2)(B) and (b)(2)(C).