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**DECISION**



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

*Johnson*  
GM

FILE: B-184782

DATE: March 18, 1977

MATTER OF: Compensation of Land Commissioners

- DIGEST:**
1. Appropriations for compensation of land commissioners are obligated only upon appointment of each commissioner and referral of particular condemnation action to commission of which he is a part, since no bona fide need for commissioner's services as to particular case arises until that time. Therefore, compensation for members of "continuous" land commission, established in 1969, is subject to GS-18 daily rate limitation under fiscal year 1976 or 1977 appropriations for payment of land commissioners with respect to cases referred to continuous commission after June 30, 1975. B-184782, February 26, 1976, explained.
  2. Where members of "continuous" land commission are substituted or added after June 30, 1975, to hear cases referred prior to that time, obligation for compensation to original commissioner (based on compensation rate prescribed in his order of appointment) ceases to exist, and new obligation as to substituted or added commissioner only is created based on compensation prescribed for new commissioner and anticipated length of service. Compensation would, therefore, be payable from appropriations current at time of substitution or addition, and would be subject to limitations contained in such appropriations, including GS-18 daily rate limitation contained in fiscal year 1976 and 1977 appropriation acts.
  3. Amended court order increasing previously fixed rate of compensation for land commissioners creates new obligation chargeable to appropriation current at time of amended order. Thus, increased compensation payable under such an amended order issued after June 30, 1975, is subject to, and limited by, any salary restrictions contained in appropriation charged.

This decision to the Attorney General of the United States responds to certain questions presented by the Assistant Attorney General for Administration concerning the applicable rates of compensation payable to land commissioners in land condemnation cases.

In Department of Justice - Land Commissioners, B-184732, February 26, 1976, we stated the basic rule governing the obligation of appropriations for the compensation of land commissioners as follows.

"\* \* \* at the time of the court order appointing land commissioners, a valid obligation against appropriations then current has been created. Such obligation is in the nature of a contract for services within the meaning of 31 U.S.C. § 200(a)(1) \* \* \* analogous to the court appointment of attorneys to represent defendants in Federal criminal cases considered in our decision at 50 Comp. Gen. 569 (1971)."

Accordingly, we held that the costs of compensation to be paid to land commissioners should be charged to the appropriation current at the time of appointment, irrespective of when services are performed. Under this approach, we further concluded that the rate of compensation for commissioners appointed prior to July 1, 1975, was not subject to the provision in Pub. L. No. 94-121 (October 21, 1975), 89 Stat. 611, 618, which limited the compensation of land commissioners to the equivalent of the GS-18 daily salary rate.<sup>\*</sup> The GS-18 rate limitation was continued in the fiscal year 1977 appropriation for payment of land commissioners. See Pub. L. No. 94-362 (July 14, 1976), 90 Stat. 937, 943.

In the United States District Court for the Western District of Missouri a land commission was appointed on July 29, 1969, to hear land condemnation cases relating to the anticipated acquisition of 266,024 acres of land within the Kaysinger Bluff Dam and Reservoir Project (later renamed Harry S. Truman Dam and Reservoir Project), involving approximately 8,000 tracts, and affecting approximately 6,000 ownerships. All the civil actions actually encompassed by the 1969 court order have been

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<sup>\*</sup>/Pub. L. No. 94-121 provided, in pertinent part:

"\* \* \* no part of the sum herein appropriated shall be used for the payment of the compensation of land commissioners at a daily rate in excess of the equivalent daily rate of compensation paid a grade 18 on the General Schedule."

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disposed of, and final judgments have been entered by the court. However, subsequent cases arising out of the same land acquisition project were referred to the same land commission by later court orders. In addition, it appears that all land condemnation cases arising since July 29, 1969, in this District have been referred to this same "continuous" commission. The membership of the commission has been changed from time to time by court order. The Assistant Attorney General for Administration presents the following questions in this regard:

"(1) In light of Comptroller General Decision B-184782 (February 26, 1976), may members of the sole land commission which was appointed in 1969, be compensated at a higher daily rate than permitted by Pub. L. No. 94-121 (October 21, 1975) for those cases referred to the Commission on or after July 1, 1975, or is the daily rate of compensation dictated by Title II of Pub. L. No. 94-121 controlling because the cases in question were referred to the Commission on or after July 1, 1975?

"(2) Are commissioners who are substituted or added to the commission on or after July 1, 1975, limited to the daily rate of compensation set forth in Title II of Pub. L. No. 94-121?"

The Assistant Attorney General also presents, without elaboration, a third question unrelated to the issues discussed above:

"Can members of a commission who were appointed by court order prior to July 1, 1975, at a daily rate less than the GS-18 limitation, now be compensated above this figure by a later, amended court order raising the daily rate of compensation, effective July 1, 1975, or thereafter?"

As to the first question, section 1311(a)(1) of the Supplemental Appropriation Act, 1955, as amended, 31 U.S.C. § 200(a)(1)(1970) provides:

"\* \* \* no amount shall be recorded as an obligation of the Government of the United States unless it is supported by documentary evidence of--

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"(1) a binding agreement in writing between the parties thereto, including Government agencies, in a manner and form and for a purpose authorized by law, executed before the expiration of the period of availability for obligation of the appropriation or fund concerned for specific goods to be delivered, real property to be purchased or leased, or work or services to be performed; \* \* \*."

As noted in B-184782, supra:

"\* \* \* The general rule relative to the obligation of a fiscal year appropriation by contract is that the contract which imposes the obligation must be made within the fiscal year covered by the appropriation sought to be charged and must concern a bona fide need arising within that fiscal year. See, e.g., 33 Comp. Gen. 57, 61 (1953). Determination of what constitutes a bona fide need of a particular fiscal year depends in large measure upon the circumstances of the particular case, there being no general rule for application to all situations which may arise. 44 Comp. Gen. 399, 401 (1965); 37 id. 155, 159 (1957). However, in the instant case, the pendency of condemnation actions in fiscal year 1975 is sufficient to support the need for appointment of commissioners in that fiscal year." (Emphasis supplied.)

Our decision was based on the assumption that land commissions are established, and commissioners appointed, in conjunction with the referral of specific cases, and that they cease to exist once those cases are completed. Thus the obligation described in our decision as arising at the time commissioners are appointed relates to the hearing of cases actually referred. The Government incurs no obligation and has no bona fide need for "work or services to be performed," within the meaning of 31 U.S.C. § 200(a)(1), merely by the appointment of the commissioners or the continued existence of the land commission without reference to specific cases. Both the appointment of the individual commissioners and the referral of a specific case to the commission as a whole is required before the obligation is created.

While the land commission for the Western District of Missouri has been in existence since July 29, 1969, no land condemnation case is actually placed before it except by appropriate court order; nor is there any requirement that subsequent land condemnation cases be

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referred to it. Moreover, even with regard to actions subsequently brought as a part of the anticipated land acquisition for the Harry S. Truman Dam and Reservoir Project, the Government's needs could conceivably change from year to year, necessitating the institution of either fewer or additional actions than originally anticipated. In light of the above, we are of the view that no obligation or bona fide need for the services of the land commissioners arises until a particular land condemnation action is instituted and referred to the commission. It follows that compensation payable to members of this continuous land commission for cases referred to it after June 30, 1975, are chargeable to the appropriation current at the time of referral and are thus subject to the GS-18 rate limitation.

We have been informally advised that in some instances involving large takings, because of the wording used in an order of appointment or referral, it is not absolutely clear as to what tracts or portions thereof have been referred to a land commission. The Department of Justice, of course, retains administrative discretion to obligate funds pursuant to our decision on the basis of its determination as to the precise ambit of a particular court order. Of course, no bona fide need for the services of land commissioners exists and no obligation can be created until a civil action has been filed, regardless of the breadth of a particular court order.

With regard to the second and third questions presented, as noted above, no obligation is created until individual commissioners are appointed and a specific case is referred to the land commission of which he is a part. Where either element is lacking, the obligation does not exist. Thus where a continuous land commission exists, no obligation is created until a particular action is referred to it. See discussion, supra. Moreover, the total amount of the obligation is determined by the individual arrangements with each land commissioner, as reflected in their respective orders of appointment. We understand, in this regard, that commissioners sitting on a land commission and hearing a particular case are often appointed at different rates of compensation, depending on their personal qualifications, experience, or other factors. The total obligation, therefore, reflects a cumulation of the obligations for payments to the individual land commissioners, based on the anticipated length of service and the prescribed rate of compensation for each.

Therefore, where a commissioner is substituted for another commissioner on a continuous land commission, the obligation for the original commissioner ceases to exist and a new obligation for the

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anticipated compensation for that commissioner arises at that time, based on the terms of his appointment. Similarly, when a commissioner is added to a continuous land commission, the terms of his appointment govern the amount of the obligation incurred, regardless of the amount of compensation payable to his fellow commissioners under previous appointments.

In this regard, sections 200(d) and 712a of title 31, United States Code (1970), provide, respectively:

"No appropriation or fund which is limited for obligation purposes to a definite period of time shall be available for expenditure after the expiration of such period except for liquidation of amounts obligated in accord with subsection (a) of this section; but no such appropriation or fund shall remain available for expenditure for any period beyond that otherwise authorized by law."

"Except as otherwise provided by law, all balances of appropriations contained in the annual appropriation bills and made specifically for the service of any fiscal year shall only be applied to the payment of expenses properly incurred during that year, or to the fulfillment of contracts properly made within that year."

As stated in 50 Comp. Gen. 589, 591 (1971)--

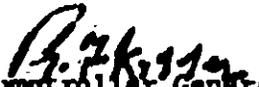
"\* \* \* We have long held, consistent with the above-quoted statutes, that a claim against an annual appropriation when otherwise proper is chargeable to the appropriation for the fiscal year in which the obligation was incurred. This rule is applicable in all cases in which there is a definite determination as to the time the public funds became obligated for the payment of a given liability whether the amount is, or is not, certain at the time. 18 Comp. Gen. 363 (1938); 23 id. 370 (1943)."

It follows, therefore, that compensation to a substituted or added commissioner would be chargeable to appropriations current at the time of his appointment, and would, therefore, be subject to the GS-18 rate limitation.

For the same reason, where the original court order of appointment is amended to provide for increased compensation for a particular land commissioner, a change occurs in the basic nature of the obligation

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as to that commissioner beyond the contemplation of the original order, and thus cannot be related back to the original order. See 41 Comp. Gen. 134, 138 (1961); 37 id. 861 (1958). Accordingly, compensation for land commissioners to be paid pursuant to an amended court order which increases a pre-established fixed rate of compensation is chargeable in full to the appropriation current at the time of the amended order, and would be subject to, and limited by, salary restrictions, if any, contained therein.

  
Deputy Comptroller General  
of the United States