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DECISION



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

FILE: B-175135

DATE: SEP 26 1978

MATTER OF: Preparation of Five-Year Plan by Amtrak

DIGEST:

Congressional Budget Act of 1974 does not require Amtrak to submit five-year corporate plan as part of annual budget. The five-year requirement of section 603 of the Act, 31 U.S.C. § 11(a), applies only to the budget submitted by the President and not to Amtrak, a for-profit Government-created corporation. Amtrak's actual and projected requests for Federal assistance are included in the Department of Transportation's budget which is part of the President's budget.

Mr. Nathaniel H. Goodrich, the Vice President and General Counsel of the National Railroad Passenger Corporation (Amtrak), has requested our opinion regarding the necessity for Amtrak's preparation of an annual "Five-Year Plan" under the Congressional Budget Act of 1974. He explained that a five-year plan has been prepared annually by Amtrak since 1973. This plan serves as Amtrak's formal request for funding as well as an indication of long-term program intentions. It was his stated understanding that agencies requesting Federal funds are required to submit such long-range program proposals under the 1974 Act. Mr. Goodrich indicated that, in view of the analysis of Amtrak's route structure currently being performed by the Department of Transportation (DOT), Amtrak is proposing the submission of a short-term budget based on the present route network. This budget would cover the period through the changeover to a new route structure (which is anticipated to occur in early 1979).

Amtrak was created under section 301 of the Rail Passenger Service Act of 1970, 45 U.S.C. § 541, as a "for profit corporation" to provide intercity rail passenger service. This section further provides that Amtrak "will not be an agency or establishment of the United States Government." Under 45 U.S.C. § 548(b), the Corporation is required to submit an annual report to the President and to the Congress. At the time of the annual report it may submit any legislative recommendations including—

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"the amount of financial assistance needed for operations and for capital improvements, the manner and form in which the amount of such assistance should be computed, and the sources from which such assistance should be derived."

Appropriations are authorized to the Secretary of Transportation for the benefit of Amtrak; the Secretary is also authorized to guarantee loans of the Corporation (45 U.S.C. § 601, 602). Whenever Amtrak submits a budget request or estimate to the President, the Department of Transportation, or the Office of Management and Budget, it is required to concurrently transmit a copy to the Congress (45 U.S.C. § 601(b)(1)).

The last annual five-year corporate plan, covering fiscal years 1978-1982, was submitted to the President and to the Congress on October 7, 1977. It contained, among other things, the Corporation's formal budget request for operating and capital grants for fiscal year 1979, and also describes the capital spending program for fiscal year 1978.

Section 603 of the Congressional Budget Act of 1974, Pub. L. No. 93-344, (July 12, 1974), amended section 201(a) of the Budget and Accounting Act of 1921 (31 U.S.C. § 11). Section 11(a) of title 31 now reads in pertinent part as follows:

"The President shall transmit to Congress * * * the Budget * * *. The Budget shall set forth in such form and detail as the President may determine—

* * * * *

"(5) estimated expenditures and proposed appropriations necessary in his judgment for the support of the Government for the ensuing fiscal year and projections for the four fiscal years immediately following the ensuing fiscal year, * * *."

In accordance with our usual practice, we asked the Secretary of Transportation for any comments he might wish to make regarding the question presented. By letter of July 5, 1978, Mr. John M. Sullivan, Administrator of the Federal Railroad Administration, replied on behalf of the Secretary. He stated as follows:

"The requirement for a five-year budget projection contained in Section 603 of the Congressional Budget Act of 1974 applies only to the President's Budget. The only legal requirement for Amtrak to issue a five-year plan is contained in the agreement between the Department and Amtrak on the terms and conditions issued in connection with loans received by Amtrak and guaranteed by the Department through Section 602 of the Rail Passenger Service Act, as amended. Amtrak's five-year plan is * * * a part of the Corporation's formal request for funding and an indication of its long-term program intentions based on current budgetary decisions. Section 601(b)(1) of the Rail Passenger Service Act of 1970 allows Amtrak to submit budget requests to the President, the Department, or the Office of Management and Budget, and requires a concurrent submission to the Congress. A formal budget request for Amtrak is then submitted to Congress by the President, at which time Section 603 is applicable. Amtrak's corporate five-year plan is used as supporting data in the Department's review of Amtrak's budget request. The Congressional Appropriations Committees consider both Amtrak's and the President's budget request in their determinations.

* * * * *

"Due to uncertainty regarding both the shape of the new route structure [proposed in the Department's report released May 8, 1978] and the process for its implementation, the Amtrak Board is presently considering which type of a long-range planning process to conduct in connection with this year's budget preparation. As the Secretary's designated representative on the Board, I am participating in those considerations. If we decide formally not to conduct a five-year planning exercise, I will, for this year, waive the loan guarantee requirement for a five-year plan."

Amtrak submits its requests for financial assistance to DOT, and they are the basis for the Department's requests on behalf of Amtrak. Amtrak's requests appear as part of DOT's budget which is

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included in the President's budget. Since 1973, Amtrak's budget requests have included a five-year plan. The issue presented here is whether the provisions of 31 U.S.C. § 11 require Amtrak to submit annually a report of estimated expenditures and proposed appropriations for the coming five years.

In our view, it is clear that the section 11(a)(5) requirement for a five-year budget projection by its terms applies only to the budget submitted by the President, which includes DOT's estimates of Amtrak's future funding needs. The requirement is not applicable to Amtrak's own budget submission.

Accordingly, while DOT may well require long-range data from Amtrak as the basis for its (DOT's) own five-year projections in compliance with the Congressional Budget Act of 1974, it is our opinion that the Act does not apply directly to Amtrak and therefore does not require the annual preparation of a five-year corporate plan by Amtrak.

R. F. KELLER

Acting Comptroller General
of the United States