



DECISION

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

FILE: B-193710

AGC0022

DATE: March 28, 1979

AGC0023

MATTER OF: HEW Office of Inspector General - Amount of Appropriation

DIGEST: Public Law 95-480 appropriates \$36,606,000 for the Office of Inspector General, Department of Health, Education, and Welfare, despite convincing evidence in legislative history showing that each House of Congress passed bill appropriating \$1,000,000 less and that figure in enrolled bill was the result of typographical error.

Enrolled act, signed by the Speaker of the House of Representatives and the President of the Senate, and approved by the President of the United States, is conclusive evidence of the contents of a law passed by Congress.

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This decision is in reply to an inquiry from the Assistant Director, Accounting Operations, Bureau of Government Financial Operations, Department of the Treasury, concerning the actual amount appropriated to the Office of the Inspector General (Inspector General), Department of Health, Education, and Welfare (HEW), by the Departments of Labor and Health, Education, and Welfare Appropriations Act, 1979. The act, as passed by the House of Representatives and the Senate (H. R. 12929, 95th Cong.), contained an appropriation of \$35,606,000 for the HEW Inspector General. However, the enrolled act (Public Law 95-480), signed by the Speaker of the House of Representatives and the President of the Senate, and approved by the President of the United States, appropriated \$36,606,000 for the same office. The question is whether the Department of the Treasury has the legal authority to transfer to the account of the Inspector General \$36,606,000, as contained in the enrolled act instead of \$35,606,000, contained in the act as it passed the two Houses of Congress. For the reasons given in this decision, we hold that the higher amount is the actual sum appropriated.

In response to our request for the views of the Secretary of Health, Education, and Welfare, we received a reply from the HEW Acting Assistant Secretary for Management and Budget, which stated, in part:

"In answer to your letter of December 29, 1978, the \$36,606,000 included for the Inspector General in the enrolled bill is in error.

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A typographical error was made in preparing the enrolled bill. The correct number is \$35,606,000 which was both our FY 1979 request and the amount allowed by the House and Senate Labor-Health, Education, and Welfare Subcommittees. This amount is clear from the legislative history including the reports of the House and Senate Appropriations Committees, the Conference Report, and the printed copies of the bill as it moved through both Houses. The only place where the higher number appears is the enrolled bill."

The Labor-HEW appropriations bill for fiscal year 1979, H. R. 12929, was reported from the House Committee on Appropriations on June 1, 1978. The bill contained an appropriation of \$35,606,000 for the HEW Inspector General. In the accompanying report the committee stated:

"The bill includes \$35,606,000, the amount requested and an increase of \$8,876,000 over the amount available for 1978. * * *" (H. R. Rept. No. 95-1248, 95th Cong., 2nd Sess. 98 (1978).)

H. R. 12929 was passed by the House of Representatives on June 13, 1978, still containing an appropriation of \$35,606,000, for the HEW Inspector General.

The bill was reported from the Senate Committee on Appropriations on August 16, 1978. It too contained an appropriation of \$35,606,000 for the Inspector General. In reporting the bill, the committee stated:

"The Committee recommends an appropriation of \$35,606,000, an increase of \$8,876,000 over the comparable fiscal year 1978 level. This is the same as the President's budget and the House allowance." (S. Rept. No. 95-1119, 95th Cong., 2nd Sess. 132 (1978).)

On September 27, 1978, the Senate passed H. R. 12929 containing an appropriation of \$35,606,000 for the HEW Inspector General.

The House and Senate versions of H. R. 12929 were not in agreement on matters other than the amount of the appropriation and the bill was referred to a conference committee. The conference committee report of October 6, 1978, was agreed to by each House on October 12, leaving disagreement on only one Senate amendment, not here pertinent. In the Congressional Record of October 12, 1978, two tables were printed, showing the appropriations contained in H. R. 12929 as agreed to by the conferees. Each table indicated an appropriation of \$35,606,000 for the

HEW Inspector General. See 24 Cong. Rec. S18433, H.12483 (Daily ed. October 12, 1978). On October 14, 1978, the House agreed to a reworded Senate amendment resulting in final passage of the bill.

Although it is not entirely clear from the record, it appears that in enrolling H. R. 12929, a typographical error was made and the appropriation for the HEW Inspector General was increased to \$36,606,000. The Speaker of the House and the President of the Senate did not notice the error and signed the enrolled bill. The enrolled bill was approved by the President of the United States on October 18, 1978, who apparently also did not notice the error, and the enrolled bill became Public Law 95-480.

This situation does not arise frequently but there are some decisions of the Attorney General, the Comptroller General, and the Supreme Court of the United States which are pertinent. The Attorney General decision involved an appropriation act which directed the Secretary of the Treasury to pay funds to one R. W. Thompson as provided for in an agreement with the Menominee Indians. The Indians objected to the payment, claiming that the act as it passed Congress contained a proviso, not contained in the enrolled act, which would have allowed them to veto the payment. The Attorney General decided against the Indian claim and instructed the Secretary of the Treasury to pay Thompson. In his decision, the Attorney General stated:

"We cannot go behind the written law itself for the purpose of ascertaining what the law is. An act of Congress examined and compared by the proper officers, approved by the President, and enrolled in the Department of State, cannot afterwards be impugned by evidence to alter and contradict it. It imports the absolute verity of a record, at least in so far that no extrinsic proof can be received to erase one thing from it or to interpolate another into it. If there be an apparent conflict between the journals and the law as finally approved and enrolled, the journals have no claim to superior authenticity." (9 Op. Att. Gen. 1, 3 (1857).)

The Supreme Court decision involved the application of a tariff act. Several importers claimed that the act could not be enforced against them because the enrolled act did not contain an entire section contained in the act as passed by the Congress and was thus not a law of the United States. The Supreme Court rejected this contention. In the Court's words:

"The signing by the Speaker of the House of Representatives, and by the President of the Senate, in open session, of an enrolled

bill, is an official attestation by the two houses of such bill as one that has passed Congress. It is a declaration by the two houses, through their presiding officers, to the President, that a bill, thus attested, has received, in due form, the sanction of the legislative branch of the government, and that it is delivered to him in obedience to the constitutional requirement that all bills which pass Congress shall be presented to him. And when the bill, thus attested, receives his approval, and is deposited in the public archives, its authentication as a bill that has passed Congress should be deemed complete and unimpeachable. As the President has no authority to approve a bill not passed by Congress, an enrolled act in the custody of the Secretary of State, and having the official attestations of the Speaker of the House of Representatives, of the President of the Senate, and of the President of the United States, carries, on its face, a solemn assurance by the legislative and executive departments of the government, charged, respectively, with the duty of enacting and executing the laws, that it was passed by Congress. * * *"Field v. Clark, 143 U.S. 649, 672 (1892).)

The Court went on to conclude:

"We are of opinion for the reasons stated, that it is not competent for the appellants to show, from the journals of either house, from the reports of committees or from other documents printed by authority of Congress, that the enrolled bill designated H. R. 9416, as finally passed, contained a section that does not appear in the enrolled act in the custody of the State Department." (Id. at 680.)

Public Law 95-480, Signed by the Speaker of the House of Representatives and the President of the Senate, and approved by the President of the United States, appropriates:

"For expenses necessary for the Office of the Inspector General, \$36,606,000 * * *."

Under Field v. Clark, and the 1857 Opinion of the Attorney General, the enrolled act, so signed and approved, is conclusive evidence of the law passed by Congress. Committee reports, the Congressional Record, or any other congressional printed material should not be used to show that the enrolled act differs from the act as passed by the Congress. Thus, we conclude that the Departments of Labor and Health, Education, and

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Welfare Appropriations Act, 1979, appropriated \$36,606,000 to the HEW Inspector General.

This case differs significantly from previous decisions in which courts and this Office have looked to the whole statute or to the legislative history and have corrected obvious printing errors in acts of Congress. In Fleming v. Salem Box Co., 38 F. Supp. 997 (D Ore. 1940), and Ronson Patents Corp. v. Sparklets Devices, Inc., 102 F. Supp. 123 (E. D. Mo. 1951), typographical errors in acts of Congress were apparent on the face of the statute. In each instance the court corrected the error in order to effectuate the true congressional intent.

In B-127507, December 10, 1962, we were faced with a statute authorizing the Department of Agriculture to purchase certain land for the Superior National Forest. One of the tracts to be purchased was described by the statute as section 12, Township 63 North, Range 14 West. The statute could not be executed as printed, however, because the designated section was already included within the national forest. Faced with this ambiguity, we examined the legislative history and discovered that Congress intended to authorize purchase of section "13" but this was erroneously printed as "12". We therefore interpreted the statute as authorizing purchase of section 13.

In another instance, referred to in an attachment to the Department of the Treasury inquiry, our General Counsel was faced with an Appropriation Act which appropriated money for the payment of claims and judgments as set forth in Senate Document 94-163, 94th Congress. An examination of that document revealed that it did not deal with claims and judgments. The statute as printed, therefore, could not be fulfilled. The legislative history indicated that Congress intended to refer to Senate Document 94-164, and that the reference to 94-163 resulted from a typographical error. Our General Counsel decided that the claims and judgments could be paid as if there was no error in the act.

In the present instance, the typographical error is not apparent on the face of the statute, nor is this an instance where compliance with the statute as printed is impossible. The appropriation of \$36,606,000 for the HEW Inspector General is clear and unambiguous.

Although we decide that Public Law 95-480 appropriated the full \$36,606,000 stated in the enrolled act, we believe that this appropriation resulted from a typographical error and was not intended by Congress. Accordingly, we are sending a copy of this decision to the House and Senate Appropriations Committees for whatever corrective legislation they may deem appropriate.

R. F. K...
Acting Comptroller General
of the United States

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