COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON 25

B-139524 June 1, 1959

Dear Mr. Secretary:

On April 30, 1959, the Under Secretary of Labor presented for our decision a question arising from certain provisions of the Departments of Labor, and Health, Education, and Welfare Appropriation Act, 1959, and the Independent Offices Appropriation Act, 1959.

The pertinent provision of the Departments of Labor, and Health, Education, and Welfare Appropriation Act, 1959, approved August 1, 1958, 72 Stat. 457 (Public Law 85-580), appearing under the heading "Grants to States for Unemployment Compensation and Employment Service Administration," 72 Stat. 458, is as follows:

> "For grants in accordance with the provisions of the Act of June 6, 1933, as amended (29 U. S. C. 49-49n), for carrying into effect section 602 of the Servicemen's Readjustment Act of 1944, for grants to the States as authorized in title III of the Social Security Act, as amended (42 U. S. C. 501-503) * * * and for the acquisition of a building through such arrangements as may be required to provide quarters for such offices and facilities in the District of Columbia and for the District of Columbia Unemployment Compensation Board, subject to the same conditions with respect to the use of these funds for such purposes as are applicable to the procurement of buildings for other State employment security agencies * * * $305,000,000 * * *."

The above-quoted provision clearly authorizes the acquisition of a building to provide quarters for the United States Employment Service for the District of Columbia, a Federal agency, and the District of Columbia Unemployment Compensation Board, a District of Columbia agency, from the funds appropriated thereby in the same manner that buildings have been and are being acquired by various States from Federal appropriated funds under the same program. The history of the act discloses that the Congress was apprised of the need for a building to house the cited agencies and that it was desired to acquire such building in the same manner that buildings for the same purposes are being acquired by various States under the program. Also, the Congress was advised that the States acquire buildings under the program by amortizing the costs over a period of years. The legislative history clearly shows that the Congress approved the request and included the acquisition provision in the act for the purpose of authorizing the acquisition of a building for the purposes stated in

the same manner that similar acquisitions under the program were being accomplished by the States. Since the method most commonly used by the States is stated to be by lease-purchase contracts, the cited provision would authorize acquisition of the building by that method.

However, the Independent Offices Appropriation Act, 1959, approved August 28, 1958, 72 Stat. 1063 (Public Law 85-844), contains a rider under the heading "Payments, Public Buildings Purchase Contracts," at 72 Stat. 1067, which provides as follows:

> "For payments of principal, interest, taxes, and any other obligations under contracts entered into pursuant to the Public Buildings Purchase Contract Act of 1954 (40 U. S. C. 356), $310,900; Provided, That hereafter, * * * no part of any funds in this or any other Act shall be used for payment for sites, planning or construction of any buildings by lease-purchase contracts; * * *."

Hence, the question is presented as to whether the quoted rider nullifies the authority contained in the quoted portion of the Departments of Labor, and Health, Education, and Welfare Appropriation Act, 1959.

Obviously, the rider does not expressly repeal the quoted provision of the earlier act, and repeals by implication are not favored. It is an established rule of statutory interpretation that a later general statute is not to be construed as affecting the operation of an earlier special statute unless the special statute is expressly repealed or is so wholly inconsistent that its repeal must of necessity be implied. United States v. Nix, 189 U. S. 199; Rodgers v. United States, 185 U. S. 83; Ex Parte Crow Dog, 109 U. S. 556, 570; Washington v. Miller, 235 U. S. 422; 23 Comp. Gen. 823; 22 id. 446; 21 id. 273; 19 id. 492. In the case of Baltimore National Bank v. Tax Commission, 297 U. S. 209, 215, the Supreme Court said:

> "* * * An earlier act, specific in its coverage, will be read as an exception to a later one directed to investments generally. 'It is a well-settled principle of construction that specific terms covering the given subject matter will prevail over general language of the same or another statute which might otherwise prove controlling.' Kepner v. United States, 195 U. S. 100, 125; cf. Ginsberg & Sons v. Popkin, 285 U. S. 204, 208; In re East River Co., 266 U. S. 355, 367; Washington v. Miller, 235 U. S. 422, 428; Rosencrans v. United States, 165 U. S. 257, 262; Red Rock v. Henry, 106 U. S. 596, 603. * * *"

The rule was discussed in Ex Parte Crow Dog, 109 U. S. 556, 570, as follows:

> "The language of the exception is special and express; the words relied on as a repeal are general and inconclusive. The rule is, generalia specialibus non derogant. 'The general principle to be applied,' said Bovill, C. J., in Thorpe v. Adams, L. R. 6 C.P. 135, 'to the construction of acts of Parliament is that a general act is not to be construed to repeal a previous particular act, unless there is some express reference to the previous legislation on the subject, or unless there is a necessary inconsistency in the two acts standing together.' 'And the reason is,' said Wood, V. C., in Fizgerald v. Champenys, 30 L. J. N. S. Eq. 782; 2 Johns. and Hem. 31-54, 'that the legislature having had its attention directed to a special subject, and having observed all the circumstances of the case and provided for them, does not intend by a general enactment afterwards to derogate from its own act when it makes no special mention of its intention so to do.'"

As indicated above, the legislative history of the quoted authorization contained in Public Law 85-580 clearly discloses that the matter involved therein pertained to a particular special problem and that the Congress, after considering the facts and circumstances surrounding that particular special problem, enacted the authorization for the specific purpose of solving that problem and considered it the proper solution. It is equally clear from the legislative history of the quoted rider contained in Public Law 85-844 that the Congress intended thereby to terminate previously authorized general programs for the acquisition of buildings by lease-purchase contracts and in the enactment thereof gave no consideration to the special problem intended to be solved by the specific authorization in Public Law 85-580. Thus, the principle enunciated in the last sentence of the quoted portion of Ex Parte Crow Dog seems applicable to the present situation.

In view of the above, it is our opinion that the quoted rider in the Independent Offices Appropriation Act, 1959, does not nullify the special authorization granted by the quoted portion of the Departments of Labor, and Health, Education, and Welfare Appropriation Act, 1959, to acquire a building to provide quarters for the United States Employment Service for the District of Columbia and the District of

Columbia Unemployment Compensation Board. However, in view of the admitted ambiguity of the language incorporated in the quoted portion of your 1959 appropriation act with reference to the method of procurement of a building as compared with the Congressional policy against the use of lease-purchase contracts as expressed in the Independent Offices Appropriation Act, 1959, we recommend that, before entering into such an arrangement which would necessarily involve a long term commitment, complete disclosure of your plans be made to the respective appropriation committees.

Sincerely yours,

JOSEPH CAMPBELL

Comptroller General
of the United States

The Honorable
The Secretary of Labor