DIGEST - GGM 543

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

B-159687 D MAY 17 1978

The Honorable James A. McClure
United States Senate

Dear Senator McClure:

We refer to your letter of May 5, 1978, on behalf of the Minority Members of the Senate Committee on Energy and Natural Resources, requesting a ruling from this Office on the legality of the Department of Energy's construction of the statutory language contained in section 201 of Pub. L. No. 95-238, February 25, 1978, Department of Energy Act of 1978 - Civilian Applications - which would add a new section 111 to title I of the Energy Reorganization Act of 1974, 42 U.S.C. § 5811 (Supp. V, 1975). Of particular concern is proposed new subsection 111(h).

Subsection 111(h) provides as follows:

> "(h) When so specified in appropriation Acts, any moneys received by the Administration may be retained and used for operating expenses, and may remain available until expended, notwithstanding the provisions of section 3617 of the Revised Statutes (31 U.S.C. 484); except that--
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> "(1) this subsection shall not apply with respect to sums received from disposal of property under the Atomic Energy Community Act of 1955 or the Strategic and Critical Materials Stockpiling Act, as amended, or with respect to fees received for tests or investigations under the Act of May 16, 1910, as amended (42 U.S.C. 2301; 50 U.S.C. 98h; 30 U.S.C. 7); and
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> "(2) revenues received by the Administration from the enrichment of uranium shall (when so specified) be retained and used for the specific purpose of offsetting costs incurred by the Administration in providing uranium enrichment service activities."

According to an excerpt from a letter to you, dated April 28, 1978, from a Department of Energy spokesman, which you provided to us, the Department of Energy (DOE) has interpreted the above-quoted provision as imposing a mandatory requirement that revenues from

enrichment services be used solely to offset the operations of the enrichment facilities only if specifically so provided in the applicable appropriation act. Since there is no such specific restrictive language in the Public Works for Water and Power Development and Energy Research Appropriation Act, 1978, Pub. L. No. 95-96, August 7, 1977, DOE takes the position that funds received from enrichment services may be retained and used for the general operating expenses of the Department, as authorized by the first sentence of subsection 111(h) and by title I of Pub. L. No. 95-96, supra. 91 Stat. 797

You disagree with this interpretation and state that the language of subsection 111(h) was intended by the Congress to require any retained revenues from enrichment services to be offset against the cost of such services. You indicate that the parenthetical phrase, "when so specified" in paragraph (2) of subsection 111(h) refers to a requirement that the general retention of revenues (which otherwise would have to be deposited in the Treasury pursuant to 31 U.S.C. § 484) be provided specifically in an appropriation act. The phrase was not meant to refer to a specific requirement to offset enrichment service costs with enrichment revenues. Once the general retention of funds is authorized in an appropriation act, as was done in this case by Pub. L. No. 95-96, supra, then the revenues must be used exclusively to offset the costs of enrichment services.

It is a general principle of statutory construction that resort to legislative history to discover the congressional intent of a particular section or sections of a statute is justified only when the legislative language may be reasonably considered ambiguous. Where there is no ambiguity in the language, it is presumed conclusively that the clear and explicit terms of the statute express the legislative intention. United States v. American Trucking Assoc., 310 U.S. 534, 543 (1940), March v. United States, 506 F.2d 1306 (1974). Ambiguity has been defined as doubtfulness, doubleness of meaning, or indistinctness or uncertainty of meaning of a written expression. Roe v. Hopper, 408 P. 2d 161, 163 (1965). We think either your interpretation or the DOE's interpretation of subsection 111(h) is justifiable, if the language is read literally, without reference to its legislative history. Specifically, the ambiguity results from the placement of the parenthetical phrase, "(when so specified)". Had the phrase been inserted two words later in the paragraph (after the words "be retained,") much of the misunderstanding might have been avoided. At any rate, it is clear that the intent of subsection 111(h) must be determined by reference to the legislative history.

Generally, committee and conference reports represent the most persuasive indicia of congressional intent. Housing Authority of the City of Omaha, Nebraska v. United States Housing Authority, 468 F.2d

1 (1972) and Crown Central Petroleum Corp. v. Federal Energy Administration, 415 F. Supp. 60, Affirmed 542 F.2d 69 (1976). The legislative history of S. 1340, which became Pub. L. No. 95-238, is found in the legislative history of S. 1811, an earlier bill with the same text as S. 1340 (except for certain deletions not here material) that was vetoed. See 124 Cong. Rec. S1483 (daily ed. February 8, 1978) (remarks of Senator McClure).

The conference reports accompanying S. 1811 and made applicable to S. 1340 (S. Rep. No. 482, 95th Cong., 1st Sess. 92 (1977) and H.R. Rept. 671, 95th Cong., 1st Sess. 92 (1977)), contain the following statement about the intended meaning of subsection 111(h):

> "The Conferees accepted House language which requires that the revenues received by the Administration from the enrichment of uranium be used to offset the costs which are incurred in providing existing and future uranium enrichment service activities, both for operating and plant and capital expenditures."

The report of the House Committee on Science and Technology on the companion House bill said:

> "This program provides for the income received from the services ERDA renders for toll enriching natural uranium. For toll enriching, customers supply the feed to ERDA in the form of uranium hexafluoride (UF_6) and ERDA processes the UF_6 in gaseous diffusion plants to produce the level of the enriched U-235 isotope specified by the customer. The revenues received will be applied in the budget against the operating costs for the ERDA enrichment plants. The question of fair value charge for uranium enrichment services and related Committee action are discussed in a separate section under Title V." (Emphasis Supplied.) H.R. Rep. No. 349, Part 1, 95th Cong. 1st Sess. 114 (1977).

When we now read subsection 111(h) in the context of its legislative history as expressed in the House Report and the House-Senate Conference Reports, we conclude that the Congress intended to require that moneys received by DOE from uranium enrichment services be used solely to offset the costs which are incurred in providing enrichment service activities, providing that the relevant appropriation act specifies that any moneys received by DOE may be retained. Paragraph (2) of subsection 111(h) thus provides a second exception to the general authority in the first sentence of subsection 111(h) to retain and use all receipts for general operating expenses.

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With regard to your request for recommended amendments to subsection 111(h) for incorporation in the FY 1979 DOE authorization bill that would express the intention of Congress more clearly, we offer the following suggested language:

> "(2) revenues received by the Administration from the enrichment of uranium shall be used solely for the purpose of offsetting costs incurred by the Administration in providing uranium enrichment service activities."

Reference to the need to have an appropriation act provide for retention of DOE revenues for use in meeting operating expenses is already made in the first sentence of subsection 111(h) and need not be repeated in paragraph (2). Our suggested revision would merely specify that revenues from a particular source could be used only for a particular category of operating expenses. This becomes a permanent limitation on DOE authority under the Energy Reorganization Act of 1974. Unless specifically provided otherwise in subsequent appropriation acts, an appropriation to "carry out the purposes of the Energy Reorganization Act of 1974" would presumably have to be spent in accordance with the agency's authorizing statute.

We hope the above-suggested language will clarify congressional intention about the use of such fees.

Sincerely yours,

R.F. KELLER

Deputy Comptroller General
of the United States