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DECISION

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

FILE: B-198234

DATE: March 25, 1981

MATTER OF: Foreign Claims Settlement Commission
Claims under Micronesian Claims Act

DIGEST: Funds appropriated for expenses of Foreign Claims Settlement Commission are available to pay salaries or administrative expenses necessary to readjudicate claims under Micronesian Claims Act. Micronesian Claims Act authorizes appropriations to Commission to carry out purposes of Act, and Commission's lump sum appropriation is available for expenses of reconstituting Micronesian Claims Commission for purpose of readjudicating remanded claims.

The Chairman of the Foreign Claims Settlement Commission (FCSC) has requested our opinion as to whether he may lawfully obligate and expend funds appropriated for the expenses of the FCSC to pay salaries and administrative expenses which may be incurred in readjudicating claims under the Micronesian Claims Act of 1971, 50 U.S.C. App. §§ 2018-2020b (Supp. II 1972). The Chairman indicates that, in two lawsuits in which he is a named defendant, the United States District Court for the District of Columbia has remanded for redetermination claims under the Act originally adjudicated by the now-defunct Micronesian Claims Commission (MCC). The court's mandate does not specify what body is to redetermine the claims. Under the circumstances, the Chairman asks whether FCSC appropriations are available to pay the costs of readjudication.

For the reasons indicated below we conclude that funds appropriated to carry out the activities of the Foreign Claims Settlement Commission are available to pay salaries or administrative expenses necessary to redetermine claims under the Micronesian Claims Act.

The Micronesian Claims Act of 1971 establishes a Micronesian Claims Commission (MCC) to be under the control and direction of the Chairman of the FCSC (Chairman). 50 U.S.C. App. § 2019b. The five members of the MCC are to be appointed by the Chairman and are to serve at his pleasure. The Chairman is also to determine the compensation of the MCC members (within statutory limits) and to approve any hiring of employees or other expenditures by the MCC. With the approval of the Chairman, the MCC is to establish procedural rules including a final date for the filing of claims, which is to be no later than one year after the appointment of all members of the MCC. The Act instructs the MCC to wind up its affairs as expeditiously as possible but in no event later than 3 years after the final date for filing claims.

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The Act grants to the MCC the exclusive jurisdiction to hear and adjudicate claims by Micronesian inhabitants of the Trust Territory of the Pacific Islands arising out of the hostilities between the United States and Japan during World War II or arising after the islands were secured by the United States but before July 1, 1951. The Act grants no authority to the FCSC to hear or adjudicate any of these claims. Under the Act claims decisions by the MCC are to be final and conclusive for all purposes.

Under the Act's mandate the MCC set October 15, 1973, as the final date for filing claims. In conformance with the Act's termination provision the MCC concluded all its functions on July 30, 1976.

The Act authorizes to be appropriated

"* * *such sums as may be necessary for the operation and administrative expenses of the Foreign Claims Settlement Commission, to the extent needed to cover activity connected with this Act, and of the [Micronesian Claims] Commission in order to carry out the purposes of this Act." (50 U.S.C. App. § 2019d (Supp. II 1972))

Despite this authorization, the Congress has never appropriated any funds to the MCC. Rather, during the years in which the MCC functioned, the Congress increased the lump-sum appropriation to the FCSC to cover the costs of the operation of the MCC.

During the period of the MCC's existence, two actions were filed in the United States District Court for the District of Columbia challenging MCC rulings. The Chairman was a named party defendant to these suits. The district court dismissed these actions on the grounds that the finality provision of the Act precluded judicial review of MCC decisions. Subsequent to the MCC having completed its work and terminated its operations, the United States Court of Appeals for the District of Columbia Circuit reversed the District Court decisions. Ralpho v. Bell, 569 F.2d 607, reh. denied, 569 F.2d 636 (1977); Melong v. MCC, 569 F.2d 630, reh. denied, 569 F.2d 636 (1977). The Court of Appeals decided (1) that the finality provision of the Act did not preclude judicial review of MCC decisions on grounds of violation of the Act or the Constitution, and (2) that the termination provision of the Act was directory rather than mandatory and that "justice to the Micronesians is not to be renounced simply to avoid even a brief additional lease on life for the Commission." 569 F.2d at 627.

The district court, in conformance with the decisions of the Court of Appeals, remanded both the Ralpho and Melong cases to be readjudicated. The court's mandate did not specify what body was to readjudicate the remanded claims.

At the same time that the Chairman requested our opinion, he also requested the decision of the Attorney General as to whether the FCSC could lawfully readjudicate the remanded claims, or could take any other action to comply with the court's mandate. In a memorandum dated May 21, 1980, the Deputy Assistant Attorney General, Office of Legal Counsel, informed the Chairman that, although under the Act the FCSC had no authority to readjudicate the remanded cases, the Act when read together with the decisions of the Court of Appeals granted to the Chairman the authority to reconstitute the MCC for the limited purpose of complying with the district court's mandate. We view the memorandum as representing the legal opinion of the Department of Justice that the Chairman may lawfully reactivate the MCC and that the reactivated MCC may lawfully readjudicate the Ralpho and Melong claims.

During fiscal year 1981 the FCSC has been operating with funds provided by two continuing resolutions, Pub. L. No. 96-369, 94 Stat. 1351 and Pub. L. No. 96-536, 94 Stat. 3166. The first resolution appropriated sufficient funds for the FCSC to continue operations under the appropriation provided by, and at a rate not exceeding that provided by, H.R. 7584, 96th Congress, as it passed the House of Representatives. The second resolution appropriates sufficient funds for the FCSC to continue operations to the extent and in the manner provided in H.R. 7584 as it was enacted by the Congress. That Act appropriated by transfer \$828,000,

"For expenses necessary to carry out the activities of the Foreign Claims Settlement Commission ***."

A lump-sum appropriation for necessary expenses of an agency is generally available, in whole or in part, for any purpose for which the agency is authorized to expend funds. As we indicated above the Micronesian Claims Act authorizes appropriations to the FCSC to carry out the purposes of the Act. Thus a lump-sum appropriation to the FCSC is available for expenses incurred in fulfilling the Act.

As we have indicated the Court of Appeals has decided that the statutory wind-up provision in the Micronesian Claims Act, despite its plain language, was not mandatory. Although not specifically stated, we assume it is the court's position that the MCC still has legal existence although it concluded its functions in 1976 and its members are no longer in office. For reasons that are not at all clear to us, the Justice Department decided not to seek review of the court's decision.

Were we deciding this inquiry without the benefit of the court's ruling, we might apply the language of the statute as it is written and decide that the MCC has terminated, that the FCSC has no jurisdiction to readjudicate the remanded claims, and that therefore the FCSC's appropriation is not available

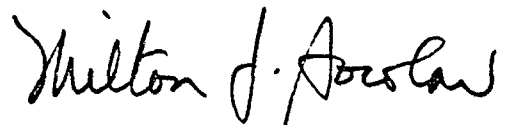
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for this purpose. However, we must follow the court's ruling that the MCC continues to exist, at least for the purposes of readjudicating the remanded claims. Therefore, because the Congress has authorized appropriations to the FCSC to carry out the purposes of the Micronesian Claims Act, the FCSC's lump-sum appropriation may be used to cover expenses incurred in connection with readjudicating the remanded claims.

Support for this conclusion may be found in the legislative history of the fiscal year 1981 appropriation for the FCSC. In reporting H.R. 7584, which was incorporated into the continuing resolution, the Committee on Appropriations of the House of Representatives stated:

"*** With these funds the Commission will also be able to discharge its continuing responsibilities of attending to the residual activities arising from completed programs under the International Claims Settlement Act, the War Claims Act, and the Micronesian Claims Act." (H.R. Rept. No. 96-1091, 96th Cong. 2d Sess. 16 (1980).)

Thus the Congress anticipated that the FCSC would continue to expend funds under the Micronesian Claims Act even though the MCC previously had terminated its activities.



Acting Comptroller General
of the United States