33648

DECISION

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

FILE: B-200923 **DATE:** February 27, 1986

MATTER OF: Federal Judges IV - Reexamination of Appropriations Rider Limitation on Pay Increases

DIGEST:

Federal judge requests reexamination of prior decisions concerning effect of section 140 of Public Law 97-92, an amendment which bars pay increases for federal judges except as specifically authorized by Congress. Although the sponsor of section 140 now says that the amendment was not intended to be permanent legislation but was to expire with the appropriation act to which it was attached, we hold that section 140 is permanent legislation in view of congressional intent expressed at the time of passage of section 140 and subsequently. Prior decisions are affirmed.

ISSUE

The issue presented is whether section 140 of Public Law 97-92, December 15, 1981, 95 Stat. 1183, 1200, which precludes pay increases for federal judges unless specifically authorized by Congress, shall continue to be construed as permanent legislation. We hold that, despite newly presented evidence of intent by the sponsor of section 140 that the amendment was not intended to be permanent legislation, section 140 is permanent legislation and federal judges are not entitled to retroactive pay increases unless specifically authorized by an Act of Congress.

BACKGROUND

This decision is in response to a request from the Honorable Frank M. Coffin, United States Circuit Judge,

034691

United States Court of Appeals for the First Circuit,[1] seeking our reexamination of prior decisions concerning pay increases for federal judges.

Pay adjustments for federal judges

The salaries of federal judges are subject to adjustment by two mechanisms: (1) the Federal Salary Act of 1967 provides for a quadrennial review of executive, legislative, and judicial salaries (2 U.S.C. §§ 351-361 (1982)); and (2) the Executive Salary Cost-of-Living Adjustment Act provides that salaries covered by the Federal Salary Act of 1967 will receive the same comparability adjustment as is made to the General Schedule under the provisions of 5 U.S.C. § 5305. See 5 U.S.C. § 5318 and 28 U.S.C. § 461 (1982).

Section 140 and prior decisions

In prior decisions we considered the effect of section 140 of Public Law 97-92 on the laws providing pay increases for federal judges. Section 140 was added to a continuing resolution appropriations act and it provides, in essence, that the salaries of federal judges may not be increased except as specifically authorized by an Act of Congress. We held in Federal Judges I, 62 Comp. Gen. 54 (1982), that section 140 was permanent legislation and that federal judges were not entitled to a comparability increase on October 1, 1982, in the absence of specific congressional authorization.[2]

---

[1] Judge Coffin has written in his capacity as the Chairman of the Judicial Conference Committee on the Judicial Branch.

[2] See also B-200923, October 1, 1982, interpreting section 140 as permanent legislation.

Subsequently, we ruled in Federal Judges II, 62 Comp. Gen. 358 (1983), that federal judges were entitled to the December 1982 comparability pay increase in view of a specific congressional authorization for such a pay increase. Finally, we held in Federal Judges III, 63 Comp. Gen. 141 (1983), that federal judges were not entitled to the January 1984 comparability pay increase, again in the absence of specific congressional authorization for a pay increase.

We note that federal judges later received the 1984 comparability pay increase of 4 percent pursuant to section 2207 of the Deficit Reduction Act of 1984, Public Law 98-369, July 18, 1984, 98 Stat. 494, 1060. In addition, federal judges have received the 3.5 percent comparability increase effective January 1985. See Public Law 99-88, August 15, 1985, 99 Stat. 293, 310.

Arguments of the judges

In requesting reexamination of our decisions, Judge Coffin refers to newly obtained information revealing the legislative intent as to the meaning and duration of section 140 of Public Law 97-92. Specifically, he points to a letter from the Honorable Bob Dole, Majority Leader of the United States Senate, clarifying his intent with respect to section 140, which he introduced as an amendment to the continuing appropriations resolution.

Senator Dole, in his letter of March 18, 1985, to our Office, notes that the amendment was offered as an accommodation to another Senator and that it was prepared by that Senator's staff. He states further that the intent was to limit the application of this amendment to the fiscal year in which it was enacted, and he points out that the Senate rule and practice is not to attach permanent legislation to continuing resolutions.

Judge Coffin also points out that in a discussion during a hearing in 1982,[3] Senator Dole stated that the amendment (section 140) would be in effect for only 1 year. Thus, Judge Coffin argues that these clarifying remarks help identify the legislative intent behind section 140.

Finally, Judge Coffin concedes that the effect of section 140 was discussed during the debate on the Deficit Reduction Act of 1984 when the Congress granted federal judges the 4 percent comparability increase for 1984. However, he contends that the debate centered on how our Office had ruled on section 140, not on what was the intent of Congress in enacting section 140 several years earlier.[4]

OPINION

The key question in this decision is whether section 140 of Public Law 97-92 shall be construed to be permanent legislation or whether it expired at the end of fiscal year 1982 with the continuing resolution appropriations act. In our analysis in Federal Judges I, we stated that a provision contained in an annual appropriations act may not be construed to be permanent legislation unless the language or the nature of the provision makes it clear that such was the intent of the Congress. 62 Comp. Gen. at 56. However, in that decision we held that both the language (words indicating futurity) and the nature of the provision (no direct relation to the object of the appropriations act) indicated intent by the Congress to make this provision permanent legislation, and that such intent was supported by the legislative history before us at that time.

---

[3] Hearing on S.1847 before the Subcomms. on Courts and Agency Administration of the Senate Comm. on the Judiciary, 97th Cong., 2d Sess. 104 (1982).

[4] Cong. Rec. S5027-30, S5102-04 (daily eds. April 30, 1984, and May 1, 1984) (statements of Senators Mitchell, Thurmond, Domenici, and Bentsen).

We note that at the time Senator Dole introduced the amendment, the stated purpose was "to put an end to the automatic, backdoor pay raises for federal judges." He continued by explaining that about 2 months earlier, Congress had failed to enact a pay cap on or before October 1, and that, although it was not the intent of Congress, federal judges had received a pay increase on October 1, 1981, which could not subsequently be altered or repealed. Senator Dole then concluded that his amendment "would remedy this situation by prohibiting judicial pay increases unless they were specifically authorized by Congress." Cong. Rec. S13890 (daily ed. November 19, 1981).

Although it may be argued that section 140 was not intended to be permanent legislation, such an interpretation would strip the section of any legal effect. As we pointed out in Federal Judges I, the next applicable pay increase under existing law for federal judges would have been effective October 1, 1982, and if section 140 were not permanent legislation, the section would expire with the continuing resolution on September 30, 1982. Thus, under this interpretation section 140 would have no legal effect since it would have been enacted to prevent pay increases during a period when no increases were authorized to be made. As we stated in Federal Judges I, there is a presumption against interpreting a statute in a way which renders it ineffective.

In our opinion, there is a conflict in interpreting Senator Dole's remarks at the time of passage of section 140 and his remarks after passage of section 140. We note that under principles of statutory construction, statements of the sponsor of a bill during deliberations on the bill are given consideration by the courts since other legislators look to the sponsor to be particularly well informed about

the bill's purpose, meaning, and intended effect.[5] However, post-passage remarks by legislators, even explicit remarks, cannot change the legislative intent expressed prior to passage of the act.[6] We believe that despite the post-passage expressions of intent by Senator Dole, it was the intent of the Congress that section 140 be permanent legislation.

Although the post-passage remarks of legislators are of little assistance in interpreting congressional intent, subsequent actions by the Congress with regard to the same legislation are very useful in such interpretation. We note that our interpretation of congressional intent with respect to section 140 is clearly supported by the subsequent legislative actions by the Congress. For example, as we noted in Federal Judges II, Congress enacted a pay increase for "senior executive, judicial, and legislative positions" in December 1982.[7] The conference report to that legislation specifically referred to section 140 of Public Law 97-92 and stated that section 140 would not prevent this pay increase for federal judges since the conference agreement provided a specific congressional authorization for such an increase. Conference Report quoted in part in Federal Judges II, 62 Comp. Gen. 358, 360.

Furthermore, we note that a bill was introduced by the Honorable George J. Mitchell in 1984 to specifically repeal section 140 and to provide federal judges with the 1984 comparability pay increase. S. 2224, 98th Cong., 2d Sess. (1984). No action was taken on that bill. Senator Mitchell later introduced an amendment during consideration of

---

5/ Sutherland Stat. Const. § 48.15 (4th Ed.); and National Woodwork Manufacturers Association v. National Labor Relations Board, 386 U.S. 612, 640 (1967).

6/ Sutherland Stat. Const. § 48.15 (4th Ed.) and Regional Rail Reorganization Act Cases, 419 U.S. 102 (1974).

7/ Section 129(b) of Public Law 97-377, December 21, 1977, 96 Stat. 1830, 1914.

another bill to authorize the 1984 comparability pay increase for federal judges, without repealing section 140. Cong. Rec. S5027-28 (daily ed. April 30, 1984). This second bill was incorporated into the Deficit Reduction Act of 1984, and federal judges received the 1984 comparability increase without any further attempt to repeal section 140.

Judge Coffin argues that in enacting the 1984 pay increase the Congress was not reflecting upon the original intent of section 140, but rather upon the way our Office had interpreted the effect of section 140. We disagree, although we are cognizant of the principles that Congress is not required to act each time a statute is interpreted erroneously, and that legislative inaction following such an interpretation is not strong evidence of legislative intent.[8]/ On the other hand, where it can be shown that a consistent administrative interpretation has been clearly brought to the attention of Congress and it has not been changed, that is "almost conclusive evidence that the interpretation has congressional approval." Kay, at 646-47.

Therefore, we conclude that, despite the newly presented evidence of intent to the contrary, section 140 of Public Law 97-92 is permanent legislation and federal judges are not entitled to pay increases except as specifically authorized by Congress. Our prior decisions are affirmed.

Finally, we note that the principal concern of the Congress in enacting section 140 appears to have been to bar the so-called "backdoor" pay increases which judges received by operation of law but which were delayed or denied to other high-level federal officials. However, the effect

---

8/ Kay v. Federal Communications Commission, 443 F.2d 638 (D.C. Cir. 1970); and Sutherland Stat. Const. § 49.10 (4th ed.).

of section 140 as enacted by the Congress is that federal judges do not receive the same comparability increases provided to other federal employees by operation of law except upon specific congressional authorization. We are constrained to follow the language of section 140 even though it extends beyond the problem Congress was trying to cure.

We also note that it is doubtful Congress intended to deny federal judges the same comparability increases provided to other federal employees. As noted above, Congress has enacted legislation in both 1984 and 1985 to grant federal judges the comparability increases retroactively. Therefore, we strongly urge that the Congress clarify this situation by amending the statutes governing pay for federal judges and repeal section 140 to permit federal judges to receive the same increases provided to other high-level executive and legislative officials. The so-called backdoor increases could be prevented by delaying increases for federal judges until 30 days following the effective date of pay increases for other high-level officials, but making the judges' pay increases retroactive to that effective date. To assist the Congress in consideration of such an amendment, we are submitting proposed language to the Chairmen of the Appropriations and Judiciary Committees of the Senate and House of Representatives.

Charles A. Bowsher
Comptroller General
of the United States

SUGGESTED BILL LANGUAGE

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Sec. 1. Section 461(a) of title 28, United States Code, is amended by striking the subsection and substituting the following:

(a) Thirty days after the effective date of a salary adjustment under section 5318 of title 5 for positions in the Executive Schedule, and retroactive to that effective date, each salary rate which is subject to adjustment under this section shall be adjusted by an amount, rounded to the nearest multiple of $100 (or if midway between multiples of $100, to the next higher multiple of $100) equal to the percentage of such salary rate which corresponds to the overall average percentage (as set forth in the report transmitted to the Congress under section 5305 of title 5) of the adjustments in the rates of pay under the General Schedule.

Sec. 2. Section 140 of Public Law 97-92, 95 Stat. 1183, 1200, is hereby repealed.