DECISION

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

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MATTER OF: B-184136

DIGEST: Use of noncertificated air carriers for foreign travel when certificated American carriers will not accept foreign currencies made available by specific appropriation acts.

(1) Questions as to legality of proposed expenditures submitted by an agency official other than the agency head may be decided and transmitted to the agency head as if questions had been submitted by him under 31 U.S.C. 74.

(2) Specific provisions in appropriation statutes that authorize use of foreign currencies for projects involving foreign travel are not viewed as having been impliedly modified by enactment of 49 U.S.C. 1517; hence, Government sponsored travel that can be financed only with such foreign currencies may be made by noncertificated carrier when otherwise available American-flag carriers will not accept such currencies.

The Director, Foreign Currency Staff, Department of State, has requested a clarification of the conditions under which the General Accounting Office will regard as justified the use of foreign flag air carriers for Government-sponsored foreign travel that can be financed only through the use of excess foreign currencies standing to the credit of the United States Government and made available by specific foreign currency provisions in various appropriation acts. Although under 31 U.S.C. 74 and 82d the Comptroller General is required to render advance decisions only to disbursing officers, certifying officers, and to heads of departments and agencies, the Director's inquiry will be regarded as a request by the Secretary of State, and answered accordingly.

The Director indicates that certain programs and activities of the Government, most of which have involved and continue to require extensive use of commercial air transportation in foreign travel, have for a number of years been financed solely with excess foreign currencies that are not convertible to dollars. Use of these funds for the purposes involved has been specifically authorized in various appropriation acts.

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Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, Public Law 93-623, 88 Stat. 2102, 2104, 49 U.S.C. 1517, requires that Government-financed foreign travel and transportation be performed by American-flag air carrier if available, and also requires that the Comptroller General disallow any expenditure to a noncertificated carrier in the absence of satisfactory proof of the necessity therefor. Regulations issued in implementation of the Act, 4 C.F.R. 52.2, require a certification as to the necessity for the use of noncertificated carriers.

The Director further indicates that American flag carriers have begun a practice of refusing foreign currencies for their services in certain instances. The reason for this apparently stems from unfavorable conditions for conversion and remittance. In many instances the excess foreign currencies are the only funds available for the programs involved; and unless some means can be found for their use for the foreign travel involved the United States Government activities and initiatives planned jointly between this and foreign governments may be forced into default, with consequent embarrassment to our Government and serious disruption of programs of vital public interest.

The Director lists in attachment E to his request a number of programs that would be adversely affected, and the appropriations involved. He correctly points out that these appropriations and the allocations involved do not permit the expenditure of dollars. See Hearings on U.S.-owned foreign currencies Before a Subcommittee of the House Committee on Government Operations, 88th Congress, 1st Section (1964). Although it may be conceded that most of the various activities involved are of secondary importance to programs being carried out through dollar appropriations, and it may be that they are devised mainly to avail of the economic benefits of the excess foreign currency accumulations, there is no question that the programs and the extensive travel required in their execution have specific statutory authorization.

We find in Public Law 93-623 no express amendment of any of such statutory authorizations. The salient question presented, therefore, is whether the language employed in Public Law 93-623 must be accorded the legal effect of having modified or amended such provisions by necessary implication. It is well established that repeals and modifications of law

by implication are not favored; on the contrary, there is a well-recognized presumption against implied repeal or modification. See Sands, Sutherland Statutory Construction, section 23.10, Vol. 1A, pages 230-231, which states the principle as follows:

> "The bent of the rules of interpretation and construction is to give harmonious operation and effect to all of the acts upon a subject, where such a construction is reasonably possible, even to the extent of superimposing a construction of consistency upon the apparent legislative intent to repeal, where two acts can, in fact, stand together and both be given consonant operation. Where the repealing effect of a statute is doubtful, the statute is strictly construed to effect its consistent operation with previous legislation."

The legislature is presumed to intend to achieve a consistent body of law. Ibid, Section 23.09, Vol. 1A, p. 223. Therefore, statutes in pari materia, although in apparent conflict, are so far as reasonably possible construed to be in harmony with each other. Ibid, Section 51.02, Vol. 2A, p. 290.

Aside from the absence of modifying language in section 5 we find nothing in the legislative history that requires the conclusion that the Congress intended a modification of the authorizations for foreign-currency financed operations in circumstances where the American Flag carriers render themselves unavailable by their own nonacceptance of such currencies. On the contrary, Senate report 93-1257, in explaining section 5 of S-3461, 93rd Congress, 2d Session, the language of which subsequently was enacted as section 5 of Public Law 93-623, indicates at page 9:

> "We do not suggest, of course, that U.S. business traffic ought to be reserved exclusively for U.S. flag airlines. But it certainly is in order to require that all government-financed transportation is accomplished on U.S. flag airlines wherever and whenever possible." (underscoring supplied.)

We therefore conclude that in instances where American flag carriers render themselves unavailable to perform

transportation service that can be financed only with excess foreign currencies, by declining to accept payment in such currencies, we are not required to object to the carrying out of the Congressionally-authorized programs when required transportation service is performed by noncertificated carrier. The certification required under 4 C.F.R. 52.2 must, in each such instance, indicate that the service can be financed only by excess foreign currencies and that otherwise available American flag carriers declined to accept payment in such currencies. Such certification, so indicating, will be accepted as satisfactory proof of the necessity for the use of the noncertificated carrier.

This decision should not be viewed as inconsistent with the tenor of paragraph 3(b) of guidelines implementing Section 5, reissued at 41 F.R. 14946.

We would see no objection to the issuance of a foreign service bulletin to reflect the conclusion stated in this decision.

(SIGNED) ELMER B. STAATS
Comptroller General
of the United States