DECISION

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

J. Hutton 6-19

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8338

FILE: B-192766 DATE: November 7, 1978

MATTER OF: Applicability of Federal Reports Act to Copyright Royalty Tribunal

DIGEST: The Copyright Royalty Tribunal, created as an independent agency "in the legislative branch," is not subject to the provisions of the Federal Reports Act, or the amendment which gave the General Accounting Office jurisdiction over independent regulatory agencies, because the Act does not apply to the legislative branch. 44 U.S.C. § 3512 was not intended to enlarge the scope of the Federal Reports Act with regard to the agencies covered.

This decision is in response to a request by the Chairman of the Copyright Royalty Tribunal (Tribunal) that we determine whether the Tribunal's information gathering activities are subject to review and clearance under the Federal Reports Act, 44 U.S.C. §§ 3501 et seq. (1970 & Supp. V 1975). The Chairman asserts that "the Act does not apply to agencies of the Legislative Branch." For the reasons set forth below, we agree with this conclusion.

The Tribunal was established by title I of Pub. L. No. 94-553, October 19, 1976, 90 Stat. 2594, 17 U.S.C. §§ 801-810, as "an independent Copyright Tribunal in the legislative branch", for the purpose of periodically reviewing and adjusting copyright royalty rates and to resolve disputes concerning distribution of certain royalties paid by users of copyrighted materials. 17 U.S.C. § 802 (1976) gives the President the power to appoint five commissioners to the Tribunal, subject to confirmation by the Senate, for a term of 7 years. The President has no authority to remove any commissioners, and vacancies in the Tribunal can be filled only for the duration of the unexpired term, in the same manner as the original appointment was made.

The Tribunal is given authority to adopt its own regulations (17 U.S.C. § 803 (1976)) and to appoint, fix the compensation, and prescribe functions and duties of its employees. 17 U.S.C. § 805 (1976). Administrative support is provided to the Tribunal by the Library of Congress which is compensated by the Tribunal. 17 U.S.C. § 806(a) (1976). The Library is also authorized to disburse funds

for the Tribunal, in accordance with regulations prescribed jointly by the Librarian of Congress and the Tribunal with the approval of the Comptroller General. 17 U.S.C. § 806(b) (1976).

Under the general criteria agreed upon by the Office of Management and Budget (OMB) and the General Accounting Office (GAO) in our letter of February 8, 1974, B-180224, the Tribunal would qualify as an "independent regulatory agency" subject to our jurisdiction if the Federal Reports Act were to apply to the legislative as well as the executive branch. However, both the language of that letter and of the statute, in light of its legislative history, exclude the legislative branch from the Act's coverage. The relevant portion of the general criteria, agreed upon by GAO and OMB, follows:

> "Agencies. There is no indication that section 409 is designed to enlarge the scope of the Federal Reports Act in terms of agencies covered. Thus agencies which were wholly or partially exempt from the act prior to its amendment by section 409 of Public Law 93-153 would retain the same status at present. For example, the basic act exempts '* * * the obtaining by a Federal bank supervisory agency of reports and information from banks as authorized by law and in the proper performance of the agency's functions in its supervisory capacity.' 44 U.S.C. 3507. Accordingly, agencies whose information collection activities for regulatory purposes are exempt under 44 U.S.C. 3507 would not be included under section 409."

The legislative history of the Federal Reports Act and the language of the Act itself demonstrate no intent by Congress to extend coverage of the Act beyond the executive branch. And, as noted above, the 1973 amendment which transferred review functions over reporting requirements for independent regulatory agencies to GAO was not intended to enlarge the scope of the Federal Reports Act with regard to the agencies covered. For the purposes of OMB review authority, "Federal agency" is defined by 44 U.S.C. § 3502 (Supp. V 1975) as--

> "an executive department, commission, independent establishment, corporation owned or controlled by the United States, board, bureau, division, service, office, authority, or administration in the executive branch of the Government; but does not include

> the General Accounting Office, independent Federal regulatory agencies, nor the governments of the District of Columbia and of the territories and possessions of the United States, and their various subdivisions;"

The exception for GAO was included in the bill by a House Committee amendment introduced at the request of Comptroller General Lindsay Warren. The amendment was apparently necessary, not because the Act was considered to cover the legislative branch, but because GAC was specifically described as an "independent establishment." 31 U.S.C. § 41 (1976).

OMB does not now review any of the reporting requirements of legislative branch agencies such as the Congressional Budget Office, Office of Technology Assessment or the Library of Congress. GAO informally advised the Federal Election Commission that, prior to its restructuring as an independent regulatory commission under Pub. L. No. 94-283, May 11, 1976, 90 Stat. 475, it was a legislative branch agency exempt from our clearance jurisdiction. After it was restructured as an independent Federal regulatory agency, GAO advised the Commission that it was no longer exempt from 44 U.S.C. § 3512. B-130961, April 20, 1977.

In view of this longstanding interpretation and the absence of any congressional directive to review reporting requirements of legislative branch agencies, we cannot extend the Federal Reports Act coverage beyond the executive branch and the independent, regulatory agencies therein. Therefore, the Commission is not subject to GAO reports clearance procedures.

for Shelton J. Gordon
Comptroller General
of the United States