

DECISION

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

APR 22 1975

FILE: B-175155 (2)

DATE:

MATTER OF: Use of grant funds by National Railroad Passenger Corporation (Amtrak)

DIGEST: Grant funds obtained by Amtrak under section 601 of Rail Passenger Service Act, as amended, and temporarily not needed for other purposes, may be advanced to purchase capital equipment and to pay off loans guaranteed under section 602 of Act and Amtrak can subsequently borrow funds under section 602 equal to amount of those capital expenditures and repayments made with grant funds provided proper accounting safeguards are maintained. B-175155, September 29, 1972, is affirmed.

At the suggestion of the Federal Railroad Administration, Department of Transportation, we have been asked by the National Railroad Passenger Corporation (Amtrak) to confirm its understanding of our decision of September 29, 1972, B-175155, relating to the use of funds granted to Amtrak under section 601 of the Rail Passenger Service Act, as amended, 45 U.S.C. § 601. We have been informally advised that the Federal Railroad Administration also seeks a full exposition of our views on this matter.

In his letter to us, Amtrak's Vice President for Finance states that it is the corporation's understanding of our 1972 decision that--

- " - AMTRAK may utilize non-loan funds for capital expenditures and subsequently borrow 602 funds in an amount equal to non-loan funds expended for capital purposes.
- " - AMTRAK may use non-loan funds to retire guaranteed loans and subsequently borrow under 602 authority in an amount equal to these repayments."

Sections 601 and 602 of the Rail Passenger Service Act of 1970, Pub. L. No. 91-518, October 30, 1970, 84 Stat. 1338, were

initially amended by Pub. L. No. 92-316, June 22, 1972, 86 Stat. 231. In our aforementioned 1972 decision we stated concerning that amendment:

"Section 601 of Pub. L. 92-316 authorized the appropriation of \$40,000,000 for fiscal 1971 and subsequent fiscal years to a total of \$225,000,000 for purposes which included both capital expenditures and operating costs. In fact this sum was consumed in start-up costs and some borrowings under the guaranteed loan provisions in section 602 have also been used for operating expenses. The hearings before subcommittees of both the House Committee on Interstate and Foreign Commerce and the Senate Committee on Commerce, and the Committee reports on H.R. 11417 (Pub. L. 92-316) indicate that Congress realized Amtrak was underfunded initially. Hearings, Transportation and Aeronautics Subcommittee, House Interstate and Foreign Commerce Committee, Serial No. 92-54; Hearing before the Surface Transportation Subcommittee, Senate Commerce Committee, October 26, 1971, Serial No. 92-29; House Report No. 92-905, March 8, 1972; Senate Report No. 92-756, April 21, 1972.

"At the same time, the hearings and reports indicate Congressional concern that Amtrak funds from all sources were being and would continue to be used largely for operating expenses and the hoped-for revitalization of rail passenger service would not occur. This concern led to the addition to section 601(a) in Pub. L. 92-316 of a specific authorization for the use of grant funds to purchase or lease rolling stock and in the deletion from section 602 of the phrase 'and for other corporate or related purposes.' The obvious effect of this deletion is to preclude the use of guaranteed loans for operating expenses or for other than capital expenditures."

Based on that discussion we concluded in our decision to Amtrak that the practices in question were not in violation of law.

Since we issued that decision, section 601 has been twice amended. As amended by the Amtrak Improvement Act of 1973, Pub. L. No. 93-146, November 3, 1973, 87 Stat. 553, section 601(a) authorized appropriations and then provided:

"* * * Funds appropriated pursuant to such authorization shall be made available to the Secretary during the fiscal year for which appropriated and shall remain available until expended. Such sums shall be paid by the Secretary to the

Corporation for expenditure by it in accordance with spending plans approved by Congress at the time of appropriation and general guidelines established annually by the Secretary."

In its report on S. 2016, 93d Cong., the derivative source of Pub. L. No. 93-146, the Senate Committee on Commerce explained the purpose of this provision as follows:

"This subsection specifically provides that the sums shall be paid to the Corporation by the Secretary for expenditure 'in accordance with spending plans approved by Congress at the time of appropriation.' The intent of this provision is to give the Corporation more freedom in using funds appropriated by Congress, and at the same time make the Corporation more responsible to Congress. It is the intent of this Committee that the Corporation have the maximum freedom possible to use such funds as are appropriated to provide quality intercity rail service. In the past, agreements between the Department and the Corporation may not have allowed the Corporation sufficient latitude for corporate flexibility in the use of funds authorized and appropriated by the Congress and may have caused needless bureaucratic maneuvering to the detriment of improved rail passenger service."

S. Rep. No. 93-226, 93d Cong., 1st Sess. 5 (1973). See also the conference committee report, H. Rep. No. 93-587, 93d Cong., 1st Sess. 20-21 (1973).

Section 601 was further amended by the Amtrak Improvement Act of 1974, Pub. L. No. 93-496, October 28, 1974, 88 Stat. 1526, 1530. Section 8 of that Act added the following sentence to the end of section 601(a) as set forth above:

"Payments by the Secretary to the Corporation of appropriated funds shall be made no more frequently than every 90 days, unless the Corporation for good cause, requests more frequent payment before the expiration of any 90-day period."

In its report on the derivative source of Pub. L. No. 93-496, H.R. 15427, 93d Congress, the House Committee on Interstate and Foreign Commerce stated:

"The committee also considered the question of the Department of Transportation's control over Amtrak operating expenses and guaranteed loan authority. The committee

felt that Amtrak should receive grant payments from the Department on a quarterly basis, rather than on a monthly schedule. A monthly disbursement of grants which have been appropriated by Congress is not conducive to good business practices. The committee will review this subject at length in its review of Amtrak in the next Congress. The committee did not change existing authority of the Department to review Amtrak's loan authority." H. Rep. No. 93-1145, 93d Cong., 2d Sess. 5 (1974). See also the report of the conference committee, H. Rep. No. 93-1441, 93d Cong., 2d Sess. 16-17 (1974).

Amtrak was established by the Congress as a private for-profit corporation and it generally is expected to conduct its business like other for-profit corporations. Hence, the Congress has continually expressed its desire to give Amtrak substantial latitude in the use of section 601 funds. As the conference committee on S. 2016, 93d Congress pointed out in eliminating Department of Transportation grants to Amtrak as a funding mechanism, more freedom from Government control is necessary to test the feasibility of a for-profit corporation handling intercity rail passenger service. See H. Rep. No. 93-587, supra.

Each of the three amendments of section 601 has further broadened Amtrak's flexibility in contravention of the Department of Transportation's efforts to retain substantial control over the transfer of grant funds to Amtrak. In its 1974 amendment requiring such payments to be made no more frequently than every 90 days, the Congress has virtually assured that Amtrak will generally continue to receive more section 601 funds than it immediately needs to pay its operating and other expenses. There are no restrictions on the use of the subject funds and it seems clear that the Congress expects Amtrak to utilize them in accordance with its best business judgment. As a prudent business practice, Amtrak has determined--as we think it is clearly authorized to do--to use those temporarily "excess" funds for legitimate corporate purposes rather than have them lay idle. Two of the ways Amtrak uses these funds--ways we believe to be clearly authorized--are those mentioned above: namely, using them as advance payments for capital expenditures and to pay off outstanding loans guaranteed under section 602.

Subsequently, Amtrak borrows funds guaranteed under section 602 equal to the amount of these capital expenditures and repayments. We have found no statutory or other prohibition against the use of borrowings guaranteed under section 602 (and are restricted to loans for capital expenditures) to repay grant funds advanced for capital

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expenditures. In addition, the 1974 amendments to section 602 appear to broaden Amtrak's discretion as to when it can use-- though not on what it may use--the available loan guarantee authority for its purchases and limits the Secretary of Transportation's discretion in turning down requests for loan guarantees. (See section 602(h) and (i) as added by Pub. L. No. 93-496, supra. Also, we note that when Amtrak uses its funds (including section 601 monies) in this manner, not only does the corporation incur smaller interest charges, but since the amount of borrowings is reduced by this process, the overall contingent liability of the Government on the loan guarantees is similarly reduced. Of course, proper accounting safeguards must be maintained to assure that the borrowed funds are used only with respect to capital acquisitions authorized by section 602.

In conclusion, even greater financial flexibility has been given to Amtrak since our September 29, 1972 decision, B-175155. Accordingly Amtrak's understanding of our above-cited 1972 decision is confirmed.

SIGNED ELMER B. STAATS

Comptroller General
of the United States