

DECISION



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

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FILE: B-164497(3)

DATE: February 6, 1979

MATTER OF: [Availability of Appropriations to Maintain
Highland Scenic Highway] ↗

- DIGEST: 1. Highland Scenic Highway in Monongahela National Forest, West Virginia, was to be constructed and managed by U.S. Forest Service as route on Federal-aid secondary system and parkway. Pub. L. No. 93-87. Forest Roads and Trails appropriation is not available to maintain Highland Scenic Highway, because it does not fit definitions and statutory purpose of forest road or trail.
2. Law requires Forest Service to manage parkway portion of Highland Scenic Highway as part of Monongahela National Forest. Pub. L. No. 93-87. West Virginia, which built part of Highway written Forest as public lands highway, open to commercial traffic, says it lacks authority to maintain that part because Pub. L. No. 93-87 bars commercial traffic and State cannot maintain limited service highway. Forest Protection and Utilization appropriation to Forest Service, since it is available for management of National Forest, may be used for maintenance of Highway within Forest.

The Assistant Secretary of Agriculture has asked whether funds appropriated to the Forest Service for construction and maintenance of forest development roads and trails are available to maintain the Highland Scenic Highway.

Completion of the Highway, a scenic thoroughfare running through the Monongahela National Forest, by the United States was authorized by section 161 of the Federal-Aid Highway Act of 1973, (Pub. L. No. 93-87, 87 Stat. 250), 279 (August 13, 1973). Section 161 of the Act provides in relevant part:

"(a) The Secretary of Agriculture (acting through the Forest Service) is authorized to develop and construct as a parkway the Highland Scenic Highway from West Virginia State Route 39 to U.S. 250 near Barton Knob. Notwithstanding subsection

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Dec.

(c) of section 103 of title 23, United States Code [providing that State and local officials shall make the selection and designation of routes on the system], such parkway shall be a route on the Federal-aid secondary system.

"(b) The route from Richwood, West Virginia to U.S. 250 near Barton Knob, via West Virginia State Route 39, and the parkway authorized by subsection (a) of this section shall be designated as the Highland Scenic Highway.

* * * * *

"(f) The Highland Scenic Highway as authorized by subsection (a) of this section and all associated lands and rights-of-way shall be managed as part of the Monongahela National Forest, solely for scenic and recreational use and passenger car travel."

The quoted provisions indicate that the Highland Scenic Highway consists of two segments:

1. the section running from West Virginia State Route 39 to U.S. 250 near Barton Knob, within the Monongahela National Forest, which is designated a parkway on the Federal-aid secondary system, and is restricted to passenger car traffic; and
2. the section of State Route 39 running from Richwood, West Virginia, to the parkway. Commercial traffic has access to this section.

We are here concerned only with the parkway section.

The original Highland Scenic Highway was to be a 160-mile scenic roadway between State Route 39 in Pocahontas County, West Virginia, and Gorman in Grant County, West Virginia. The State of West Virginia developed the initial segments of the road as a public lands highway. Contracts for construction of only small segments of the Highway could be awarded at any given time. Congress, in Pub. L. No. 93-87, designated a portion of the Highway as a "parkway" rather than a "public lands highway," and authorized its construction by the Forest Service within the National Forest. See S. Rep. No. 93-61, 20-21 (1973) and section 161 of Pub. L. No. 93-87.

B-164497(3)

After the parkway portion of the Highway is completed, it is to remain in the control of the Department of Agriculture. The parkway is to "be turned over to the Forest Service for administration as part of the Monongahela National Forest." S. Rep. No. 93061, supra. Moreover, unlike the "public lands highway" originally undertaken by the State, under chapter 1 of title 23 as part of the Federal-aid system, the Highway will not be open to commercial traffic. Pub. L. No. 93-87, section 161(f), supra.

Although the parkway portion of the Highway is to be developed and constructed by the Forest Service, the responsibility for maintenance is in doubt because of another provision of Pub. L. No. 93-87. Section 150(b), 87 Stat. 275, added a new subsection to 23 U.S.C. § 207 to provide that:

"(d) Any parkway project on a Federal-aid system shall be subject to all of the requirements of this title [title 23, United States Code] and of any other law applicable to highways on such system."

The parkway portion of the Highland Scenic Highway was designated as a route on the Federal-aid secondary system. Section 161, Pub. L. No. 93-87, supra. That was done in order, as explained by Senator Randolph, the sponsor of the authorization for the highway in Pub. L. No. 93-87 and the Chairman of the Senate Public Works Committee which reported on the bill, to allow Highway Trust funds to be used for its construction. 119 Cong. Rec. 27213 (1973).

The maintenance provision of title 23, United States Code (section 116) requires State highway departments to maintain any project constructed under chapter 1 of title 23, and provides sanctions when the highway department fails to do so itself or fails to enter into an agreement for maintenance with the county in which the project is located.

It is doubtful whether section 116 of title 23 applies to that part of the parkway portion of the Highland Scenic Highway which is being developed and constructed by the Forest Service pursuant to the 1973 Act. Section 116, by its terms, applies to "any project constructed under the provisions of this chapter [Chapter 1, title 23, United States Code]." Chapter 1, "Federal-Aid Highways," contemplates a highway built and owned by the State, not by the Federal Government (23 U.S.C. § 114); that chapter is designed to "provide for a federally assisted State program." 23 U.S.C. § 145.

The effect of section 150(b) of Pub. L. No. 93-87 on parts of the parkway built by the State as a public lands highway is less clear. The State built those parts under chapter 1 of title 23 and agreed to be responsible for their maintenance. However, the State's agreement was arguably predicated upon the road being open to commercial traffic. After the State executed the project agreement, the public lands highway which was the subject of the agreement was converted, by Pub. L. No. 93-87, to a parkway restricted to passenger car traffic. The State says it has no authority to maintain a limited service highway. We would be reluctant, without further evidence that the State remains bound by its original agreement, to conclude that section 116 requires it to maintain the Highway when the nature of the Highway has been changed unilaterally from what it was when the State agreed to be responsible for maintenance.

The Assistant Secretary asks:

"In view of the fact that normal title 23 maintenance provisions for Federal-aid secondary system roads cannot be met by the State of West Virginia, are FR&T [forest roads and trails] appropriations to the Forest Service * * * available for maintaining the Highland Scenic Highway?"

The appropriation for forest roads and trails for fiscal year 1978 was contained in Title II of the Department of the Interior and Related Agencies Appropriation Act, 1978, Pub. L. No. 95-74, 91 Stat. 285, 295 (July 26, 1977), as follows:

"For expenses necessary for carrying out the provisions of 16 U.S.C. 528-538 and 551, relating to the construction and maintenance of forest development roads and trails, \$175,833,000, to remain available until expended, and \$78,781,000 for liquidation of obligations incurred pursuant to authority contained in 23 U.S.C. 203, to remain available until expended * * *."

The appropriation for fiscal year 1979, in Pub. L. No. 95-465, 92 Stat. 1293, uses essentially similar language, except that it has no authority for liquidation of obligations incurred pursuant to 23 U.S.C. § 203.

"Forest roads and trails" are roads or trails serving the National Forest system and which are necessary for the protection, administration, and utilization of the system and the use and development of its resources. 23 U.S.C. § 101(a), as amended by

B-164497(3)

section 106(b)(1), Pub. L. No. 95-599, 92 Stat. 2693. "Forest development roads and trails" are forest roads or trails under the jurisdiction of the Forest Service. 23 U.S.C. § 101(a), as amended by section 106(b)(2), Pub. L. No. 95-599, 92 Stat. 2693.

The parkway portion of the Highland Scenic Highway, on the other hand, is to be managed "solely for scenic and recreational use and passenger car travel." Pub. L. No. 93-87, section 161(f). The provisions of title 16, cited in the Forest Roads and Trails Appropriation, supra, are consistent with the definitions in title 23; forest development roads, while they may serve a recreational purpose (16 U.S.C. § 532), are to be built so as to "permit maximum economy in harvesting timber." 16 U.S.C. § 535. Thus, the Forest Roads and Trails Appropriation cannot be applied to the maintenance of the Highland Scenic Highway.

The purpose of the congressional action with regard to the Highland Scenic Highway in Pub. L. No. 93-87 was to hasten the completion of that road and to make it available for public use sooner than would have been the case if construction as a public lands highway had continued. That purpose would be thwarted if we construed the law to make Federal funds unavailable for maintenance and, as a result, the road became unsafe or unusable.

The current appropriation to the Forest Service for Forest Protection and Utilization is available for necessary expenses of the Forest Service not otherwise provided for, "including the administration, improvement, development and management of lands, waters, or interests therein, under Forest Service administration * * *." Pub. L. No. 95-465, 92 Stat. 1279, 1292. Administration and management of lands under Forest Service administration would include whatever maintenance might be necessary within those lands. Since the Forest Service is required to manage the parkway portion of the Highway "and all associated lands and rights-of-way" as part of the Monongahela National Forest (Pub. L. No. 93-87, section 161(f)), its appropriation for Forest Protection and Utilization is available for required maintenance of the portion of the Highland Scenic Highway within the Forest.


Deputy Comptroller General
of the United States