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**DECISION**



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

C. Roney

CP

**FILE:**

**B-190964**

**DATE:** January 19, 1978

**MATTER OF:** John V. Rainbolt - Commodity Futures  
Trading Commission - Holdover period

- DIGEST:**
1. Commissioner was appointed to serve for 2-year period on newly created Commodity Futures Trading Commission. Upon expiration of that period no successor was nominated. Commission asks whether holdover provision of 7 U.S.C. §4a(a)(B) applies to commissioners first appointed to serve immediately following creation of Commission. Purpose of holdover provision is to avoid vacancies which may prove disruptive of Commission work. Thus, holdover provision does apply to those commissioners first appointed to the Commission.
  2. Commissioner of Commodity Futures Trading Commission continued to serve beyond expiration of fixed period of appointment on April 14, 1977, pursuant to holdover provision of 7 U.S.C. §4a(a)(B). Commissioner's entitlement to compensation after expiration of first session of 95th Congress is questioned since statute provides that a commissioner may not continue to serve "beyond the expiration of the next session of Congress subsequent to the expiration of said fixed term of office." The word "next" before "session" refers to the adjournment of a subsequent session of Congress. Therefore, the Commissioner may be compensated until expiration of the 2d session of the 95th Congress, or appointment and qualification of successor, whichever event occurs first.

By letter of December 23, 1977, John G. Gaine, General Counsel, Commodity Futures Trading Commission, requested a decision as to whether John V. Rainbolt, II, a Commissioner of that Commission, may continue lawfully to receive compensation after the expiration of the 1st session of the 95th Congress.

The request involves the application of section 2(a)(2) of the Commodity Exchange Act, as amended by the Commodity Futures Trading Act of 1974, 7 U.S.C. §4a(a), establishing the Commodity Futures Trading Commission. The pertinent part of that section is set forth below:

"Each Commissioner shall hold office for a term of five years and until his successor is appointed and has qualified, except that he shall not so continue to serve beyond the expiration of the next session of Congress subsequent to the expiration of said fixed term of office, and except (A) any Commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and (B) the terms of office of the Commissioners first taking office after the enactment of this paragraph shall expire as designated by the President at the time of nomination, one at the end of one year, one at the end of two years, one at the end of three years, one at the end of four years, and one at the end of five years." (Emphasis added.)

Commissioner Rainbolt was one of five commissioners first taking office after the creation of the Commodity Futures Trading Commission. He was appointed to office for a two-year period, which expired on April 14, 1977, and since that time he has continued to serve under the holdover provision in 7 U.S.C. §4a(a). As of the time of Mr. Gaine's letter to this Office, Commissioner Rainbolt had not been reappointed, nor had a successor been appointed and qualified.

The legislative history of the Commodity Futures Trading Commission Act of 1974, which contains the language involved, offers little assistance in resolving the issues presented by this case. However, the pertinent language of 7 U.S.C. § 4a(a) is essentially the same as that in Public Law 86-619, approved July 12, 1960, 74 Stat. 407. The purpose of that act was "to make uniform provisions of law with respect to the terms of office of the members of certain regulatory agencies." The subject language was discussed in some detail during Committee hearings on that law. In

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view of the fact that the pertinent language of that act is virtually identical to the language of 7 U.S.C. §4a(a), and that both acts were enacted for similar reasons, we believe that it is appropriate to utilize the legislative history of Public Law No. 86-619 in resolving the questions presented by Mr. Gaine's request.

The first issue is whether the holdover provision contained in 7 U.S.C. § 4a(a) applies to the commissioners first taking office after the creation of the Commission and whose terms of office were fixed by the President pursuant to subsection (B).

The legislative history of Public Law No. 86-619 indicates that the need for that statute arose due to the situation resulting when a regulatory Commission is at less than full strength during the period after a member's term expires and before his successor is nominated and confirmed. During such periods the work of a commission was delayed, which served not only to handicap the commission but also to deprive the public of the benefits and services of that commission. See House Report No. 1917, 86th Cong., 2d Sess. 2 (1960). In order to avoid such delays, it was proposed that Commissioners should serve until their successors were appointed and qualified. Id. at 3.

We previously construed the holdover provisions of Public Law No. 86-619, as they applied to the Federal Power Commission, in a letter of January 31, 1973, to Senator Warren G. Magnuson, Chairman of the Senate Committee on Commerce. We stated in that letter that the legislative history of Public Law No. 86-619 shows that the clear intent of Congress was to extend the term of office of commissioners of the Federal Power Commission so that it would not be prevented from acting on matters before it due to vacancies. We found nothing in the legislative history which would support a view that the Act was intended to apply only to commissioners appointed to full terms. Rather, we viewed the language in question as creating terms of office which do not necessarily expire at the end of a fixed period, but which continue until successors are appointed and qualify subject to the limitation on the length of the holdover. Therefore, we applied the holdover provision of the 1960 Act to a Federal Power Commissioner who had been appointed to less than a full term to fill a vacancy.

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We believe that the same analysis applies to the case at bar. Under this view, commissioners first taking office after the creation of a commission would be eligible to serve the original term, including any time beyond that designated by the President because a successor had not yet been appointed and qualified. Accordingly, since we can discern no reason why the above rationale would not be applicable to the Commodity Futures Trading Commission, we conclude that the holdover provision in 7 U.S.C. §4a(a) applies to commissioners first taking office after the creation of the Commodity Futures Trading Commission.

The second issue concerns the application of the holdover provision of section 4a(a) to Mr. Rainbolt. That provision provides that a commissioner may continue to serve beyond the expiration of the 5-year period of his appointment, " \* \* \* except that he shall not so continue to serve beyond the expiration of the next session of Congress subsequent to the expiration of said fixed term of office \* \* \*." Since Mr. Rainbolt's appointment expired on April 14, 1977, during the first session of the 95th Congress, the question is whether the above-quoted language would permit Mr. Rainbolt to serve until the expiration of the second session of the 95th Congress, or whether it serves to terminate his appointment at the expiration of the first session of the 95th Congress.

Mr. Gaine suggests that to construe the subject provision so as to terminate Mr. Rainbolt's appointment at the expiration of the first session of the 95th Congress would be to ignore the word "next" appearing in the phrase. He states that such a reading would conflict with the rule of statutory construction that effect must be given, if possible, to every word, phrase, and sentence of a statute. He continues:

"I have examined the holdover provisions of statutes which were enacted before and after the creation of the Commodity Futures Trading Commission. See, e.g., 15 U.S.C. §2053, establishing the Consumer Product Safety Commission, and the enabling statutes for the Civil Aeronautics Board (49 U.S.C. §1321), the Interstate Commerce Commission (49 U.S.C. §11), the Federal Trade Commission (15 U.S.C. §41) and the National Transportation Safety Board (49 U.S.C. §1902). These statutes all permit the affected commissioners

to continue to serve beyond their fixed of office, and except in the case of the Consumer Product Safety Commission (where a commissioner may not holdover longer than one year), each of these statutes has a unlimited holdover provision until a successor is appointed and has qualified. Thus, Congress has frequently recognized that even lengthy holdover periods would be needed in order to provide for the orderly functioning of agencies and has made provisions for them."

We believe that the plain meaning of the statute compels the result urged upon us by Mr. Gaine. Moreover, the legislative history of Public Law No. 86-61<sup>6</sup> provides additional support for that result. See page 3 of House Report No. 1917, supra, which reads in pertinent part as follows:


"The committee amendment is designated also to meet the suggestion of the Bureau of the Budget that this additional period 'until his successor is appointed and qualified' during which a Commissioner might serve should be limited to 60 days. In the consideration of the actual days of vacancy which have existed in the commissions involved, it appeared that a 60-day period would be too limited and consideration was given to a longer period. However, a specification of any given number of days might raise a number of additional problems owing to the fact that it is possible that a stated number of days might carry over beyond the adjournment of a subsequent session of the Congress. The committee accordingly proposes a change in the Senate bill to add language to the effect that the Commissioners concerned 'shall not so continue to serve beyond the expiration of the next session of Congress subsequent to the expiration of said fixed term of office.'" (Emphasis added).

The report shows Congressional concern regarding continuity, as shown by the fact that consideration was given to a longer holdover period. Therefore, in interpreting the language of the holdover provision, to ignore the word "next" would have

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the effect of shortening the holdover period, providing a result which runs contrary to the intent of Congress.

Since the language in 7 U.S.C. §4a(a)(B) is similar to that in Public Law No. 86-619, we believe that Mr. Rainbolt's term does not terminate upon the expiration of the first session of the 95th Congress. Accordingly, Commissioner Rainbolt may continue to receive his salary and other appropriate disbursements as a member of the Commodity Futures Trading Commission until his successor is appointed and qualified or until the expiration of the second session of the 95th Congress, whichever event occurs first.

  
Deputy Comptroller General  
of the United States