

DECISION



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

FILE: B-191036

DATE: August 19, 1982

MATTER OF: Copyright Royalty Tribunal - Service
of Commissioners Beyond End of Term

DIGEST: Commissioners of Copyright Royalty
Tribunal may not continue to serve
beyond the expiration of their terms
of office since there is no specific
statutory provision authorizing the
commissioners to hold over in office.

This action is in response to a letter dated May 5, 1982, from Frances Garcia, Chairman, Copyright Royalty Tribunal, questioning whether a commissioner of the Tribunal may continue to serve beyond the expiration of his term of office until such time as a new appointment to the office is made. We have concluded that the provisions of 17 U.S.C. § 802 (Supp. II, 1979) do not authorize a commissioner of the Tribunal to serve beyond the expiration of his term of office.

The Tribunal was established in 1976 pursuant to chapter 8 of Public Law 94-553 (October 19, 1976), 90 Stat. 2594, 17 U.S.C. §§ 801-810 (Supp. III, 1979). It is an independent agency within the legislative branch, consisting of five members appointed to staggered terms by the President with the advice and consent of the Senate.

With respect to duration of the commissioners' terms of office, 17 U.S.C. § 802(a) provides as follows:

"(a) The Tribunal shall be composed of five commissioners appointed by the President with the advice and consent of the Senate for a term of seven years each; of the first five members appointed, three shall be designated to serve for seven years from the date of the notice [of initial appointments] specified in section 801(c), and two shall be designated to serve for five years from such date, respectively ***."

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There is no specific provision in the Act authorizing the continuance of Tribunal members as members after the expiration of their terms in the event that successors are not appointed.

There is nothing in the legislative history of Public Law 94-553, the Act establishing the Tribunal, to suggest that Congress gave any consideration to allowing commissioners to hold over beyond their appointed terms. In contrast, as pointed out by Chairman Garcia, many of the statutes establishing Federal boards and commissions specifically provide that members will continue to serve after the expiration of a fixed term until their successors are appointed and qualified. See, e.g., the Federal Trade Commission Act, 15 U.S.C. § 41 (1976), which provides that "*** upon the expiration of his term of office a Commissioner shall continue to serve until his successor shall have been appointed and shall have qualified." Thus, a logical inference may be drawn that had Congress intended to provide authority for the holding over of commissioners of the Copyright Royalty Tribunal, it would have enacted language similar to that quoted above.

We have held in analogous situations that board or commission members may not legally continue in office after expiration of their terms absent specific statutory authorization. Merit Systems Protection Board, B-202734, June 30, 1981; National Transportation Safety Board, B-185525, December 23, 1975; B-50929, August 17, 1945.

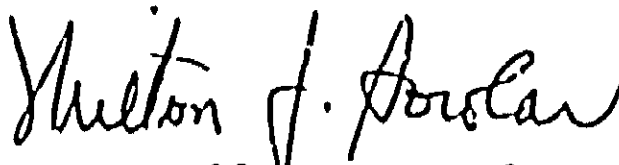
Our decisions follow an established line of court decisions and Attorney General opinions. See Badger v. Boles 93 U.S. 599, 601 (1876); Romero v. United States, 24 Ct.Cl. 331, 337 (1889); 17 Op. Atty. Gen. 648 (1884). If a public officer continues to serve beyond the expiration of his term without hold over authority, the validity of his official acts and his entitlement to salary could be challenged. See generally, 56 Comp. Gen. 761, 766 (1977); Department of Energy, B-150136, May 16, 1978; and compare Williams v. Phillips, 360 F.Supp. 1363 (D.D.C. 1973), motion for stay denied 482 F.2d 669 (D.C.App. 1973). Thus, while we have recognized the difficulties which could arise under a rule permitting no holding over past the expiration of

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a member's term, we have also observed that the consequence of a member continuing to act as member without hold over authority would also be very disruptive. Merit Systems Protection Board, cited above.

In view of the above, we conclude that a commissioner of the Copyright Royalty Tribunal may not serve beyond the term of office to which appointed. If the Tribunal feels that this limitation is too restrictive, an amendment to the statute would be necessary to permit commissioners to hold over in office for a period of time or until a successor is appointed.

The question presented is answered accordingly.

for 
Comptroller General
of the United States