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DECISION

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

10,210

FILE: B-194634 addressee OK. DATE: May 16, 1979

MATTER OF: Federal Assistance for Areas Impacted by Increased Coal or Uranium Production.

DIGEST: Under section 601(a) of the Powerplant and Industrial Fuel Use Act of 1978, a State Governor may designate an impacted area based on his finding that employment in coal or uranium production activities "increased for the most recent calendar year by 8 percent or more from the immediately preceding year." Both the plain meaning of the statute and its legislative history support the view that "the most recent calendar year" is determined with respect to the time of the Governor's finding, and not, with respect to any calendar year since 1975, of 8 percent increased employment. Final regulations of the Farmers Home Administration for the Energy Impacted ~~Area Development~~ Assistance Program should include an amended definition of "base year" consistent with this decision.

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The Acting General Counsel of the Department of Agriculture had requested our interpretation of a portion of section 601 of the Powerplant and Industrial Fuel Use Act of 1978, Pub. L. No. 95-620, approved Nov. 9, 1978, 92 Stat. 3289, which established Federal assistance for areas impacted by coal or uranium production.

Although there is a second criterion, for purposes of this decision, eligibility for this assistance depends on a determination by the Governor for an area in the State that employment in coal or uranium production activities has increased by 8 percent or more in a base period - defined in the statute as "the most recent calendar year" over the immediately preceding year.

Section 601(a) states in pertinent part:

"(a) DESIGNATION OF IMPACTED AREAS. --
(1) In accordance with such criteria and guidelines as the Secretary of Agriculture shall, by rule,

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prescribe, the Governor of any State may designate any area within such State for the purposes of this section, if he finds that--

"(A) either (i) employment in coal or uranium production development activities in such area has increased for the most recent calendar year by 8 percent or more from the immediately preceding year or (ii) employment in such activities will increase 8 percent or more per year during each of the 3 calendar years beginning after the date of such finding;

"(B) such employment increase has required or will require substantial increases in housing or public facilities and services or a combination of both in such area; and

"(C) the State and the local government or governments serving such area lack the financial and other resources to meet any such increases in public facilities and services within a reasonable time.

"The Secretary of Agriculture shall prescribe a rule containing criteria and guidelines for making a designation under this subsection, after consultation with the Secretary of Labor and the Secretary of Energy, not later than 180 days after the effective date of this Act.

* * * * *

"(3) The Secretary shall, after consultation with the Secretary of Agriculture, approve any designation of an area under paragraph (1) only if -

"(A) the Governor of the State making the designation provides the Secretary in writing with the data and information on which such designation was made, together with such additional information as the Secretary may require to carry out the purposes of this section; and

"(B) the Secretary determines that the requirements of subparagraphs (A), (B), and (C) of paragraph (1) have been met."

The question presented is whether "the most recent calendar year" as used in section 601(a) means most recent in relation to a governor's

designation or the most recent in relation to employment growth in development activities. The Acting General Counsel puts the question as follows:

> "* * * if the Governor's designation occurred in 1979, could it be based upon an 8 percent employment increase occurring in 1976 over 1975 even though in 1978 (1978 being literally the most recent year to the Governor's designation) there was no 8 percent employment increase over 1977 and in 1977 there was no 8 percent employment increase over 1976?"

History of Impact Provision

Senate Bill 977, as introduced in the 95th Congress on March 10, 1977, was a modified version of proposed legislation for expanded use of coal as a substitute for other fossil fuels, which had been considered in the prior Congress. Subsequently, on April 20, 1977, President Carter announced a national energy program which included a proposal to "increase the use of coal by 400 million tons, or 65 percent, in industry and utilities by 1985 * * *." Legislative proposals incorporating the President's National Energy Plan soon followed. As reported by the Senate Committee on Energy and Natural Resources (S. Rep. No. 95-361, 95th Cong., 1st Sess., July 25, 1977) S. 977 was extensively amended. A new section 306(a) was added which provided in pertinent part that-

> "When the Governor of any State or chairman of any Indian tribe determines that coal production will expand above 1976 production levels in an area which will require the provision of additional public facilities and services or housing, the Governor or chairman may designate such an area within his jurisdiction as an 'energy-impacted region.'* * *"

In discussing the provision, the Senate report stated that-

> "Section 306 is an attempt to alleviate the significant adverse socio-economic impacts on coalfield communities that are likely to result from the coal conversion program. Eastern Governors, such as John D. Rockefeller IV of West Virginia, and Western Governors, such as Richard Lamm of Colorado, have pointed out in testimony the serious difficulties small communities face in meeting the demand for housing, public facilities and services that will result if the President's goal of

1.2 billion tons of annual coal production is reached. The opening subsection of the new provisions gives Governors and tribal Chairmen the power to designate for special aid energy-impacted regions where coal production is expanding." At 62.

Shortly thereafter, on September 8, 1977, the Senate passed H.R. 5146 which had been amended to incorporate provisions of S. 977, as amended, including a changed section 306, providing for assistance to regions impacted by expanded coal or uranium production. As passed by the Senate, subsec-section (a) of section 306 of H.R. 5146 read in part as follows:

"When the Governor of any State or chairman of any Indian tribe determines that employment in the coal- or uranium-mining industries and in coal- or uranium-related industries in an area has increased by 8 per centum or more over the 1976 level of employment in coal or uranium mining and coal- or uranium-related industries in the area which will require the provision of additional public facilities and services or housing, the Governor or chairman may designate such an area within his jurisdiction as an 'energy-impacted region.' * * *"

The House had not passed a comparable provision. The conference report on H.R. 5146, October 10, 1978 (H.R. Rep. No. 95-1749, 95th Cong., 2d Sess.), states that the Senate provision on impact assistance, as modified, was adopted as section 601 of the Powerplant and Industrial Fuel Use Act of 1978. It was explained that an energy-impacted region may be designated:

"Whenever a Governor of a State identifies within that State an area or areas to be impacted by energy development such as new or existing coal or uranium producing, processing, and transportation industries and demonstrates to the Secretary that:

"(a) such development has increased employment by at least 8 percent over the prior year directly (i.e., this does not include increases from non-energy activities, such as a shopping center) from coal or uranium production, processing, or transportation, or is projected to increase employment by at least 8 percent annually over the next 3 years from the same activities; * * *" At 93.

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On October 14, 1978, the Honorable John D. Dingell, Chairman of the Subcommittee on Energy and Power of the House Committee on Interstate and Foreign Commerce, presented to the House of Representatives on behalf of himself and other House conferees, an explanatory statement addressed to questions which had arisen about the meaning of certain sections of H.R. 5146 as reported by the Conference Committee. The statement was made prior to acceptance of the conference report. The portion addressed to impact assistance (124 Cong. Rec. H 13121 (daily ed. October 14, 1978)) is as follows:

> "The language in section 601(a), titled assistance to areas impacted by increased coal or uranium production, specifies that an area within a State may be eligible for assistance in one of two ways. First, coal or uranium related employment has increased for the most recent calendar year by at least 8 percent from the immediately preceding year.
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> "The 8-percent criterion was developed in 1977 after examining the employment patterns of 1975 and 1976. The purpose was to provide assistance to communities facing the most severe impacts at that time from expanding coal development. These communities continue to need assistance like that provided in this bill. Additional communities facing more recent growth impacts may become eligible based on 1976-77 changes in employment levels. The actual employment situation varies greatly not only from State to State, but from county to county. The conferees intend that the Secretary of Agriculture, in prescribing rules on eligibility for assistance, shall permit flexibility, to the greatest degree possible, in qualifying for assistance under this criterion."
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> "Once the Governor has designated an area and satisfied the Federal administrative requirements set out in the bill, then the Secretary of Energy, after consultation with the Secretary of Agriculture, must approve the Governor's designation. The conferees also intend that, to the greatest extent possible, these Federal administrative requirements not be unduly complex or burdensome."

The President signed H.R. 5146 on November 9, 1978. The Farmers Home Administration (FmHA) of the Department of Agriculture has responsibility for administration of section 601 activities. Relying on the legislative history of this section, it believes that "most recent calendar year" refers to the time of increase in employment rather than the time of the Governor's designation. We are also told that a contrary interpretation would render ineligible those communities to which Mr. Dingell referred in colloquy prior to House passage of the Act. This includes almost all of West Virginia, where substantial employment increases occurred during 1975, 1976, and 1977 but apparently not in 1978.

The FmHA published proposed regulations for its Energy Impacted Area Development Assistance Program (44 Fed. Reg. 12936, et seq.) on March 8, 1979. It provides that an area designated by a Governor must show increased employment of 8 percent or more in the year following a base year or that such employment will increase by 8 percent or more over the base year during each of the next 3 calendar years (section 1948.73(a)). "Base year" is defined in section 1948.53(c) as-

> "The most recent calendar year determined by the Governor of the appropriate State to be prior to the occurrence of the most significant impact on the designated area. This may be any calendar year selected by the Governor from 1975 to the calendar year preceding the most recent calendar year."

Analysis

The issue before us, in essence, goes to the Governor's discretion to choose which 2 consecutive year period to look at in determining if an area within the State is eligible for impact aid. FmHA's proposed regulations would authorize the Governor to examine data dating back to 1975 in making a determination. For the reasons discussed below, we do not believe this is permissible.

The original impact provision proposed by the Senate Committee on Energy and Natural Resources based eligibility on increased coal production in an area over 1976 production levels. During floor debate, Senator Randolph offered an amendment to change the criteria from coal production increases to an 8 percent increase in "employment in the coal-mining industry and in coal-related industries." He explained that, among other things, in many communities production might not have increased over 1976 levels due to wildcat strikes or due to a shift from surface mining to deep mining, but that the need to produce more coal

brought more employment to, and had a dramatic impact on those communities. He also explained that as proposed by the Committee, numerous communities would eventually become eligible for assistance. To target the aid to those most in need, the 8 percent figure was developed from examining coal employment data from the States of West Virginia, Colorado, and New Mexico.

Both as reported by the Committee and as passed by the Senate, the proposed legislation mandated 1976 as the base year. Thus, even had one of these versions been enacted, FmHA's proposed regulations, which authorize a Governor to choose 1975 as the base year, would not have been valid.

Although the Senate passed H.R. 5146 on September 8, 1977, the Conference Committee did not complete its work until about one year later. Although it does not provide very much comment on the changes it recommended, it seems clear that the Conference Committee intended to restrict even further eligibility for assistance and to decrease the program's size.

In addition to deleting reference to 1976 as the base year in favor of the "most recent calendar year" standard, the Conference Committee suggested, and the Congress and the President accepted, numerous other changes in the program. It changed the Senate-passed language relating to increases in employment in "coal- or uranium-mining industries and in coal- or uranium-related industries" to increases in employment in "coal or uranium production activities."

It also added to the Senate-passed requirement that the increase in employment will "require the provision of additional public facilities and services or housing", the requirement that the State and local governments serving the impacted area lack the financial and other resources to meet these needs. In determining this, increased revenues from severance taxes, royalties, and similar fees which are associated with the increase in development activities are generally required to be taken into account.

The final change recommended by the Conference Committee to which we will refer is its amendment of the appropriation authorization. The Senate-passed measure would have authorized appropriations in the sum of $150,000,000 annually for the 8 years beginning with fiscal year 1978, with unexpended amounts to be available until expended. The final version authorized to be appropriated $60 million for fiscal year 1979 and $120 million for fiscal year 1980. This is a much smaller total authorization of appropriations than in the Senate bill.

While the Conference Committee does not explain its deletion of the reference to 1976 as the base year and substitution of the most recent calendar year and the year preceding it, it does not seem likely in view of the other actions it took that it intended to broaden eligibility over that provided by the Senate-passed bill. We have also reviewed the explanatory statement made by the House conferees quoted above, and do not find it inconsistent with our view of the law and legislative history.

Finally, we do not believe that we can read into the provisions a qualification of the words "the most recent calendar year" to mean the most recent calendar year of increased employment. The words of the statute, when given a normal and unstrained reading, indicate that a Governor may make a finding as to the most recently completed calendar year (since employment information for a year cannot be ascertained with certainty before the end of that particular year), which is then to be compared with the immediately preceding calendar year. To hold, for example, that 1976 could now be compared with 1975 would do violence to the plain meaning of the provision since 1976 is not "the most recent calendar year" prior to 1979 - the year in which the finding was made.

FmHA relies in part on the 1978 explanatory statement, quoted above, which was presented to the House by Mr. Dingell on behalf of the conferees, in which it was said that communities could be eligible for impact assistance based on "1976-77" changes in employment levels. The statement, of course, was correct at the time it was made since the legislation was enacted in 1978. A finding in that year relating to the then most recent completed calendar year, 1977, of increased employment over 1976 would have clearly been within the ambit of section 601(a).

Accordingly, we are of the opinion that under section 601(a) a Governor in making an impact designation based on a finding of increased employment may not choose, as FmHA proposes, any year of employment increase starting with any year since 1975 as the base year. The Governor must select the most recent calendar year as compared to the calendar year immediately preceding it. (In the alternative, of course, he may find an adverse impact based on a projected 8 percent employment increase for each of the next 3 calendar years following his finding.) The final regulations promulgated by the FmHA should include a definition of "base year" consistent with this view.

Deputy Comptroller General
of the United States