

DECISION

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

FILE: B-207792

DATE: August 24, 1982

MATTER OF: Railroad Retirement Board—Period of Availability of Appropriation

DIGEST: Funds appropriated to the Railroad Retirement Board for administrative expenses of a labor protection program are available only for fiscal year 1982, despite the fact that the funds for the program itself are available until expended. Section 309 of the 1982 appropriation act for the Department of Transportation provides that funds are available only during fiscal year 1982 unless the appropriation specifically states otherwise. As the clause appropriating administrative funds contains no special language to the contrary, and the administration appropriation clearly is separate and distinct from the labor protection program appropriation, the funds in question are available only for fiscal year 1982.

The Railroad Retirement Board has requested our opinion as to whether the 1982 appropriation for the administration of Title VII of the Regional Rail Reorganization Act makes funds available for administrative use beyond fiscal year 1982. For the reasons set forth below, we conclude that the funds have been appropriated only for fiscal year 1982 and are not available beyond that time.

As explained by the Board, the issue arises due to the ambiguous wording of a provision in the Department of Transportation Appropriation Act, Title I, Pub. L. No. 97-102, 95 Stat. 1450 (1981). That provision appropriates \$85 million for the payment of labor protection benefits under Title VII of the Regional Rail Reorganization Act "to remain available until expended," and further appropriates an additional unspecified amount for administrative expenses. The latter appropriation does not specify the period of availability of those funds.

The Board believes that because the \$85 million for labor protection is available beyond the fiscal year, the funds needed to administer the program similarly should be available without regard to time. The Board also argues that the appropriation in question incorporates by reference the language of Section 713 of the Regional Rail Reorganization Act of 1973, as amended, Pub. L. No. 97-35, § 114(a), 95 Stat. 668 (1981), which states that "amounts appropriated under this section are authorized to remain available until expended."

The labor protection program was established under the Regional Rail Reorganization Act of 1973, 45 U.S.C. § 701 et seq., as amended,

Pub. L. No. 97-35, § 1143, 95 Stat. 661 (1981) (adding Title VII). Implementation of the program is by means of employee protection agreements under Section 701, 95 Stat. 661 (to be codified at 45 U.S.C. § 797). Appropriations for the program are authorized by Section 713, 95 Stat. 668 (to be codified at 45 U.S.C. § 7971).

The 1982 appropriation, supra, provides:

"For labor protection as authorized by section 713 of the Regional Rail Reorganization Act of 1973 as added by section 1143 of the Northeast Rail Service Act of 1981, \$85,000,000, to remain available until expended, to be derived from the unobligated balances of 'Payments for Purchase of Conrail Securities'; * * * Provided further, That, in addition, such sums as may be necessary shall be derived from the unobligated balances of 'Payments for Purchase of Conrail Securities' for necessary expenses of administration of section 701 of the Regional Rail Reorganization Act of 1973 by the Railroad Retirement Board."

It is the appropriation contained in the proviso which is the subject of the present dispute.

We are not persuaded by the Board's reasoning that the administration funds should be available until expended. First, there are two separate appropriations in the clause quoted above.

The first is \$85 million for the labor protection program. The second is an unspecified additional amount for administration expenses. The first appropriation states that the funds are "to remain available until expended." The second is silent as to its period of availability.

Further, section 309 of Public Law 97-102, 95 Stat. 1459, provides that "[n]one of the funds contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein." In 50 Comp. Gen. 857 (1971) we held that limiting language identical to section 309 governed in an issue similar to the subject case. In that case, the Federal Home Loan Bank Board urged that language in its authorization statute, which stated that funds appropriated under the section were to be without fiscal year limitation, was incorporated by reference into the appropriation. We rejected that view, and relied instead on the provision, section 509 of that appropriation act, stating that no funds were to be available beyond the fiscal year unless expressly provided in the appropriation act. In holding that section 509 took precedence over the authorization statute, we stated that:

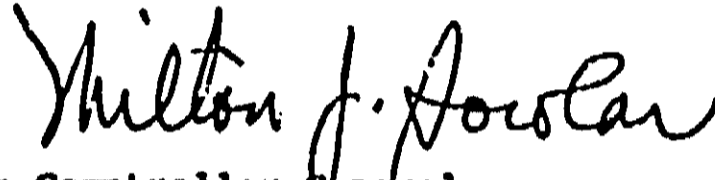
* * * the effect of such language is to require the act making the appropriation to expressly provide

(rather than by incorporation by reference) for availability longer than 1 year if the enacting clause is to be overcome as to any specific appropriation contained therein. Otherwise, the use of such language in an appropriation act would appear to serve little if any purpose."

We concluded that, as there was no specific language to the contrary in the appropriation act, the appropriation was available for only 1 year.

We have reached the same conclusion for essentially the same reasons in 58 Comp. Gen. 321 (1979), and in B-151087, September 15, 1981.

In the subject case, as we have already indicated, the appropriation for administration expenses does not specify any period of availability beyond 1 fiscal year. Therefore, under section 309 of the appropriation act, these funds can remain available only for the remainder of fiscal year 1982.



Acting Comptroller General
of the United States