

Comptroller General
of the United States
Washington, D.C. 20548

Decision

PR

Matter of: Civil Rights Commission
File: B-246541
Date: April 29, 1992

DIGEST

Appropriations acts providing fiscal year 1992 funds to the United States Commission on Civil Rights had the effect of suspending the operation of section 8 of the United States Commission on Civil Rights Act of 1983, as amended, which would have terminated the Commission on September 30, 1991. The Commission therefore was authorized to operate during the period between October 1, 1991 and November 26, 1991, when a reauthorization bill was enacted extending the Commission's termination date to September 30, 1994.

DECISION

This responds to a request from Wilfredo J. Gonzalez, Staff Director, United States Commission on Civil Rights (Commission), asking whether appropriations acts for fiscal year 1992 authorized the Commission to operate even though the legislation authorizing the Commission terminated on September 30, 1991. For the reasons discussed below, we conclude that the appropriations acts had the effect of suspending the Commission's termination from October 1 to November 26, 1991, when a reauthorization bill extending the termination date to September 30, 1994, was enacted.

BACKGROUND

The United States Commission on Civil Rights Act of 1983 (1983 Act), Pub. L. No. 98-183, 97 Stat. 1301, 42 U.S.C. §§ 1975-1975f, established the Civil Rights Commission. The 1983 Act established the Commission and provided the basic legislative authority for it to operate. Section 8 of the 1983 Act, as amended, 42 U.S.C. § 1975f, provided that the "provisions of this Act shall terminate on September 30, 1991." Thus, legislation was needed to avoid the Commission terminating at the end of fiscal year 1991.

¹The 1983 Act's November 30, 1989, termination date was extended to September 30, 1991, by Pub. L. No. 101-189, § 2(1), 103 Stat. 1325, Nov. 28, 1989.

PUBLISHED DECISION

057985/149562

71 Comp. Gen. 378

Action on the Commission's Reauthorization

During fiscal year 1991, the Congress initiated action to continue the Commission by extending the termination date in the 1983 Act. Hearings were held in July² and bills were introduced in the Senate and the House in September. On September 25, 1991, the Senate passed S.1754, 102d Cong., 1st Sess., to reauthorize the Commission for 4 years until September 30, 1995.³ On September 30, 1991, the House passed H.R. 3350, 102d Cong., 1st Sess., to extend the Commission for 2 years until September 30, 1993.⁴

However, action on the reauthorization bills was not completed until after the September 30, 1991, termination date. The House and the Senate agreed to a compromise extending the 1983 Act and thus the Commission for 3 years until September 30, 1994. The Senate passed the compromise on October 28, 1991,⁵ and the House on November 6, 1991.⁶ The United States Commission on Civil Rights Reauthorization Act of 1991, Pub. Law No. 102-167, was signed into law by the President on November 26, 1991.

Stat 1101

Commission's Fiscal Year 1992 Appropriations

During fiscal year 1991, Congress also initiated action to appropriate funds to the Commission as part of the Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Bill for 1992, H.R. 2608, 102d Cong., 1st Sess. As passed by the House on June 13, 1991, H.R. 2608 would have appropriated \$7,159,000 for the Commission for fiscal year 1992. The bill passed by the Senate on July 31, 1991, would have appropriated \$7,617,000 to the Commission.

The appropriations bill was not enacted before the end of fiscal year 1991. To prevent a funding gap after October 1

²Reauthorization of the U.S., Commission on Civil Rights Before the Subcommittee on Civil and Constitutional Rights of the House Committee on the Judiciary, 102d Cong., 1st Sess. (July 25, 1991).

³137 Cong. Rec. S13732 (daily ed. Sept. 25 1991).

⁴137 Cong. Rec. H7088-H7090 (daily ed. Sept. 30, 1991). We note that the Statement of Administration Policy sought extension of the Commission's termination date for 10 years. 137 Cong. Rec. H7089.

⁵137 Cong. Rec. S15306-15309 (daily ed. Oct. 28, 1991).

⁶137 Cong. Rec. H9416 (daily ed. Nov. 6, 1991).

for agencies like those covered by H.R. 2608, Congress passed a continuing resolution that appropriated funds until October 29, 1991. Pub. L. No. 102-109, § 101(a), 105 Stat. 551, Sept. 30, 1991. The continuing resolution explicitly incorporated the fiscal year appropriations bills providing funds to the Commission.

In the meantime, a Conference Committee continued its consideration of H.R. 2608. The bill reported by the Conference Committee (H.R. Rep. No. 102-233, 102d Cong., 1st Sess.), which contained the House-passed appropriation for the Commission, was passed by the House and Senate on October 3, 1991, and was signed into law (Pub. L. No. 102-140) by the President on October 28, 1991.

DISCUSSION

The question before us is whether the Commission terminated on September 30, 1991 in accordance with section 8 of the 1983 Act or whether the enactment of fiscal year 1992 appropriations for the Commission suspended that termination between October 1 and November 26, 1991, when the reauthorization act extending the Commission was enacted.

There is no general requirement, either constitutional or statutory, that an appropriation act be preceded by a specific authorization act. A statute imposing substantive functions upon an agency which require funding for their performance provides the agency with the authority necessary to perform the functions. In this regard, we have long held that an agency is authorized to spend appropriations made to a program or activity when no appropriation authorization for the program or activity has been enacted, or the authorization has expired, before enactment of the appropriation. *E.g.*, 55 Comp. Gen. 289 (1975); B-207166, Feb. 10, 1989; B-173832, July 16, 1976; B-173832, Aug. 1, 1975; B-111810, Mar. 8, 1974; B-137063, Mar. 21, 1966.

Similarly, we also have held that an agency may continue operating a program whose authorization has expired if an appropriation is made to the agency explicitly for the program by either an annual appropriation act or a continuing resolution. 65 Comp. Gen. 524 (1986); 65 Comp. Gen. 318 (1986) and B-227658, Aug. 7, 1987. Thus, if we were faced solely with the expiration of the Commission's appropriation authorization under section 7 of the 1983 Act, as amended, 42 U.S.C. § 1975e, or with an expiration of an authorization for a particular Commission program or activity, the Commission clearly would be authorized by our prior decisions to spend the funds during the period in question.

B-24654

Here, we are presented with a provision providing for the termination of the Commission itself. In that connection, we have said that once a termination or sunset provision becomes effective, the agency ceases to exist and no new obligations may be incurred after the termination date as a charge against the agency's appropriation even if funds remain from an appropriation made available to the agency prior to the termination date.⁷ Payment of obligations incurred prior to the termination date is usually made by a successor agency or by another agency pursuant to an Economy Act, 31 U.S.C. § 1535, agreement entered into prior to the termination date.⁸

While the outcome in these cases varies, they are all grounded in the same principle. The Congress may revive or extend an act by any form of words which makes clear its intention to do so. Kersten v. United States, 161 F.2d 337 (10th Cir. 1947), cert. den. 331 U.S. 851. Furthermore, when the Congress desires to extend, amend, suspend or repeal a statute, it can accomplish its purpose by including the requisite language in an appropriations or other act of Congress. The whole matter depends on the intention of Congress as expressed in statute. United States v. Will, 449 U.S. 200, 221-222 (1980) and United States v. Burton, 888 F.2d 682, 685 (10th Cir. 1989).

In this case we believe Congress clearly intended the Commission to operate beyond September 30, 1991. The language of the continuing resolution providing funds to the Commission for fiscal year 1992 is irreconcilable with the language of section 8 of the 1983 Act terminating the enabling legislation, and thus the Commission, on October 1, 1991. The language of the continuing resolution is unqualified and nothing in the continuing resolution or its legislative history supports the view that the appropriation to the Commission was being made contingent on extending the termination date in the 1983 Act. Further, the action taken by the House and the Senate on H.R. 3350 and the annual appropriations act prior to as well as after October 1, 1991, confirms the intent of the Congress that the Commission should continue without interruption after September 30, 1991.

The Commission's situation clearly does not fall within our decision on the Solar Energy Conservation Bank, B-207186, Feb. 10, 1989. In the case of the Bank, the housing

⁷B-182081, Feb. 14, 1979 and Jan. 26, 1977; 14 Comp. Gen. 738 (1935) and 14 Comp. Gen. 490 (1934).

⁸B-182081, Feb. 14, 1979.

legislation extending the termination date of the Bank until March 15, 1988, and the continuing resolution appropriating funds to the Bank for fiscal year 1988 were passed by the Congress on the same day. Based on rules of statutory construction and the legislative history surrounding the two acts, we concluded that the two statutes could be reconciled by construing the continuing resolution as appropriating money for the life of the Bank and the housing legislation as terminating that life on March 15, 1988.

Nor is the Commission's situation like that addressed in Tennessee Valley Authority v. Hill, 437 U.S. 153 (1978). The court held that an unspecified lump-sum appropriation and legislative history supporting a specific project was insufficient to repeal by implication provisions of another law under which the project would be prohibited. TVA v. Hill, 189-192. Unlike the TVA case, the Commission received a specific appropriation.

When viewed in their entirety, legislative actions on the Commission's reauthorization and appropriation bills, together with their legislative history, clearly manifest an intent by Congress for the Commission to continue to operate after September 30, 1991. We therefore conclude that the specific appropriation provided the Commission served to suspend the operation of section 8 of the 1983 Act and the termination of the Commission, and to authorize it to operate from October 1 through November 26, 1991, when the reauthorization bill extending the 1983 Act and the Commission was enacted.

Milton J. Bowler
for Comptroller General
of the United States

*We also note that OMB refused to apportion funds to the Bank after March 15, 1988, while OMB apportioned funds to the Commission in four equal quarterly installments for the entire fiscal year on November 22, 1991.