

DECISION

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

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FILE:

B-175155

DATE: JUN 11 1975

MATTER OF:

Investment of grant funds provided to the National
Railroad Passenger Corporation (Amtrak)

DIGEST:

Grant funds paid to National Railroad Passenger Corporation (Amtrak) pursuant to section 601 of Rail Passenger Service Act of 1970, as amended, 45 U.S.C. § 601 may be used to meet current operating expenses while funds from other sources are currently and temporarily invested or may themselves be invested when not otherwise currently needed. Moreover, Amtrak may retain and use for authorized corporate purposes interest earned on such investments. See B-175155(2), April 22, 1975.

This decision to the Secretary of Transportation is in response to a request for an opinion with regard to the investment of Federal grant funds and the disposition of interest earned thereon by the National Railroad Passenger Corporation (Amtrak). In a letter from the Assistant Secretary of Transportation, Mr. William S. Heffelfinger, the decision of this Office is requested with respect to the following questions:

"1. May AMTRAK draw-down Federal assistance for meeting current operating requirements while funds from any source available for such purpose are currently and temporarily invested?

"2. As a mixed Government corporation, may AMTRAK temporarily invest monies provided through Federal assistance programs?

"3. May interest earned on investments of funds made available through Federal assistance programs be used by AMTRAK for authorized corporate purposes?"

We refer to our decision, B-175155(2) dated April 22, 1975, which concerned other uses of these same grant

funds by Amtrak. In that decision we reviewed the legislative history of section 601 of the Rail Passenger Act of 1970, approved October 30, 1970, Pub. L. No. 91-518, 84 Stat. 1338, as amended, pertaining to the authorization of grant funds for Amtrak. From this review we observed that Congress has continually expressed its desire to give Amtrak broad latitude in the use of these funds. The legislative history makes it clear that Congress intended Amtrak, a private for-profit corporation created by Congress, to utilize its best business judgment with regard to use of these funds. Hence, after noting that through its amendments to section 601 Congress has assured that Amtrak will generally receive more grant funds than it will immediately need to pay its operating and other expenses and that no restrictions were placed on the use of these funds prior to their expenditure, we concluded in that decision that Amtrak was authorized to use funds granted under the authority of section 601 as advance payments for capital expenditures and to pay off outstanding loans guaranteed under section 602. For the same reasons discussed in that opinion (i.e., the flexibility accorded Amtrak in the use of section 601 funds), it is our view that Amtrak is authorized to invest grant funds paid to it pursuant to section 601 until they are needed for other corporate purposes. Similarly, and as a logical consequence of this holding, we see no objection to Amtrak's using grant funds for current operating expenses even though other funds of the Corporation remain temporarily invested.

In this regard it was suggested in the inquiry to us that the Department of the Treasury Circular No. 1075 (Third Revision) 1973, is applicable to grant funds Amtrak receives under section 601. This Circular in section 205.3 essentially provides that grant funds shall be made available to recipients only in minimum amounts to meet the actual, immediate cash requirements of the recipient's program. As discussed in our aforementioned decision of April 22, 1975, the Congress, in 1974, enacted the most recent amendment to the Act which added the following sentence to section 601:

"Payments by the Secretary of the Department of Transportation to the Corporation of appropriated funds shall be made no more frequently than every 90 days, unless the Corporation for good cause, requests more frequent payment before the expiration of any 90-day period." Section 8, Amtrak Improvement Act of 1974, Pub. L. No. 93-496, October 28, 1974, 88 Stat. 1526, 1530.

In our aforementioned decision we stated with regard to amended section 601:

"Each of the three amendments of section 601 has further broadened Amtrak's flexibility in contravention of the Department of Transportation's efforts to retain substantial control over the transfer of grant funds to Amtrak. In its 1974 amendment requiring such payments to be made no more frequently than every 90 days, the Congress has virtually assured that Amtrak will generally continue to receive more section 601 funds than it immediately needs to pay its operating and other expenses. There are no restrictions on the use of the subject funds and it seems clear that the Congress expects Amtrak to utilize them in accordance with its best business judgment. * * *."

This statutory provision takes precedence, of course, over the provisions of the Circular.

Finally it is questioned whether interest earned on invested funds may be used by Amtrak for authorized corporate purposes. In this regard our attention was directed to several of our decisions in which we held that any interest realized on grant monies prior to their application to the purpose for which made must be accounted for as funds of the United States and are for deposit, pursuant to 31 U.S.C. § 484 (1970), in the Treasury as miscellaneous receipts. See, for example, 42 Comp. Gen. 289 (1969) and cases cited therein.

A major rationale of those decisions is that grant funds may only be used for grant purposes, that investment is not a purpose of most grants and, hence, that the investment proceeds must accrue to the United States. However, the Congress has made section 601 grant funds available to Amtrak for general corporate purposes and has provided for payment of those funds to the corporation prior to its actual need to expend them. As a prudent business practice, Amtrak has determined--as we believe it is clearly authorized to do--to invest some of those temporarily "excess" funds in order to gain for itself additional revenue. In so doing Amtrak is following the will of Congress that it conduct itself like any other for-profit corporation. See, e.g., H. Rep. No. 93-587, 20 (1973). Hence, since section 601 grant funds are available for investment, the rationale of our aforementioned decisions would be inapplicable

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and, in our opinion, Amtrak is entitled to retain the proceeds of its investments.

The questions presented are answered accordingly.

(SIGNED) ELMER B. STAATS

Comptroller General
of the United States