

DECISION



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

FILE: B-202222

DATE: August 2, 1983

MATTER OF: Department of the Interior--Fiscal Year
Appropriations Chargeable for Contract
Modifications

DIGEST:

1. Affirms decision of December 31, 1981, 61 Comp. Gen. 184, that the Department of the Interior's fiscal year 1981 appropriation should be charged for the costs of modifications to a contract between the Youth Conservation Corps and the Chico Unified School District, Chico, California because bona fide need for severable services to be performed in next fiscal year did not exist when contract modifications were executed in September 1980. The fact that authorizing statute provided for expenditure of funds for 2 fiscal years does not exempt agency from requirements of 31 U.S.C. § 1502.
2. Affirms decision of December 31, 1981, 61 Comp. Gen. 184, that the Antideficiency Act, 31 U.S.C. § 1341 was violated because no fiscal year 1980 funds were available at time obligation was incurred for severable services to be performed in fiscal year 1981.
3. Fact that fiscal year 1980 Department of the Interior appropriation act restricted availability of funds for obligation to same fiscal year but did not mention availability of funds for expenditure purposes has no bearing on result. Funds are always available to liquidate valid obligations beyond fiscal year in which obligations were incurred, pursuant to 31 U.S.C. § 1553(a). Failure to mention this in appropriation act is immaterial. In instant case, however, no valid obligation of fiscal year 1980 funds took place.

In a letter dated April 8, 1982, the Deputy Assistant Secretary for Policy, Budget and Administration of the Department

of the Interior asked that we reconsider our decision of December 31, 1981, 61 Comp. Gen. 184, which held that the fiscal year 1981 appropriation should be charged for the costs of a modification to a contract between the Youth Conservation Corps (YCC) and the Chico Unified School District, Chico, California. We also concluded that the supplemental agreements between the YCC and Chico were made before the 1981 appropriation was enacted, thereby violating the Antideficiency Act, 31 U.S.C. § 665(a) (subsequently codified to 31 U.S.C. § 1341 by Pub. L. 97-258 (Sept. 13, 1982)), which forbids the incurring of obligations in advance of appropriations.

Our December 1981 decision concerned the question of which fiscal year--1980 or 1981--appropriation was chargeable for contract modifications. The Department of the Interior entered into a service contract for necessary facilities and staff to operate nonresidential project camps for youth. In the last month of fiscal year 1980, Interior executed modifications to the contract extending the period of performance from October 1, 1980, to May 31, 1981. The contract extension required new services to be performed by the contractor during the extension period, which, we concluded, created a new, severable contract, albeit related to the first. We concluded that since Interior could not have a bona fide need in 1980 for the services to be provided by the modification, since they were not to be performed until 1981, they were chargeable to Interior's 1981 appropriation. We determined that only modifications within the scope of the original contract could be charged to the same appropriation as the original contract.

We have reviewed our previous decision and have considered the arguments presented in the Department's request for reconsideration. However, we find no basis for changing our earlier decision.

Interior's argument centers on the interrelationship between the YCC authorizing legislation and the fiscal year 1980 Interior Appropriation Act. In this regard, 16 U.S.C. § 1706 (1976), the YCC authorizing statute, provides that notwithstanding any other provision of law, funds appropriated for any fiscal year for YCC purposes shall remain available "for obligation and expenditure" for 2 fiscal years. The fiscal year 1980 appropriation (Pub. L. 96-126, 93 Stat. 954, November 27, 1979), however, limited the availability of the funds for obligation to fiscal year 1980. It did not similarly restrict the period of availability for expenditure purposes.

Thus, Interior argues that so long as the funds were recorded as obligations before the end of the fiscal year 1980, their expenditure in fiscal year 1981 not only is not prohibited by the appropriation act, but is specifically authorized by the YCC authorization act.

Our 1981 decision, however, addressed the question of whether the obligation recorded in September of 1980 against fiscal year 1980 funds was proper under existing statutes and applicable precedents. If the obligation was proper, we would not have objected to expenditures to liquidate it in future fiscal years, whether the language in 16 U.S.C. § 1706 relied on by Interior existed or not. It is well-accepted appropriation law that all obligated balances of an appropriation remain available until needed to pay obligations properly chargeable to the appropriation in question, even though the period of availability to incur new obligations has expired. 31 U.S.C. § 1553(a). This may explain why the fiscal year 1980 appropriation act did not include the words "and expenditure," as was provided in the authorizing legislation. Those words are unnecessary, unless, of course, the Congress had wished to limit the availability of the funds for liquidation of valid obligations to a period of 2 years. Without those words, the funds remain available to liquidate the obligations indefinitely. Thus no inference should be drawn from the fact that the words "and expenditure" were not included in the fiscal year 1980 appropriation act that the Congress intended to waive the usual requirements of 31 U.S.C. § 1502 (formerly 31 U.S.C. § 712a)--the so-called "bona fide needs" rule. As we said in our previous decision,

"31 U.S.C. § [1502]* * * permits use of annual appropriations only for expenses serving the needs of the year in which the appropriation was made. Therefore, Interior can only use funds from its 1980 appropriations for obligations incurred during fiscal year 1980 which will fulfil a bona fide need arising within this period of availability. See 44 Comp. Gen. 399, 401 (1965); 33 Comp. Gen. 57, 61 (1953). While the modifications in question were executed during fiscal year 1980, they may be properly charged to Interior's 1980 appropriation only if Interior had a bona fide need for them in fiscal year 1980."

Interior does not dispute our assertion in 61 Comp. Gen. 184 that the services contracted for on September 29, 1980 could not possibly be considered to be bona fide needs of fiscal year 1980. By the very terms of the modification, Chico was not required to provide any services until fiscal year 1981. Therefore, no fiscal year 1980 funds were available for the modification in question.

Interior appears to be relying entirely on the fact that its 1980 funds were restricted only for obligation purposes to 1 fiscal year, but that there was no comparable restriction on the availability of the funds for expenditure. This argument is without merit. If appropriations are not available to incur a particular obligation, they are not available to liquidate it either. Since the performance of severable services in fiscal year 1981 did not represent a bona fide need of the previous fiscal year, a contract modification entered in September 1980 could not properly obligate the funds available for fiscal year 1980. The obligation should instead have been charged to fiscal year 1981 funds.

We further affirm our 1981 conclusion that agreeing in fiscal year 1980 to a binding contractual commitment properly chargeable against fiscal year 1981 appropriations before those appropriations were available violated the Antideficiency Act, 31 U.S.C. § 1341 (formerly 31 U.S.C. § 665(a)).

for *Milton J. Ascolan*
Comptroller General
of the United States