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PROPERTY - PRIVATE - ACQUISITION - RELOCATION EXPENSES TO "DISPLACED PERSONS" - STATUTORY LIMITATION ON AMOUNT DIGEST: GRANT TO COMMONWEALTH OF PENNSYLVANIA FROM ABANDONED MINE RECLAMATION FUND MAY NOT EXCEED 90 PERCENT OF RELOCATION EXPENSES INCURRED INCIDENT TO ACQUISITION OF CERTAIN PROPERTIES, AS RESULT OF THE CENTRALIA, PENNSYLVANIA, MINE FIRE. SECTION 407(E) OF SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977 LIMITS FEDERAL GRANTS TO STATES TO A MAXIMUM OF 90 PERCENT OF LAND ACQUISITION COSTS AND SECTION 211(A) OF UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970 PROVIDES THAT RELOCATION EXPENSES BE PAID IN THE SAME MANNER AND TO THE SAME EXTENT AS OTHER PROGRAM OR PROJECT COSTS.

APPLICABILITY OF MATCHING-SHARE REQUIREMENTS TO CENTRALIA, PENNSYLVANIA, RELOCATION EXPENSES:

ON JUNE 25, 1984, THE DEPUTY UNDER SECRETARY OF THE INTERIOR (INTERIOR), WHO IS THE ACTING DIRECTOR OF THE OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT (OSM), REQUESTED AN ADVANCE DECISION AS TO THE APPROPRIATE FUNDING LEVEL FOR A GRANT TO THE COMMONWEALTH OF PENNSYLVANIA FOR RELOCATION EXPENSES TO BE PAID BY THE COMMONWEALTH IN CONNECTION WITH THE ACQUISITION OF CERTAIN PROPERTIES AFFECTED BY THE CENTRALIA, PENNSYLVANIA, MINE FIRE. PENNSYLVANIA REQUESTED 100 PERCENT FUNDING. OSM CONTENDS THAT IT IS LIMITED TO A MAXIMUM OF 90 PERCENT OF THE COSTS. WE AGREE WITH OSM.

STATUTORY BACKGROUND

SECTION 401(A) OF THE SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977 (SMCRA), ESTABLISHED A TRUST FUND CALLED THE ABANDONED MINE RECLAMATION FUND (FUND), FINANCED BY PER TON RECLAMATION FEES LEVIED ON COMMERCIAL COAL PRODUCTION, WHICH IS TO BE ADMINISTERED BY THE SECRETARY OF THE INTERIOR (SECRETARY). THE ACT AUTHORIZES THE SECRETARY TO MAKE FEDERAL GRANTS TO STATES FROM THE FUND FOR A MAXIMUM OF 90 PERCENT OF THE COSTS OF ACQUISITION OF LANDS, INTERESTS IN LANDS, ASSOCIATED MINERAL AND WATER RIGHTS, AND OTHER COSTS INVOLVED IN CARRYING OUT THE PURPOSES OF THE ACT (ABANDONED MINE RECLAMATION). SECTION 407(E).

SECTION 401(D) PROVIDES THAT THE FUND IS AVAILABLE TO FINANCE THESE ACTIVITIES TO THE EXTENT THAT THERE ARE APPROPRIATIONS BY THE CONGRESS FOR THESE PURPOSES. IN IMPLEMENTATION OF THIS REQUIREMENT, THE SUPPLEMENTAL APPROPRIATIONS ACT, 1984, APPROPRIATED $42 MILLION FROM THE FUND FOR ACQUISITION OF PROPERTIES AND FOR THE RELOCATION OF RESIDENTS "THREATENED BY THE PROGRESSIVE MOVEMENT OF THE MINE FIRE CURRENTLY BURNING IN AND AROUND THE BOROUGH OF CENTRALIA," TO BE PAID

IN ACCORDANCE WITH THE UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970 (UNIFORM ACT). 42 U.S.C. SEC. 4601, ET SEQ.

SECTION 211(A) OF THE UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970, CODIFIED AS 42 U.S.C. SEC. 4631(A), PROVIDES THAT:

"THE COST TO A STATE AGENCY OF PROVIDING PAYMENTS AND ASSISTANCE PURSUANT TO SECTIONS * * * 4630 (RELOCATION PAYMENTS AND ASSISTANCE)* * * OF THIS TITLE, SHALL BE INCLUDED AS PART OF THE COST OF A PROGRAM OR PROJECT FOR WHICH FEDERAL FINANCIAL ASSISTANCE IS AVAILABLE TO SUCH STATE AGENCY, AND SUCH STATE AGENCY SHALL BE ELIGIBLE FOR FEDERAL FINANCIAL ASSISTANCE WITH RESPECT TO SUCH PAYMENTS AND ASSISTANCE IN THE SAME MANNER AND TO THE SAME EXTENT AS OTHER PROGRAM OR PROJECT COSTS * * *."

DISCUSSION

THE COMMONWEALTH OF PENNSYLVANIA HAS REQUESTED FULL FUNDING OF THE RELOCATION COSTS, FOR REASONS SET FORTH IN AN UNDATED POSITION PAPER INCLUDED IN THE DEPUTY UNDER SECRETARY'S SUBMISSION. ACCORDING TO THE PAPER, RELOCATION COSTS SHOULD BE TREATED AS SEPARATE COSTS OF A PROJECT AND NOT BE INCLUDED IN THE ACQUISITION COSTS. THIS VIEW APPEARS TO BE AT LEAST IN PART BASED ON THE FEDERAL-AID HIGHWAY ACT OF 1970'S AMENDMENT OF THE PRIOR DEFINITION OF "CONSTRUCTION" IN THAT ACT TO INCLUDE "RELOCATION ASSISTANCE" FOR FEDERAL-AID HIGHWAYS (23 U.S.C. SEC. 101(A)). (THIS AMENDMENT WAS NOT TO TAKE EFFECT IF THE UNIFORM ACT WAS ENACTED PRIOR TO EFFECTIVE DATE OF THE AMENDMENT OF SECTION 101. HOWEVER, THE UNIFORM ACT WAS SIGNED INTO LAW ON JANUARY 2, 1971, AFTER THE DECEMBER 31, 1970, ENACTMENT OF THE FEDERAL-AID HIGHWAY ACT.) THE RATIONALE FOR THE COMMONWEALTH'S POSITION SEEMS TO BE THAT INCLUSION OF RELOCATION EXPENSES AS PART OF "CONSTRUCTION" SHOWS THAT THESE COSTS ARE TO BE CONSIDERED AS APART FROM LAND ACQUISITION. ACCORDING TO THE POSITION PAPER, IF RELOCATION EXPENSES ARE A COMPONENT OF PROJECT COSTS SEPARATE FROM ACQUISITION COSTS, THE 90 PERCENT GRANT LIMITATION IS NOT APPLICABLE.

THE FUND ESTABLISHED BY SMCRA, IN 1977, INCLUDED LAND ACQUISITION AND GRANTS TO THE STATES WITHIN THE PURPOSES OF THE FUND, BUT MADE NO SPECIFIC REFERENCE TO RELOCATION EXPENSES. THIS IS NOT SURPRISING SINCE THERE ALREADY WAS A STATUTORY REQUIREMENT FOR RELOCATION ASSISTANCE UNDER THE UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970. ACCORDING TO H.R. REP. NO. 91-1656, 91ST CONG., 2ND SESS. 17 (1970) ON S. 1 WHICH WAS ENACTED AS THE UNIFORM ACT: "* * * THE COMMITTEE (ON PUBLIC WORKS) INTENDS THAT THE SAME REQUIREMENTS FOR STATE AGENCY MATCHING SHALL APPLY TO COSTS OF RELOCATION PAYMENTS AND ASSISTANCE TO A DISPLACED PERSON, WHATEVER THE AMOUNT, AS APPLY TO SUCH OTHER PROGRAM OR PROJECT COSTS."

THE SENATE REPORT ON THE PROPOSED LEGISLATION (S. REP. NO. 91-488, 91ST CONG., 1ST SESS. 2 (1969)) IN DISCUSSING THE PURPOSE OF S. 1 STATED THAT:

"* * * IT FOLLOWS AS CLOSELY AS POSSIBLE THE SUBSTANTIVE PROVISIONS OF THE HOUSING AND URBAN DEVELOPMENT ACT AND THE FEDERAL HIGHWAY ACT, MODIFYING THEM ONLY AS NECESSARY TO ACHIEVE A SYSTEM OF REQUIREMENTS AND AIDS THAT CAN BE APPLIED UNIFORMLY IN ALL FEDERAL AND FEDERALLY ASSISTED PROGRAMS."

UNDER SECTION 211(A) OF THE UNIFORM ACT, THE COSTS OF RELOCATION PAYMENTS AND ASSISTANCE ARE TO BE INCLUDED AS PART OF THE COST OF A PROGRAM OR PROJECT FOR

WHICH FEDERAL FINANCIAL ASSISTANCE IS AVAILABLE IN THE SAME MANNER AND TO THE SAME EXTENT AS OTHER PROGRAM OR PROJECT COSTS. BECAUSE OF THE CENTRALIA MINE FIRE, PRIVATE HOMES, BUSINESSES AND NONPROFIT BUILDINGS AND THE LANDS ON WHICH THEY ARE LOCATED ARE ACQUIRED BY THE COMMONWEALTH WHICH RECEIVES A 90 PERCENT GRANT FROM THE FUND. UNDER THE UNIFORM ACT, INCIDENT TO THE LAND ACQUISITION PROGRAM, RELOCATION BENEFITS MAY BE REIMBURSED TO THE COMMONWEALTH FROM THE FUND. THE FEDERAL SHARE IS LIMITED TO 90 PERCENT OF THE RELOCATION COSTS-- THE SAME LIMITATION APPLICABLE TO THE ACQUISITION PROGRAM. THE THRUST OF SECTION 211(A) IS TO MAKE RELOCATION COST REIMBURSEMENT AVAILABLE TO THE STATES WHEN A PROGRAM OR PROJECT RESULTS IN RELOCATIONS, ON A BASIS SIMILAR TO THAT EMPLOYED FOR THE PROGRAM OR PROJECT, ITSELF. ACCORDINGLY, ONE NEED NOT DETERMINE THAT RELOCATION COSTS ARE AN INTEGRAL PART OF LAND ACQUISITION TO REACH THE CONCLUSION THAT THE 90 PERCENT LIMITATION APPLIES TO BOTH.

WHILE THE FEDERAL-AID HIGHWAY ACT, CITED BY PENNSYLVANIA INCLUDES RELOCATION EXPENSES IN ITS DEFINITION OF CONSTRUCTION, THIS IS NOT APPLICABLE TO THE UNIFORM ACT WHICH IS A SEPARATE LAW ENCOMPASSING A LARGE NUMBER OF FEDERAL PROGRAMS. SEE TRIANGLE IMPROVEMENT COUNCIL V. RITCHIE, 402 U.S. 497 (1971). RELOCATIONS UNDER THE FEDERAL-AID HIGHWAY ACT ARE NOW HANDLED UNDER THE UNIFORM ACT WHICH REPEALED THE HIGHWAY RELOCATION PROVISIONS FOR FEDERAL-AID HIGHWAYS.

THE COMMONWEALTH'S POSITION PAPER ALSO RELIES ON THE LANGUAGE EMPLOYED IN THE SUPPLEMENTAL APPROPRIATIONS ACT, 1984. IN APPROPRIATING $42 MILLION FROM THE FUND TO BE AVAILABLE IN CONNECTION WITH THE CENTRALIA MINE FIRE, THE ACT REFERRED TO THE ACQUISITION OF PROPERTY AS WELL AS TO THE RELOCATION OF PERSONS. ACCORDING TO PENNSYLVANIA, MENTION OF RELOCATION AS WELL AS PROPERTY ACQUISITION IS INDICATIVE OF THE INTENTION TO TREAT THEM DIFFERENTLY IN THE FUNDING OF RELATED STATE GRANT PROGRAMS.

AS INTERIOR POINTS OUT, IT IS SECTION 407(E) OF SMCRA AND NOT THE SUPPLEMENTAL APPROPRIATIONS ACT THAT IS THE BASIC AUTHORITY FOR THE CENTRALIA PROJECT GRANT. THE APPROPRIATION ACT MERELY IMPLEMENTS THE REQUIREMENT OF SECTION 401(D) OF SMCRA DISCUSSED EARLIER THAT THE CONGRESS MUST SPECIFICALLY APPROPRIATE FROM THE FUND TO MAKE ITS RESOURCES AVAILABLE TO THE SECRETARY FOR SMCRA PURPOSES.

MOREOVER, THE LEGISLATIVE HISTORY OF THE SUPPLEMENTAL APPROPRIATIONS ACT SHOWS NO INTENTION TO ESTABLISH A DIFFERENT FEDERAL GRANT MATCHING SHARE REQUIREMENT FOR RELOCATION AS OPPOSED TO PROPERTY ACQUISITION COSTS. THE REFERENCE IN THE ACT TO BOTH COSTS RELATED TO THE CENTRALIA MINE FIRE DOES NOT LEAD TO THE CONCLUSION THAT STATE GRANTS FOR THESE PURPOSES MUST THEREFORE EMPLOY DIFFERENT GRANT FORMULAS. THE STATEMENT THAT, "THESE ACTIVITIES MUST COMPLY WITH THE UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT," FOLLOWING THE REFERENCE TO PROPERTY ACQUISITION AND TO RELOCATION COSTS, CLEARLY DEMONSTRATES THE INTENTION TO TREAT THEM IN A SIMILAR WAY.

THE POSITION PAPER ALSO STATES IN A FOOTNOTE THAT:

"IT WOULD BE PROPER, IN FACT, TO VIEW THE GRANT TO PENNSYLVANIA AS ENTIRELY OUTSIDE ANY OF THE RESTRICTIONS OF SEC. 407(E) AND TO VIEW ACT 98 -181 AS THE COMPLETE AND SOLE AUTHORITY FOR IT, THUS ELIMINATING THE MATCHING SHARE REQUIREMENT EVEN AS TO ACQUISITION COSTS." THE SUPPLEMENTAL APPROPRIATIONS ACT PROVIDES AUTHORITY FOR USE OF THE FUND FOR THE ACQUISITION OF PRIVATE HOMES AND BUSINESSES AND NONPROFIT BUILDINGS AND THE LANDS ON WHICH THESE ARE LOCATED, AND FOR RELOCATION BENEFITS RELATED TO THE CENTRALIA MINE FIRE. IT ALSO INDICATES THAT THESE ACTIVITIES MUST COMPLY WITH THE UNIFORM ACT. THERE IS NO SHOWING THAT

A NEW GRANT PROGRAM WAS TO BE ESTABLISHED OR THAT NEW COST SHARING STANDARDS WERE TO BE APPLIED. ACCORDINGLY, THERE IS NO APPROPRIATE BASIS FOR HOLDING THAT THE SUPPLEMENTAL APPROPRIATIONS ACT PROVIDES INDEPENDENT AUTHORITY FOR THE RELOCATION OR ACQUISITION GRANTS OUTSIDE OF THE EXISTING STATUTORY SCHEME.

CONCLUSION

WE CONCLUDE THAT A GRANT TO THE COMMONWEALTH OF PENNSYLVANIA FROM THE ABANDONED MINE RECLAMATION FUND MAY NOT EXCEED 90 PERCENT OF THE AMOUNT OF RELOCATION EXPENSES INCURRED BY THE COMMONWEALTH IN CONNECTION WITH ITS ACQUISITION OF PRIVATE HOMES AND BUSINESSES AND NONPROFIT BUILDINGS INCIDENT TO THE CENTRALIA, PENNSYLVANIA, MINE FIRE.