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B-215863 July 26, 1984

Number: B-215863

Date: 1984-07-26

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The Honorable Peter W. Rodino, Jr. Chairman, Committee on the Judiciary House of Representatives

Dear Mr. Chairman:

Your letter of July 19, 1984, describes a fundamental difference of opinion between your Committee and the Administrative office of the United States Courts about the effect of a transition provision which the Congress has included as section 121 of Public Law 98-353, the Bankruptcy Amendments and Federal Judgeship Act of 1984. The new Act was signed by the President on July 10, 1984.

We gather from the legislative history of the new law--and particularly from your statements on the floor of the House on June 29, 1984, where you urged acceptance of the Conference Report--that it was not possible for the Conference Committee to complete its work on this highly complex and extensive revision of the previous bankruptcy system before it expired by operation of law on June 27, 1984. 130 Cong. Rec. H7489 (daily ed. June 29, 1984, Part I.) To be sure that both the existing bankruptcy-court system and the terms of the incumbent bankruptcy judges would continue without interruption, the Congress provided in section 121(e) as follows:

"The term of office of any bankruptcy judge who was serving on June 27, 1984, is extended and shall expire at the end of the day of the enactment of this Act."

Two other provisions also deal with the status of incumbent bankruptcy judges. Picking up where section 121(e) left off, section 106(a) provides:

"* * * the term of office of a bankruptcy judge who is serving on the date of enactment of this Act is extended to and expires four years after the date such bankruptcy judge was last appointed to such office or on October 1, 1986, whichever is later."

A judge serving on a part-time basis on the date of enactment is continued in service on the same basis for up to 2 years from the date of enactment.

Supplementing these provisions is section 105(a), which continues the salaries of the bankruptcy judges at the June 27, 1984 level, unless changed or adjusted as provided elsewhere in the Act.

You did not ask us for an opinion on the merits of these provisions or on the constitutional objections raised by the Director of the Administrative Office.

You asked only how we would reply if either the Director or a certifying official of the Administrative Office had asked for an advance opinion, pursuant to 31 U.S.C. Sec. 3529, on whether the salaries of the incumbent judges could be certified for payment.

We would certainly assure the requesting official that we would raise no objection to payment of the appropriate salaries. The aforementioned sections of the new Act extend the term of office of the incumbent judges and provide for the payment of their salaries. As far as we are concerned, these provisions must be considered to be constitutional, in the absence of a definitive ruling to the contrary by the Supreme Court or other court of competent jurisdiction. As officials in the Legislative branch of the Government, we have adopted a long-standing policy that we will not question the constitutionality of a statute enacted by the Congress, unless, of course, the Supreme Court has already ruled on the Constitutionality of a similar piece of legislation. (See, e.g., B-124985, August 17, 1955; 114578, November 9, 1983.)

Sincerely yours,

Charles A. Bowsher Comptroller General of the United States

COURTS Judges Compensation Legality

STATUTORY CONSTRUCTION Constitutionality Statute presumed to be constitutional

CONSTITUTIONALITY OF ACTS Acceptance by GAO