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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Use of General Operating Funds for Appointing Magistrates Pursuant to the District of Columbia Family Court Act of 2001

File: B-290011

Date: March 25, 2002

DIGEST

The District of Columbia Superior Court may use funds from its operating appropriation to cover the salaries and expenses of magistrate judges appointed pursuant to the Family Court Act, prior to the availability of funds specifically appropriated to carry out that Act. When the Family Court Act appropriation becomes available, the Superior Court must use that appropriation to pay the magistrate judges instead of the operating appropriation. However, without statutory authority, the Superior Court may not transfer funds from the Family Court Act appropriation, once it becomes available, to reimburse its operating appropriation for the salaries and expenses of the appointed magistrates paid for out of that account.

DECISION

The District of Columbia Courts have requested an advance decision on whether the District of Columbia Superior Court may use its operating appropriation for the expedited appointment of magistrates. The Superior Court is required by the District of Columbia Family Court Act of 2001, Pub. L. No. 107-114, 115 Stat. 2100, 2115 (2002), to make these appointments prior to the availability of funds appropriated to the Superior Court for carrying out the Family Court Act. The Courts also ask whether the Superior Court can transfer funds from the Family Court Act appropriation, once funds become available, to reimburse their operating appropriation for the expense incurred in appointing the magistrates.

For the reasons discussed below, the Superior Court may use its operating appropriation to pay for the costs incident to the expedited appointment of magistrates mandated by the Family Court Act, prior to the availability of funds specifically appropriated to carry out the Family Court Act. However, in the absence

of statutory authority to do so, the Superior Court may not transfer funds from the Family Court Act appropriation, once it becomes available, to reimburse its operating appropriation for the salaries and expenses of the appointed magistrates.

BACKGROUND

On January 8, 2002, the District of Columbia Family Court Act of 2001 (hereinafter "Family Court Act") was enacted into law. See Pub. L. No. 107-114, 115 Stat. 2100 (2002). Among other things, the Family Court Act redesignates the Family Division of the Superior Court as the Family Court of the Superior Court,[1] provides for the recruitment and retention of trained and experienced judges to serve in the Family Court, and provides for the promotion of consistency and efficiency in the assignment of judges and consideration of actions and proceedings in the Family Court. Pursuant to section 3(b)(1) of the Family Court Act, the chief judge of the District of Columbia Superior Court must prepare and submit a transition plan to the President and Congress not later than 90 days after the enactment of the Act.

Specifically at issue here is the funding of the initial appointment of magistrates, required by Section 6(d)(2)(A) of the Family Court Act. That section provides in pertinent part:

> "Not later than 60 days after the date of enactment of this Act, the chief judge of the Superior Court of the District of Columbia shall appoint individuals to serve as magistrate judges for the Family Division of the Superior Court . . . for the purpose of assisting with the implementation of the transition plan under section 3(b) of this Act, and in particular with the transition or disposal of actions or proceedings pursuant to section 3(b)(2) of this Act."

The chief judge must make these initial magistrate appointments by no later than March 9, 2002.

Prior to the passage of the Family Court Act, Congress passed the District of Columbia Appropriations Act for FY 2002, Pub. L. No. 107-96, 115 Stat. 923 (2001), which provided a specific federal payment for purposes of carrying out the Family Court Act under the heading "Federal Payment for Family Court Act." 115 Stat. 929-30. As relevant here, the appropriation act provides

> "For carrying out the District of Columbia Family Court Act of 2001 . . . $23,316,000 shall be for the Superior Court of the District of Columbia . . . . ; Provided further, That the chief judge of the Superior Court shall submit the

[1] The Family Court is one component of the Superior Court system, which also includes the Civil Division, Criminal Division, Probate Division, and the Tax Division. See Section 2(a) of the Family Court Act, amending D.C. Code Ann. § 11-902 (2001).

> transition plan for the Family Court of the Superior Court as required under the District of Columbia Family Court Act of 2001 to the Comptroller General (in addition to any other requirements under such section): Provided further, That the Comptroller General shall prepare and submit to the President and Congress an analysis . . . within 30 calendar days after the submission of the plan by the Superior Court: Provided further, That the funds provided under this heading to the Superior Court shall not be made available until the expiration of the 30-day period . . . which begins on the date the Comptroller General submits such analysis to the President and Congress: . . . "[2]

The Executive Officer of the District of Columbia Courts projects that pursuant to these provisos the federal funds provided to the Superior Court for carrying out the Family Court Act will not become available until late June 2002. The District of Columbia Courts therefore propose that the Superior Court use its operating appropriations to cover the salaries and expenses of magistrates appointed by March 9, 2002, in order to satisfy the Family Court Act mandate. For fiscal year 2002, the District of Columbia appropriations act provides $66,091,000 for salaries and expenses of the District of Columbia Superior Court under the heading "Federal Payment to the District of Columbia Courts." Pub. L. No. 107-96, 115 Stat. 927 (2001).[3]

DISCUSSION

The Superior Court's operating appropriation is a currently available source of funds to pay the salaries and other costs resulting from the appointment of magistrates. The Superior Court is required to appoint magistrates on an expedited basis pursuant to section 6(d)(2)(A) of the Family Court Act. While Congress specifically appropriated funds to carry out the Family Court Act, given the limitation on their availability, we infer that Congress intended the Superior Court's operating appropriation to cover the costs resulting from the expedited appointment of magistrates, prior to the availability of the funds specifically appropriated for the Court.

Congress passed the District of Columbia appropriations act prior to passing the Family Court Act. However, the congressional debate leading to the passage of the appropriations act makes clear that Congress was aware of the proposed Family Court Act and the need for funding to support such legislation. See, e.g., 147 Cong.

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[2] A second federal payment, in the amount of $700,000, goes to the Mayor of the District of Columbia for completion of a plan to integrate the computer systems of the District of Columbia with the Family Court. 115 Stat. 929.

[3] Given the time constraints involved, we provided the Courts our advice verbally. This decision serves as confirmation of that advice.

Rec. H9,049-50 (daily ed. December 6, 2001); 147 Cong. Rec. S1,2582-83 (daily ed. December 7, 2001). Prior to consideration of the District's appropriation, which contained the proviso delaying the availability of specific funding, both the House and Senate version of the bill that was to become the Family Court Act, contained a requirement for the expedited appointment of magistrates. In either case, the appointments would have had to occur prior to the availability of the specific funds appropriated.[4]

In the appropriation act itself, the proviso delaying the availability of funds for carrying out the Family Court Act refers to the transition plan required to be prepared by the chief judge of the Superior Court within 90 days of enactment of the Act, and proceeds to make the funds unavailable until Congress has had sufficient opportunity to review the plan. Clearly, with the knowledge that the specific funds would not yet be available, Congress recognized that the Superior Court would have to use its operating appropriation to support the chief judge's preparation of the plan within the requisite timeframe. We see no reason to view the requirement for the expedited initial appointment of magistrates any differently or to conclude that Congress intended otherwise with regard to this initial expense mandated by the Family Court Act.

Unless clearly inconsistent, we will read provisions of an authorizing act and an appropriation act to give effect to both. See B-226389, November 14, 1988 (inference of implied repeal is not supported unless two statutes are irreconcilable). Here, use of an appropriation other than the Family Court Act appropriation is required in order to give effect to the mandate to appoint magistrates within 60 days. The operating appropriation is the current appropriation available to be used for salaries and expenses of the Superior Court and the proper appropriation to fund the expedited appointment of magistrates.

Our conclusion here is consistent with prior decisions of this Office where we have permitted agencies to use existing appropriations that generally cover the type of expenditures involved to fund additional duties when Congress has not made a specific appropriation available for that purpose. The important factor is that the new duties must bear a sufficient relationship to the purpose for which the existing

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[4] H.R. 2657, passed by the House on September 20, 2001 and subsequently received in the Senate, contained a requirement to appoint not more than five individuals as magistrates no later than 30 days after the date of enactment of the Act. Section 6(d)(2)(A). See 147 Cong. Rec. H5,740-50 (daily ed. September 20, 2001), 147 Cong. Rec. S9,616-17 (daily ed. September 21, 2001). The version of H.R. 2657 reported out of the Senate Committee on Governmental Affairs on December 5, 2001, contained a requirement to appoint not more than five individuals as magistrates no later than 60 days after the date of enactment of the Act. See S. Rep. 107-108, at 15, December 5, 2001.

appropriation was made. See 46 Comp. Gen. 604 (1967) (new duties imposed on National Science Foundation are so related to basic research and educational purposes that expenditures may be taken from current appropriation), B-211306, June 6, 1983 (Bureau of Land Management's Management of Land Resources appropriation is available for expenditures for determining the fair market value of certain interests because additional duties bear a sufficient relationship to the purposes of that current appropriation). The expenses associated with the appointment of the magistrates is similar to expenses that the Superior Court routinely pays out of its operating appropriation and in our view bears a sufficient relationship to the purpose for which the operating appropriation was made.

However, once the Family Court Act appropriation becomes available, subsequent expenses to carry out the Family Court Act, including payment of magistrate salaries and expenses, must be paid exclusively out of the Family Court Act appropriation. At that point, continuing to use the operating appropriation for expenses incident to carrying out the Family Court Act would be prohibited. See 72 Comp. Gen. 295, 298 (1993) (an appropriation made for a specific purpose is available for that purpose to the exclusion of other more general appropriations that might also include that purpose).

The Superior Court may not transfer funds from the Family Court Act appropriation, once it becomes available, to reimburse its operating appropriation for the costs incurred as a result of the appointment of the magistrates. Until the Family Court Act appropriation is available, these costs are properly payable from the operating appropriation. See 30 Comp. Gen. 258 (1951) (appropriation properly charged for expenses incident to new functions performed prior to availability of funds in support of such functions, cannot be reimbursed). The shifting of money from one appropriation to another in the absence of statutory authority is prohibited by 31 U.S.C. § 1532.[5] See also, Section 446 of the District of Columbia Self-Government and Governmental Reorganization Act (Home Rule Act), as amended, D.C. Code Ann. § 1-204.46 (2001).[6] Here there is no statutory authority for the transfer. The limited transfer authority found in section 109(b) of the District of Columbia Appropriations Act pertains only to the transfer of local funds and not the federal

[5] Section 1532 provides in pertinent part, "An amount available under law may be withdrawn from one appropriation account and credited to another . . . only when authorized by law." See also 31 U.S.C. § 1301.

[6] Section 446 of the Home Rule Act provides that, with exceptions not relevant here, " . . . no amount may be obligated or expended by any officer or employee of the District of Columbia government unless such amount has been approved by Act of Congress, and then only according to such Act."

funds here at issue.[7] As such, there is no legal basis for the transfer of funds from the Family Court Act appropriation to the Superior Court's operating appropriation.

CONCLUSION

The Superior Court may use funds from its operating appropriation to cover the salaries and expenses of magistrate judges appointed pursuant to section 6(d)(2)(A) of the Family Court Act, prior to the availability of the appropriation provided for carrying out the Family Court Act. However, once this specific funding becomes available, it must be used to the exclusion of the operating appropriation. Finally, in the absence of statutory authority to do so, the Superior Court may not transfer funds from the Family Court Act appropriation, once they become available, to reimburse its operating appropriation for magistrate judges' salaries and expenses covered out of that appropriation.

/signed/

Anthony H. Gamboa
General Counsel

[7] Section 109(b) provides in pertinent part, "None of the local funds contained in this Act may be available for obligation or expenditure for an agency through a transfer of any local funds from one appropriation heading to another unless the Committees on Appropriations of the Senate and House of Representatives are notified in writing 30 days in advance of the transfer, except that in no event may the amount of any funds transferred exceed four percent of the local funds in the appropriation."