



Decision

Matter of: Federal Maritime Commission – Failure to Comply with Statutory Notification Requirement and the Antideficiency Act

File: B-327432

Date: June 30, 2016

DIGEST

The Federal Maritime Commission (FMC) violated section 711 of the Consolidated Appropriations Act, 2010 when it failed to notify the Committees on Appropriations of the House of Representatives and the Senate prior to obligating and expending in excess of \$5,000 to furnish or redecorate the office of the former Chairman of the FMC during the period of his appointment. As a consequence of using its appropriations in a manner specifically prohibited by law, FMC also violated the Antideficiency Act.

DECISION

The Chairman of the Federal Maritime Commission (FMC) requests a decision on whether FMC violated the Antideficiency Act when it violated section 711 of the Consolidated Appropriations Act, 2010.¹ Section 711 prohibits agencies from obligating amounts in excess of \$5,000 to furnish or redecorate the office of a presidential appointee during the period of appointment without prior notification to the Committees of Appropriations of the House of Representatives and the Senate. See Letter from Chairman, FMC, to General Counsel, GAO (Oct. 5, 2015) (Request Letter). As explained below, we conclude that FMC violated section 711 when it failed to provide the required notification before obligating more than \$5,000 to furnish or redecorate the office of the former Chairman of FMC. In addition, because FMC incurred obligations in excess of \$5,000 without such amounts being available, FMC violated the Antideficiency Act. The Antideficiency Act prohibits federal agencies from incurring obligations exceeding an amount available in an appropriation. 31 U.S.C. § 1341(a).

¹ Pub. L. No. 111-117, div. C, title VII, § 711, 123 Stat. 3034, 3027–3208 (Dec. 16, 2009).

Our practice when rendering decisions is to obtain the legal views of the relevant agency and to establish a factual record on the subject of the request.² In its request, FMC provided factual information and explained that it is unclear as to whether the failure to comply with section 711 constituted a violation of the Antideficiency Act. Request Letter.

BACKGROUND

FMC's request for our decision results from findings of an FMC Office of Inspector General (FMC OIG) review of expenditures for furnishing or redecorating certain FMC offices. Request Letter; FMC OIG, *Audit of Expenditures for Furnishing or Redecorating Commissioners' Offices*, A15-05 (Sept. 2015) (FMC OIG Report). The purpose of the audit was to determine whether FMC complied with appropriations provisions restricting the use of appropriated funds for furnishing or redecorating the offices of Presidential appointees. Request Letter. The Chairman and Commissioners of FMC are appointed to their positions by the President. 46 U.S.C. § 301. The FMC OIG determined that FMC obligations and expenditures to furnish or redecorate the office of the former Chairman of FMC during the period of his appointment first exceeded \$5,000 in fiscal year 2010.³ FMC OIG Report, at 6. FMC acknowledges that it incurred obligations in excess of \$5,000 for this purpose without first notifying the Committees on Appropriations of the House of Representatives and the Senate as required by section 711. See *id.*, at 4, and Appendix B, at 18 (Memorandum from FMC Managing Director).

DISCUSSION

Section 711 of the Consolidated Appropriations Act, 2010⁴ provides:

² GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), available at www.gao.gov/products/GAO-06-1064SP.

³ FMC calculates that a total of \$12,084 was spent to furnish or redecorate the former Chairman's office from fiscal years 2009 through 2011. FMC OIG Report, at 6.

⁴ This decision focuses on section 711 of the Consolidated Appropriations Act, 2010, because the FMC OIG determined that the \$5,000 limitation was breached in fiscal year 2010. See FMC OIG Report, at 6. Section 711 was carried forward into fiscal year 2011 by the Department of Defense and Full-Year Continuing Appropriations Act, 2011, Pub. L. No. 112-10, div. B, title I, §§ 1101(a)(6), 1104, 125 Stat. 38, 103 (Apr. 15, 2011) and continues to apply to agencies today. See, e.g., Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, div. E, title VII, § 710, 129 Stat. 2242, 2475 (Dec. 18, 2015).

“During the period in which the head of any department or agency, or any other officer or civilian employee of the Federal Government appointed by the President of the United States, holds office, no funds may be obligated or expended in excess of \$5,000 to furnish or redecorate the office of such department head, agency head, officer, or employee, or to purchase furniture or make improvements for any such office, unless advance notice of such furnishing or redecoration is transmitted to the Committees on Appropriations of the House of Representatives and the Senate. For the purposes of this section, the term “office” shall include the entire suite of offices assigned to the individual, as well as any other space used primarily by the individual or the use of which is directly controlled by the individual.”

Pub. L. No. 111-117, div. C, title VII, § 711.

FMC acknowledges that more than \$5,000 was obligated and expended to furnish or redecorate the office of the former Chairman of FMC during the period of his appointment, and that FMC did so without first notifying the relevant congressional committees. The former Chairman of FMC, who disputes that certain of the redecorating costs calculated by the FMC OIG were attributable to his office, also acknowledges that more than \$5,000 was spent in redecorating and furnishing his office. FMC OIG Report, Appendix C, at 19-20. Therefore, FMC violated section 711 when it failed to notify the congressional committees of the furnishing and redecorating.

If an agency incurs an obligation in excess of amounts that are legally available, the agency has violated the Antideficiency Act. 31 U.S.C. § 1341(a); B-319009, Apr. 27, 2010. In B-319009, we addressed a similar situation. In that opinion, we found that the Department of Homeland Security (DHS) and the United States Secret Service violated section 503(b) of the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, when the Secret Service obligated \$5.1 million of reprogrammed funds before notifying the appropriations committees of the reprogramming. B-319009, at 4. Section 503(b) of that act provided that no funds were available through a reprogramming in excess of \$5 million unless the Secretary of Homeland Security notified the appropriations committees 15 days in advance of the reprogramming. *Id.*, at 2. Because the reprogrammed amounts were not legally available for obligation until DHS notified the relevant committees, DHS and the Secret Service incurred obligations in excess of available appropriations. We concluded that DHS and the Secret Service’s violation of section 503(b) constituted a violation of the Antideficiency Act. *Id.*, at 4–5.

Congress has the right to predicate the availability of appropriations on compliance with specified notification requirements. Here, FMC obligated funds that were not legally available because FMC did not satisfy the notification requirement in section 711. Accordingly, FMC incurred obligations in excess of the amount

available and violated the Antideficiency Act. See 31 U.S.C. § 1341(a); B-326013. FMC should report its Antideficiency Act violation as required by law.⁵

CONCLUSION

FMC violated section 711 of the Consolidated Appropriations Act, 2010, when it failed to notify the Committees on Appropriations of the House of Representatives and Senate prior to obligating and expending in excess of \$5,000 to furnish or redecorate the office of the former Chairman during his period of appointment. As a consequence of using its appropriations in a manner specifically prohibited by law, FMC violated the Antideficiency Act. See 31 U.S.C. § 1341(a); B-326013. FMC should report its Antideficiency Act violation as required by law.



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⁵ See 31 U.S.C. § 1351 (requiring the head of an agency to report all relevant facts and a statement of actions taken to the President and Congress, and to send a copy of the report to the Comptroller General).