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DECISION



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

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FILE:

DATE:

MAY 31 1979

MATTER OF: B-167015

Determination of Proper Appropriations Fund For

Payment of Attorney's Fees Awarded against Equal Employment Opportunity Commission

DIGEST:

Award of attorney's fees against Equal Employment Opportunity Commission (EEOC) as losing plaintiff in enforcement action under title VII of Civil Rights Act is payable from permanent appropriation contained in 31 U.S.C. § 724a rather than from EEOC appropriations, since nothing in Civil Rights Act or in EEOC's appropriation language provides for payments of such awards by EEOC.

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This decision concerns the question of whether an award of attorney's fees against the Equal Employment Opportunity Commission (EEOC) in an enforcement action under title VII of the Civil Rights Act is payable from EEOC appropriations or from the permanent indefinite appropriation established by 31 U.S.C. § 724a for the payment of final judgments, awards and settlements against the United States which are not "otherwise provided for." For the reasons that follow, we believe such an award is payable from the permanent appropriation.

Section 724a, as amended by Pub. L. No. 95-26 (May 4, 1977), 91 Stat. 61, 96, provides in pertinent part as follows:

"There are appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary for the payment, not otherwise provided for, as certified by the Comptroller General, of final judgments, awards, and compromise settlements, which are payable in accordance with the terms of sections 2414, 2517, 2672, or 2677 of Title 28, together with such interest and costs as may be specified in such judgments or otherwise authorized by law \* \* \*."

Section 706(k) of the Civil Rights Act (Pub. L. No. 88-352), 42 U.S.C. § 2000e-5(k), authorizes courts to award reasonable attorney's fees to prevailing parties, other than the EEOC or the United States, "as part of the costs." In the case of an enforcement action brought by EEOC, this award may be assessed only if the court finds that EEOC's claim was "frivolous, unreasonable, or groundless." Christiansburg Garment Co. v. EEOC, 434 U.S. 412, 422 (1978). It is undisputed that

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an award under section 706(a) against EEOC, or any other Federal Department or agency, as an unsuccessful defendant, is payable from the permanent appropriations. See 38 Comp. Gen. 3-17631, March 7, 1979; 28 U.S.C. § 2412 (1976). It has been suggested, however, that an award against EEOC as an unsuccessful plaintiff may be treated differently in that it may be viewed as an expense of litigation payable from EEOC's litigation budget. 46 Comp. Gen. 98 (1966); 38 Comp. Gen. 343 (1959). In our view, with respect to the source of funds for payment, the two situations are indistinguishable.

It is well settled that the appropriations or funds provided for regular operations of the Government are not available to pay judgments, including judgments for costs. Exceptions are suggested only where the statutory provisions for the appropriations or special funds do authorize and of which the cause of action arose expressly include authority for the payment of judgments or where other express provisions of law provide for payment of judgments. 36 Comp. Gen. 591, 193 (1977); 36 Comp. Gen. 613, 618 (1977); 34 Comp. Gen. 221 (1954). Hence, the availability of EEOC's appropriations depends upon the existence of some specific statutory authorization to pay judgments or attorney's fees.

Section 1105 of the Civil Rights Act, 42 U.S.C. § 2005b-5, authorizes appropriations "as are necessary to carry out the provisions of this Act". EEOC receives annual appropriations for "necessary expenses as authorized by title VII." E.g., Department of State, Justice, and Commerce, The Judiciary, and Related Activities Appropriation Act, 1979, Pub. L. No. 95-431 (October 10, 1978), 92 Stat. 1581, 1583. While these appropriations are generally available for expenses incurred by EEOC in carrying out its enforcement function, we have found no indication in the language or legislative history of either the authorization provision or the appropriation provision that the appropriations were intended to include awards under section 706(a).

As noted above, section 706(a) authorizes the award of attorney's fees "as part of the costs." Costs are awarded under 28 U.S.C. § 2412, which provides that "except as otherwise specifically provided by statute", a judgment for costs other than fees and expenses of attorneys may be awarded to the prevailing party in any civil action brought by or against the United States. Since section 706(a) specifically authorizes the award of attorney's fees as part of costs, the evaluation of attorney's fees in 28 U.S.C. § 2412 is not applicable. Section 2412 further provides that costs awarded against the United States or one of its agencies shall be paid "as provided in section 2414 and section 2417 of this title for the payment of judgments." Judgments against the United States under 28 U.S.C. §§ 2414 and 2417 are payable from the permanent indefinite appropriation unless "otherwise provided for". It seems clear that an award of costs, other than attorney's fees, against EEOC is an enforcement

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action is payable from the permanent appropriation by virtue of 28 U.S.C. § 2412. It follows therefore that attorney's fees which are awarded "as part of the costs" are payable from the same source.

Finally, although the Supreme Court did note in Christiansburg, United Co. v. NRC, 339 U.S. 692 at p. 413, footnote 10, that the Court has been "informed" that attorney's fees awarded against NRC must be paid from the Commission's litigation budget, this consideration does not appear to have been crucial to the Court's holding. The purpose of the Court's footnote 10 seems to be merely to establish that the amount for an award of attorney's fees against a losing plaintiff should be the same whether the plaintiff is the NRC or a private party.

In view of the foregoing, since we have not found any provision of law which makes NRC appropriations available for the payment of attorney's fees, the awards are payable from the permanent appropriation contained in 31 U.S.C. § 724a.

R. E. KELLER

[Deputy]

Comptroller General  
of the United States