



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

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Westfall

B-202903

September 4, 1981

The Honorable Charles E. Grassley
United States Senate

Dear Senator Grassley:

This is in response to your letter of April 8, 1981, requesting our decision on whether Federal emergency relief funds under 23 U.S.C. § 125 may be used to repair the bridge between Marquette, Iowa, and Prairie du Chien, Wisconsin. It is our understanding that this bridge was closed after less than 6 years of use due to grave structural defects in its steel. Our reading of the relevant statutory provisions and legislative history leads us to agree with the Federal Highway Administration and the Department of Transportation that the bridge is not eligible for such funding.

In January 1981 the State of Wisconsin requested from the Federal Highway Administration emergency relief funds under 23 U.S.C. § 125 to repair the Marquette to Prairie du Chien bridge. Both the Federal Highway Administration and the Secretary of Transportation denied the request on the basis that the closing of a bridge for structural reasons did not qualify as a "catastrophic failure" for which emergency relief funds are available under the statute.

Subsection 109(a) of the Federal-Aid Highway Act of 1970, Pub. L. No. 91-605, amended subsection (a) of 23 U.S.C. § 125 to permit the Secretary of Transportation to use emergency funds under that section for:

"* * * the repair or reconstruction of bridges which have been permanently closed to all vehicular traffic by the State after December 31, 1967, and prior to December 31, 1970, because of imminent danger of collapse due to structural deficiencies or physical deterioration."

Prior to this amendment, the statute authorized the Secretary to use emergency funds for:

"* * * the repair or reconstruction of highways, roads, and trails which he shall find have suffered serious damage as the result of (1) natural disaster over a wide area such as by floods, hurricanes, tidal waves, earthquakes, severe storms, or landslides, or (2) catastrophic failures from any cause, in any part of the United States * * *."
23 U.S.C. § 125(a) (1964 ed., Supp. V).

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It is clear from the fact that the 1970 amendment was considered necessary that the Congress did not think that the closing of a bridge to all vehicular traffic because of imminent danger of collapse due to structural deficiencies was a "catastrophic failure", eligible for relief under section 125(a)(2). It would have been anomalous for the Congress to add language providing that emergency funds would be available for bridges closed during 1968, 1969, and 1970 due to threat of collapse from structural defects or physical deterioration if all such bridges, as well as those bridges closed in subsequent years, were already eligible because they qualify as "catastrophic failures."

The legislative history of the 1970 amendment supports this view. The Senate bill, S. 4418, contained language identical to that of the provision eventually adopted, except that it provided for the repair or reconstruction of bridges permanently closed "after December 31, 1967, and prior to the enactment of this Act." The Senate Public Works Committee explained that:

"The bill would extend emergency funds to repair or replace bridges that have been closed to traffic because of safety reasons since December 31, 1967, and before the enactment of this Act. The Committee intends this provision as a short term measure affecting the limited number of bridges presently closed." S. Rep. No. 91-1254, 91st Cong., 2d Sess. 9 (1970). (Emphasis added.)

The Committee further explained, in its section-by-section analysis of the act, that "[t]he termination of authority as of the date of enactment of the Act is included because the funds authorized for the bridge replacement program established by Section 24 of the bill would then be available." Id. at 22.

The House bill, H.R. 19504, would have amended 23 U.S.C. § 125 to authorize the Secretary to expend funds to repair and reconstruct bridges permanently closed to all vehicular traffic after December 31, 1967, because of imminent danger of collapse due to structural deficiencies or physical deterioration. The House Public Works Committee explained the rationale for the proposed amendment as follows:

"An increasing number of older bridges on the Federal-aid highway systems have been closed to traffic in recent years because of their hazardous and unsafe condition. Although the possibility of a catastrophic failure and collapse of such bridges was real and present at the time of the closings, since there was not, in fact, an actual failure of the bridges, it was not clear that

emergency funds authorized by 23 U.S.C. 125(a) would be available for their repair or reconstruction. The additional authority in subpart (2) of 23 U.S.C. 125(a) recognizes the need for emergency funds to repair or reconstruct such bridges which are in imminent danger of collapse due to structure deficiencies or physical deterioration but which have not been subjected to catastrophic failures and because of which an emergency has been declared by the Governor and concurred in by the Secretary." H.R. Rep. No. 91-1554, 91st Cong., 2d Sess. 14 (1970). (Emphasis added.)

The conference committee similarly indicated that it did not view section 125(a), as then worded, as including bridges threatened with imminent collapse within the definition of "catastrophic failures". In its report, the Committee stated that "[p]resent law prohibits the Secretary from expending funds on such bridges unless they have been damaged by a natural disaster or have collapsed." H.R. Rep. No. 91-1780, 91st Cong., 2d Sess. 42 (1970).

The conference substitute contained language identical to that in both the House and Senate bills, except that to be eligible for emergency funds, a bridge had to have been closed after December 31, 1967, and before December 31, 1970. In adopting the conference version, the House apparently accepted the Senate committee's reasoning that emergency relief funds should be available for bridge repair only until the date of enactment of the act (December 31, 1970), because funds authorized for the bridge replacement program being established by section 204 of the act would then be available. The statement of legislative policy contained in subsection (a) of section 204 as amended, 23 U.S.C. § 144, clearly indicates that Congress intended that section to be the source of funding for the repair of bridges closed because of the danger of collapse due to structural deficiencies:

"Congress hereby finds and declares it to be in the vital interest of the Nation that a highway bridge replacement and rehabilitation program be established to enable the several states to replace or rehabilitate highway bridges over waterways, other topographical barriers, other highways, or railroads when the States and the Secretary finds [sic] that a bridge is significantly important and is unsafe because of structural deficiencies, physical deterioration, or functional obsolescence.

Based on this history, it is our opinion that the Congress intended that a bridge such as that between Marquette and Prairie du Chien be

eligible for section 144 moneys, but not for section 125 emergency relief funds.

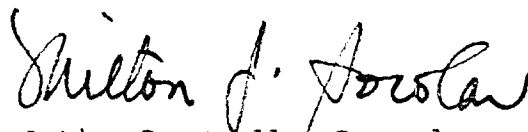
Finally, you have requested that we distinguish our 1969 letter to Congressman Harsha, in which we concluded that to be eligible for emergency funds under section 125, a catastrophe actually has to have occurred; the mere closing of a facility, even to avoid a possible disaster, does not qualify for section 125 relief. B-167368, August 29, 1969. You suggest that the cases can be distinguished on two grounds. First, the bridge in that case had been closed because of old-age deterioration while the Marquette-Prairie du Chien bridge suffers from a structural defect that has existed since the bridge was built. Second, the closing of the bridge in the earlier case created a detour of only several miles while the closing of the Marquette-Prairie du Chien bridge caused a detour of 100 miles. You argue that these differences make the Marquette-Prairie du Chien bridge closing a "catastrophe in every sense of the word."

Our 1969 opinion was not based on either the age of the bridge in question or the relatively short detour caused by its closing. Rather, we examined the legislative history of section 125 and concluded, as we indicated above, that there must be an actual disaster before emergency funds can be paid. As we stated there:

"* * * it cannot be reasonably maintained, in our opinion, that statutory authority to provide assistance in the event of catastrophe may properly be relied upon as authority to provide such assistance where catastrophe has, in fact, been averted."

Even if the case could be distinguished on the basis of the factual circumstances, the 1970 amendment would require the same result. Under present law, only bridges closed prior to December 31, 1970 (the date of enactment of the amendment) because of structural defects or physical deterioration are eligible for emergency funding under section 125. You have stated in your letter that the Marquette-Prairie du Chien bridge "* * * is less than 6 years old." We therefore conclude that the Marquette-Prairie du Chien bridge is not eligible for emergency funding under 23 U.S.C. § 125.

Sincerely yours,



Acting Comptroller General
of the United States