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# CLARIFICATION OF CERTAIN ANNUITY INCREASE LEGISLATION

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## HEARING BEFORE THE COMMITTEE ON OFFICE AND CIVIL SERVICE HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH CONGRESS  
SECOND SESSION

ON

### H.R. 8373

A BILL TO CLARIFY THE APPLICATION OF CERTAIN ANNUITY INCREASE LEGISLATION

APRIL 21, 1964

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Committee on Post Office and Civil Service



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# CONTENTS

---

	Page
H.R. 8373 -----	2
Civil Service Commission report -----	2

## STATEMENT

Andrew E. Ruddock, Director, Bureau of Retirement and Insurance, U.S. Civil Service Commission -----	1
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## CLARIFICATION OF CERTAIN ANNUITY INCREASE LEGISLATION

TUESDAY, APRIL 21, 1964

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE OF THE  
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,  
*Washington, D.C.*

The subcommittee met, pursuant to notice, at 10 a.m., in room 215, Cannon Building, Hon. Morris K. Udall, of Arizona (acting chairman of the subcommittee), presiding.

Mr. UDALL. The subcommittee will come to order.

This subcommittee was appointed to consider H.R. 8373, a bill to clarify the application of certain annuity increase legislation. In the absence of Subcommittee Chairman David N. Henderson I will preside this morning. The other members of the subcommittee are Mr. Watson, Mr. Johansen, and Mr. Abele.

The purpose of this legislation is to close a loophole in the Civil Service Retirement Act which, if unchanged, will leave the way open to additional claims that may total as much as \$65 million on the already heavily overburdened civil service retirement and disability fund.

We have with us this morning the Director of the Bureau of Retirement and Insurance of the U.S. Civil Service Commission, Mr. Andrew E. Ruddock.

We will be glad to receive your testimony at this time, Mr. Ruddock.

### STATEMENT OF ANDREW E. RUDDOCK, DIRECTOR, BUREAU OF RETIREMENT AND INSURANCE, U.S. CIVIL SERVICE COMMISSION

Mr. RUDDOCK. Thank you, Mr. Chairman.

I do not have a prepared statement. I would like to suggest that the letter dated August 22, 1963, from Chairman Macy addressed to the Speaker of the House of Representatives, the Honorable John W. McCormack, a letter which sent up this proposed legislation, be made a part of the record at this point.

Mr. UDALL. Without objection, the bill, H.R. 8373, sponsored by Mr. Murray, the chairman of the full committee, and the letter from the U.S. Civil Service Commission dated August 22, 1963, addressed to the Speaker of the House of Representatives, will be printed in the record at this point.

(The documents follow:)

[H.R. 8373, 88th Cong., 1st sess.]

A BILL To clarify the application of certain annuity increase legislation

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That for the purposes of section 1(a) of the Act of June 25, 1958 (Public Law 85-465), and section 1101(a) of the Act of October 11, 1962 (Public Law 87-793), the words "entitled to receive an annuity" shall, from and after the respective effective dates (August 1, 1958, and January 1, 1963) of the annuity increases provided by such Acts, not include any person whose annuity commencing date occurs after the effective date of the annuity increase involved.

U.S. CIVIL SERVICE COMMISSION,  
Washington, D.C., August 22, 1963.

HON. JOHN W. McCORMACK,  
Speaker of the House of Representatives.

DEAR MR. SPEAKER: The Commission herewith presents for consideration by Congress a draft bill designed to clarify beyond any possibility of misinterpretation the intent of Congress in certain civil service annuity increase enactments.

In providing annuity adjustments under the Civil Service Retirement Act, Congress has since 1948 applied a policy of affording increases only to persons who were annuitants as of the effective date of an increase. Each annuity which vests under the Civil Service Retirement Act has a specific commencing date, and the annuity becomes payable from the applicable commencing date regardless of delay in filing application for the benefit. In recognition of this and to assure increases not only to annuitants currently on the roll, but also to persons who would have been annuitants on the effective date of increase had they not delayed filing until after that date, Congress has used and relied on the words "receiving or entitled to receive an annuity" to designate the class to which it was granting increases.

This wording has been used, with this purpose in mind, in four annuity increase enactments: Act of July 16, 1952 (Public Law 82-555), act of August 11, 1955 (Public Law 84-369), act of June 25, 1958 (Public Law 85-465), and act of October 11, 1962 (Public Law 87-793). In each instance where the point arose under the first three of these laws, the Commission administratively interpreted the clause "receiving or entitled to receive an annuity" as including persons whose annuity commencing dates were on or before the effective date specified for increases. That such interpretation was in strict accord with the expressed intent of Congress is amply evidenced by the legislative reports, excerpts from which are cited in the attachment titled "Notes on Legislative Background." Further wording in the 1952 and 1955 enactments affirmatively prevented any other interpretation.

This established meaning and interpretation has been nullified in part by a November 7, 1962, decision, No. 345-61, of the U.S. Court of Claims in the case of *Ethel R. Hurtt v. The United States*. Based on the service of Russell D. Hurtt, who died March 6, 1955, the retirement law then in effect afforded his widow title to a survivor annuity commencing the 1st of the month following her attainment of age 50. Mrs. Hurtt became 50 years of age on August 16, 1958, and was granted her widow's annuity commencing September 1, 1958. In line with consistent Commission procedure and the evident intent of Congress, her annuity award did not include the 10 percent increase authorized by the act of June 25, 1958, to each "survivor who on August 1, 1958, is receiving or entitled to receive an annuity based on service which terminated prior to October 1, 1956." Mrs. Hurtt's request for the increase was denied under original and appellate Commission decisions, and her suit in the Court of Claims followed. The court held that the widow was a survivor who, on August 1, 1958, was "entitled to receive" an annuity within the meaning of the 1958 act and entered judgment awarding her the 10-percent increase accordingly.

On the basis of a review of the situation, the Commissioners were persuaded (after consultation with the Solicitor General, Department of Justice) that further judicial proceedings offered little prospect of corrective action and authorized the following steps:

1. Pay Mrs. Hurtt increased annuity as decreed by the court, with a cost to the Government estimated at \$1,450.
2. Apply the *Hurtt* decision to all similar cases without necessity of request from the affected widows. This involves about 2,000 potential deferred-to-age-50 widows and an estimated Government cost of \$2,200,000.

3. Request the Congress to specifically express its intention regarding the meaning of the wording "entitled to receive an annuity" in the 1958 and 1962 increase laws as it affects increase entitlement for approximately 185,000 deferred-to-age-62 employee-annuitants. A Hurtt-type decision or interpretation in respect to these former employees with deferred annuity title would involve an estimated Government cost of about \$65 million.

A draft bill to produce the result stated in item 3 above is attached. Enactment of this proposal would allow the Court of Claims decision to stand in respect to Mrs. Hurtt and all similar survivor cases, but would forestall any attempt to expand the meaning of the *Hurtt* decision beyond that class of annuitants. This court decision was widely publicized, and it may be anticipated that other actions will be brought by deferred annuitants in an effort to gain the 1958 increase of 10 percent in annuities which began after August 1, 1958, of the 5 percent increase under the 1962 law in annuities which commenced after January 1, 1963. The Commission accordingly recommends introduction of the draft bill and urges its early enactment into law.

The Bureau of the Budget advises that from the standpoint of the administration's program there is no objection to the submission of this proposal.

By direction of the Commission:

Sincerely yours,

JOHN W. MACY, Jr., *Chairman.*

A BILL To clarify the intent of Congress with respect to certain annuity increase legislation

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the words "entitled to receive an annuity" appearing in section 1(a) of the Act of June 25, 1958 (Public Law 85-465), and in section 1101(a) of the Act of October 11, 1962 (Public Law 87-793), shall, from and after the effective dates of the annuity increases provided by said Acts, August 1, 1958, and January 1, 1963, respectively, be construed as excluding any person whose annuity commencing date is after the applicable effective date of the annuity increase.

#### NOTES ON LEGISLATIVE BACKGROUND

In *Hurtt v. The United States*, the U.S. Court of Claims held that plaintiff, whose deferred widow's annuity under the Civil Service Retirement Act commenced September 1, 1958, was eligible for the 10-percent annuity increase provided by the act of June 25, 1958 (Public Law 85-465), section 1(b)(1) of which accorded the increase to "each survivor who on August 1, 1958, is receiving or entitled to receive an annuity based on service which terminated prior to October 1, 1956, \* \* \*."

Contrary to this holding, the legislative record shows that the Congress intended the 10-percent increase in annuities to be applied under section 1(b)(1) to those survivors who either were on the annuity roll August 1, 1958, or were eligible, upon filing application, to be placed on the roll as of a date occurring on or before August 1, 1958.

S. 72 and H.R. 607 of the 85th Congress led up to enactment of Public Law 85-465. H.R. 607, as amended and reported favorably by the House Committee on Post Office and Civil Service, proposed a 10-percent raise in the annuity of each retired employee "who, on October 1, 1956, was *receiving or entitled to receive an annuity*" [italic added] and to each survivor whose annuity commenced on or prior to October 1, 1956. Committee Report No. 1211, dated August 21, 1957, noted the amended bill's purpose as being "to provide a cost-of-living increase in the civil service retirement annuities of *annuitants and survivors who were on the annuity roll on or before October 1, 1956*". [Italic supplied.] This report then stated that the amended bill provided "a moderate, fair, and reasonable annuity increase for those civil service retirement *annuitants and survivors who now are receiving \* \* \* annuities.*" [Italic added.]

Similarly, S. 72 as reported by the Senate Post Office and Civil Service Committee on July 25, 1957 (Rept. No. 706) proposed increasing the annuity of "each individual who, prior to October 1, 1956, was *receiving or entitled to receive an annuity.*" [Italic added.] Said report noted that the bill was designed "to increase the benefits of annuitants and their survivors who were receiving or who were entitled to receive an annuity from the civil service retirement and disability fund prior to October 1, 1956." This bill was passed by the Senate and (after

being amended to incorporate H.R. 607 provisions) by the House of Representatives.

Congressional intent is clear from Report No. 1848 issued on June 5, 1958, by the committee on conference (incorporating the language which was thereupon enacted), reading in pertinent part:

"Subsection (a) of the first section of the House amendment provided an increase of 10 percent in the annuity of each employee who retired with an annuity, or entitlement thereto, beginning on or before October 1, 1956, the effective date of the Civil Service Retirement Act Amendments of 1956. Such proposal provided no increase in the annuity of any employee who has retired or retires with annuity or entitlement to annuity on or after such effective date.

"Subsection (a) of the first section of the conference substitute, with respect to the identification of the class of annuitants who will receive annuity increases, is to the same effect as subsection (a) of the first section of the House amendment with technical changes to clarify the purpose and intent of such subsection that such increases be paid to annuitants who are receiving annuities on August 1, 1958—the effective date of the annuity increases provided by section 3 of the conference substitute—based on service which terminated prior to October 1, 1956.

\* \* \* \* \*

"Subsection (b) of the first section of the conference substitute, with respect to the identification of the class of survivors who will receive annuity increases, is to the same effect as subsection (b) of the first section of the House amendment with technical changes (conforming to the technical changes made by subsection (a) of the first section of the conference substitute) to clarify the purpose and intent of such subsection (b) that such increases will be paid to (1) survivors who are receiving annuities on August 1, 1958—the effective date of the annuity increases provided by section 3 of the conference substitute—based on service which terminated prior to October 1, 1956, and (2) survivors of those employees who on August 1, 1958, are receiving or entitled to receive annuities based on service which terminated prior to October 1, 1956."

The legislative history of similar annuity increase laws shows that the Congress used the same words with the same meaning intended by the act of June 25, 1958.

*Act of July 16, 1952, Public Law 82-555.*—Section 1 of Public Law 82-555 added a new subsection (c) to section 8 of the then-existing Civil Service Retirement Act to provide stipulated increases in:

"(1) The annuity of *any retired employee or of any survivor* of a deceased or retired employee *who, before the date of enactment of this amendment, was receiving or entitled to receive an annuity from the civil-service retirement and disability fund, \* \* \**" [Italic added.]

The bill (S. 2968) which became Public Law 82-555 originally proposed to begin section (c)(1) with the words "The annuity of any employee who." Senate Report No. 1481 dated April 24, 1952, noted that the bill would "not increase annuities to survivors now on the roll or to those added to the roll in the future." Report No. 2407 of July 1, 1952, is to the same effect. Each report in effect then construes the "was receiving or entitled to receive" clause by stating that the bill would provide an increase to employees receiving annuity from the fund who retired on or before April 1, 1952, the increase to be effective the first day of second month after enactment; Report No. 2407 further stated that "No provision is made under the bill for increases in annuities \* \* \* for Federal employees who retire subsequent to April 1, 1952."

Under suspension of rules, the House on July 2, 1952 (pp. 8991-8997, Congressional Record), inserted the wording respecting survivors and passed the bill. Conference report dated July 4, 1952, noted acceptance of the House amendment, commenting that it "granted such increases to survivors *now receiving or entitled to receive annuities.*" [Italic added.]

Legislative understanding as to the effect of this law was reiterated during consideration of S. 72. Previously-cited Senate Report No. 706 stated that the act of July 16, 1952 "Gave each retiree *then on the civil service annuity roll an increase.*" [Italic supplied.]

*Act of August 11, 1955, Public Law 84-369.*—A language difference in Public Law 84-369 highlights congressional intent and the lack of any basis for the court's conclusion. That law set up a sliding scale of increases for annuitants then on the roll and those to go on the roll in the limited future, and Congress expressed its clear intention by authorizing the benefit to "any person who *now or hereafter is receiving or entitled to receive an annuity.*" [Italic supplied.] Had the legis-

lative body in 1958 intended the result deemed by Court of Claims, wording as noted would have turned the trick.

*Act of October 11, 1962, Public Law 87-793.*—Section 1101(a) of Public Law 87-793 further illustrates the same situation. Congress here accorded a 5-percent increase to persons "receiving or entitled to receive an annuity" on January 1, 1963. Section 1101(b) then incorporates a sliding scale (4, 3, 2, and 1 percent) under which each person "who receives or is entitled to receive an annuity from the civil service retirement and disability fund during" a limited period is granted a designated percentage increase from commencing date of annuity.

We read the clear intent of Congress as authorizing the 5-percent increase only in those annuities payable from the fund with commencing dates of January 1, 1963, or earlier, with the lower percentages operating for annuities commencing thereafter during the stated periods. However, the Court of Claims decision establishes a rationale under which a deferred annuity commencing after January 1, 1963, and during the sliding scale increase period could be subject to both the 5-percent increase and the percentage increase applicable to the commencing date of the annuity, a patently absurd and unintended result.

Other developments further establish that Congress was fully aware of the existing situation and did not desire to change it. H.R. 7822, introduced in the 86th Congress, proposed to amend Public Law 85-465 by extending its 10-percent increase provision to each retired employee who "effective from any subsequent [to August 1, 1958] date, is receiving or entitled to receive an annuity." The Commission reported adversely on this bill June 23, 1960, in the following terms:

"The Commission opposes this bill. It proposes to institute a policy of annuity adjustment—that of increasing separation benefits due former employees not yet annuitants—which would depart completely from the policy hitherto applied by the Congress. Since 1948, Congress has provided four general increases in annuities payable under the Retirement Act. Such increases were largely the result of congressional recognition of the pressures of cost-of-living rises on annuitants as a class. In each instance the adjustment afforded was specifically to assist individuals who at time of the increase were relying on their annuities as income; and no justification was found for benefiting persons outside this class.

"We agree with this consistent attitude of the Congress and believe that the Government fulfills any reasonable obligation it may have to provide retirement benefits to an individual who spends only part of his working life in the Federal service and later works for other employers by (1) vesting annuity benefits at age 62 after a minimum of 5 years' service, and (2) the assurance that once on the annuity roll he will participate in such adjustments as may thereafter be afforded annuitants generally."

Failure of Congress to enact H.R. 8722 in effect signified concurrence with the understanding of its position and policy as outlined in the Commission's report.

Mr. RUDDOCK. On June 25, 1958, the President signed Public Law 85-465, which included a provision that the annuity of each survivor, who on August 1, 1958, "is receiving or entitled to receive annuity," would be increased. The Commission consistently construed that phrase "receiving or entitled to receive" as meaning a person who on a given date, was (1) an annuitant on the rolls currently receiving checks or (2) a person who had met all requirements for title to annuity, but either because the claim was pending or because the application had not yet been filed, was not in an actual state of receiving annuity on that date.

Mrs. Hurtt, who was the widow of Mr. Russell D. Hurtt, applied for survivor annuity. Mr. Hurtt had died in 1955. Mrs. Hurtt, as his widow, became eligible to receive annuity when she reached the age of 50, which was on August 16, 1958. We granted her annuity beginning September 1, 1958. She asked for the annuity increase granted by Public Law 85-465, basing her application for the increase on her belief that on August 1 she was entitled to receive annuity even though she did not reach the age of 50 until August 16, 1958.

We denied her request for the increase in annuity. She appealed, and the Board of Appeals and Review sustained the decision of the

Retirement Division, as it was called at that time. She took her appeal to the Court of Claims, which agreed with her in a decision dated November 7, 1962, and held that she was entitled to an increase because as of August 1, 1958, the date required by the statute, she was entitled to receive annuity even though she had not attained age 50.

The language "receiving or entitled to receive" was first used in annuity increase legislation in 1952, but was used in the 1952 law in connection with other language which made it crystal clear that it was the commencing date of the annuity which was the determining factor. It was used in the 1955 law, used in the 1958 law, and used again in the 1962 law.

After the decision by the Court of Claims in favor of Mrs. Hurtt, the Civil Service Commission decided that it would not appeal the case to the Supreme Court, and that it would pay Mrs. Hurtt increased annuity as decreed by the court. In her particular case, this was at a total added cost of \$1,450.

The Commission decided that it would apply this decision to all similar cases of widows who, on August 1, 1958, were waiting to attain the age of 50. We estimated this would involve about 2,000 widows and would cost the taxpayers approximately \$2,200,000. We decided at the same time to ask Congress to specifically express its intention regarding the meaning of the words "entitled to receive an annuity" in the 1958 and 1962 annuity increase laws because this language was also used in connection with persons who had left Federal employment with more than 5 years' service and who would become eligible to receive annuity at age 62.

The court decision was not made with respect to the deferred employee annuitants. The Department of Justice agreed with the Commission that the decision should not be applied to the deferred employee annuitants, but also agreed with the Commission that it would be wise to ask Congress to reaffirm what we know to have been the intent of Congress in originally using that language, namely, that it would apply only to people whose annuity commencing date was on or before a legislatively specified date.

There are now two cases pending in the Court of Claims: One is Margaret E. Schellfeffer and the other is George M. Fox. In each of these cases, the claimant was separated from Federal employment before August 1, 1958, had more than 5 years of service, and would become eligible for an annuity to begin at age 62. In each of these cases, the attainment of age 62 occurred after August 1, 1958.

The bill which has been introduced by Mr. Murray, if enacted, would express the intent of Congress as not intending to extend the annuity increase of 1958 and 1962 laws to persons who, on the specified dates in those acts, had not yet attained the age at which annuity would begin.

We appreciate Mr. Murray's introducing this bill, Mr. Chairman, and we appreciate your having this hearing this morning. We respectfully request that you consider favorably this legislation which the Commission has sent up, and we urge its early enactment.

Mr. UDALL. Mr. Ruddock, is the actuarial principle involved here the fact that, when an increased annuity is provided for, those who benefit from the increase are generally those who make contributions under the new formula rather than those who would receive a windfall

as old employees who have never contributed or been under the system when the new increase was provided for?

Mr. RUDDOCK. I think this is a part of it. Actually the principle involved came up for some debate in connection with amendments to the Retirement Act in 1948. The 1942 law had established the class of deferred annuitants, because it had provided for a vesting of deferred annuity in a person separated after 5 or more years of service. The 1948 law was going to provide some annuity increases. It was also going to provide some changes in the method of computing annuities.

After some debate, Congress specifically decreed that the deferred annuitants who would come on the rolls after the enactment of the 1948 law, would have their annuities computed under the law in effect at the date of their separation and that they would be paid as if the 1948 law had not been enacted. That was very specific. And the same principle was followed when increases were granted to people already on the rolls in 1952, 1955, 1958, and 1962.

Now part of the thinking, particularly with respect to the separated employees who are waiting attainment of age 62, is the presumption that after they have left Federal service, they are probably working for some other employer. Whatever changes take place in the economy are reflected in wage levels and they benefit from them while they are working for another employer. The obligation of the Federal Government as an employer ceases when a person resigns. The Government in certain cases resumes an obligation to pay a deferred annuity upon the attainment of age 62, but so far has not undertaken any responsibility for inflation, changes in cost of living, or whatever may have occurred in the period between separation from Federal service and the commencing date of a deferred annuity.

Consistently after attainment of age 62, after a person gets on the annuity roll, any annuity increases that come along are given to that person because such increases presumably reflect changes that have occurred since the Government once again assumed some responsibility and is paying at least a part of his retirement income.

We estimate that in the category of deferred employee-annuitants potentially involved are approximately 185,000 people waiting for age 62, and that to pay the annuity increases to them would cost approximately \$65 million.

Mr. UDALL. The *Hurt* case involved a widow who was entitled to annuity because of service of her deceased husband, did it not?

Mr. RUDDOCK. That is right.

Mr. UDALL. And if the principle of the *Hurt* case is applied not only the widows, but to the separated employees who are waiting qualification—waiting to attain the necessary age—this would have much further ramifications than simply applying it to widows. Is that right?

Mr. RUDDOCK. Very much more.

Mr. UDALL. What is the percentage of people who would be affected who are widows as against those who are former employees, roughly?

Mr. RUDDOCK. Two thousand widows and one hundred and eighty-five thousand deferred employee annuitants.

Mr. UDALL. This potential cost of \$65 million that you are talking about would occur only if both classes took this matter to court and it were resolved against the interpretation of the Commission?

Mr. RUDDOCK. We have already adopted and are applying the *Hurtt* decision to the widows at a cost of \$2,200,000, but the \$65 million cost estimate is an additional cost attributable to the deferred employee annuitants.

Mr. UDALL. The gentleman from Michigan.

Mr. JOHANSEN. Let me see if I understand this thing. What is the import of an annuity increase voted by Congress as it relates to persons not yet retired? In other words, assume I am a civil service employee and I am within 2 years of retirement. Congress votes an annuity increase effective July 1, 1964. Now what is the import of that congressional action with respect to me?

Mr. RUDDOCK. It would have absolutely none if it is legislation of the type which says, "All persons who, on July 1, 1964, are receiving or entitled to receive annuity, will get a certain increase." It would have no effect whatsoever. Now there have been annuity increase laws which, in addition to giving an increase to people on the rolls as of a certain date, have also provided that the annuity of a person retiring in the near future would be increased.

Mr. JOHANSEN. Or hereafter retiring.

Mr. RUDDOCK. We did have that type of legislation in Public Law 87-793 dated October 11, 1962. That provided an increase of 5 percent for all persons receiving or entitled to receive annuity as of January 1, 1963. It also provided that any person retiring during the calendar year 1963, would have his annuity increased by 4 percent. Anyone retiring in 1964, would have it increased by 3 percent, 1965 2 percent, and 1966 1 percent.

Mr. JOHANSEN. Is the theory back of it that I, as a person who is going to retire 2 years from now, have had the benefit of higher salary and retirement benefits than a person who retired 10 years ago?

Mr. RUDDOCK. Precisely.

Mr. JOHANSEN. So that this particular legislation, which applies to persons who are already annuitants, is sort of a catchup for them, due to the fact that they have not had the advantage of increased salary and retirement benefits under improved plans subsequent to their retirement?

Mr. RUDDOCK. That is right.

Mr. JOHANSEN. Of course, what I can't understand—I'm sure that is the point of this whole proceeding—is how the court could hold that this person was entitled to receive an annuity 15 days before eligibility. Isn't that the nub of the problem?

Mr. UDALL. I share the gentleman's puzzlement and dismay.

(Discussion off the record.)

Mr. JOHNSON (staff member). May I ask a question, Mr. Chairman?

Mr. UDALL. Yes.

Mr. JOHNSON. In further extension of your suggestion, Mr. Johansen, I would like to ask Mr. Ruddock this: Assuming, in the case of Mr. Johansen, that he had 30 years of service and attained age 60, for example, but wasn't going to retire for 2 more years, is it possible that, by some process of reductio ad absurdum, the *Hurtt* decision could even be extended to a case of that kind? That is to say, to a ruling that he is just as much entitled to receive an annuity when he decides to retire 2 years hence as would be the deferred employee

annuitant who is not yet 62 or a widow such as Mrs. Hurtt who had not yet reached age 50 on the effective date spelled out in the act? Would not this cause a tremendous additional cost?

Mr. RUDDOCK. If that were to happen, it would indeed involve a tremendous cost. It would also involve some extension of the logic used by the court in the *Hurtt* decision.

Mr. JOHNSON. Would not that be spurious logic?

Mr. RUDDOCK. Once you get started in this direction it is difficult to draw a line and say, "This is where I stop."

Mr. UDALL. In line with what Mr. Johnson says, it could be argued that he put in 30 years, that he has complied with every necessary requirement to become eligible for an annuity and that the only thing that has to happen is for the clock to turn around for 2 more years.

Mr. JOHNSON. Or he could decide that he wants to retire tomorrow. He is "entitled" to an annuity.

Mr. RUDDOCK. A part of the decision written by the court in the case of Mrs. Hurtt I think clearly expresses the thought that she was one of a very small handful of widows and she was one of a very small group left out by the Commission in its application of this law. In other words, I think some sympathy or equity was expressed and I believe that was at least as strong as any logical interpretation of the law.

Mr. JOHANSEN. This is another case in which the courts are going to repair the alleged failures or the defaults of the legislative branch, isn't it? If you would rather not answer, that is all right.

Mr. RUDDOCK. Let me say this, Mr. Johansen. I have personally participated and have worked with the committees and with staff in the drafting of all annuity increase legislation beginning in 1948, and there is no question in my mind about what was intended by the words "receiving or entitled to receive."

Mr. UDALL. If I could interrupt, there is an old maxim widely known in Arizona legal circles which declares that the good Lord and the courts take care of orphans, widows, and drunk Indians. This decision may have been based on this maxim, although it isn't widely known throughout the country.

Mr. JOHANSEN. I would say my confidence in the Lord's wisdom is greater than in that of the courts. I think the case is very clear here. We have to take this action.

Mr. UDALL. I agree.

Mr. JOHNSON. I would like to say for the record, if I may, that we contacted Mr. Glen Simcox, president of the National Association of Retired Civil Service Employees—the largest organization of retirees—and that organization has no objection to this legislation.

Mr. UDALL. In that connection, I was going to ask staff before we finished here if there has been any widespread dissemination of the fact that this proposal was before us and that hearings would be held. As chairman of the subcommittee, I am always reluctant to close hearings if there are groups that this affects who might wish to be heard. You are satisfied at least the organized groups are aware of this legislation?

Mr. JOHNSON. Yes, Mr. Chairman, the staff called this to the attention of large active employee unions and also the principal retiree association.

Mr. JOHANSEN. I assume this legislation, if enacted, wouldn't alter the decision in the *Hurt* case since the Constitution prohibits ex post facto legislation?

Mr. JOHNSON. It would not.

Mr. RUDDOCK. It is not worded in such a way that it would affect in any way the decision of the *Hurt* case. That was construction of section 1(b) of Public Law 85-465, and we are asking Congress to express its intention with respect to section 1(a), so it would not affect the *Hurt* decision.

Mr. UDALL. Are there any further questions or staff comments?

Mr. JOHNSON. No, sir; thank you.

Mr. UDALL. I am satisfied for the need for legislation.

(Discussion off the record.)

Mr. UDALL. The public hearing will be closed. Those who are not staff or members of the committee will retire and we will have a brief executive session.

(Whereupon, at 10:30 a.m., the hearing was adjourned.)



The Commission on Human Rights has been established by the Economic and Social Council in its resolution 2006 (LXII) of 21 December 1948. The Commission is composed of 18 members elected by the Council for a period of three years. The Commission's mandate is to promote and protect human rights and to report to the Council on its activities. The Commission has established several subsidiary organs, including the Human Rights Council, the Human Rights Committee, and the High Commissioner for Human Rights.



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