

GOVERNMENT OF THE DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD

APPEALS OF:

DOXA, INC.)	
)	
Under Contracts regarding)	CAB Nos. D-1284 and D-1285
D.C. PSC Formal Case Nos. 766, 945,)	
982, 991, 1002, 1009, 1017, 1023, and 1026)	

For the Appellant DOXA, Inc.: Mr. Karl Richard Pavlovic, *pro se*. For the District of Columbia Office of People's Counsel: Barbara L. Burton, Esq., Assistant People's Counsel.

Opinion by Chief Administrative Judge Jonathan D. Zischkau, with Administrative Judge Warren J. Nash, concurring.

OPINION ON MOTION FOR RECONSIDERATION

LexisNexis Filing ID 13264100

Appellant DOXA, Inc., moves for reconsideration of the Board's decision dismissing DOXA's appeals seeking interest penalties for late contract payments pursuant to the Quick Payment Act ("QPA"), D.C. Code §§ 2-221.01 to 2-221.06 (2001), against the District of Columbia Office of People's Counsel ("OPC") which is statutorily within the District of Columbia Public Service Commission ("PSC"). In our decision, we held that the QPA and the Procurement Practices Act ("PPA") do not apply to OPC because it enjoys the same exemption from the QPA and PPA as the PSC. DOXA argues that we incorrectly concluded that OPC remains exempt from the QPA and PPA after the Procurement Reform Amendment Act of 1996 expanded the scope of the QPA and PPA to include "independent agencies" of the District Government. DOXA also argues that our decision contradicts our earlier decision in *Curtis Chevrolet*, CAB No. D-1116, Jan. 25, 2001, where we held that the District of Columbia Housing Authority was subject to the QPA. As discussed below, we see no legal error in our holding that the OPC is not subject to the QPA. Accordingly, we deny the motion for reconsideration.

BACKGROUND

DOXA performed consulting services for the Office of People's Counsel relating to Public Service Commission Formal Case Nos. 766, 945, 982, 991, 1002, 1009, 1017, 1023, and 1026 before the Public Service Commission from 1999 through 2005. DOXA payment invoices submitted to the Office of People's Counsel were paid, although many payments were made more than 30 days after the invoice date. In September 2005, DOXA submitted claims to OPC for interest penalties pursuant to the Quick Payment Act on the invoices which were paid late. OPC made no decision respecting the QPA claims, and on December 23, 2005, DOXA filed notices of appeal with the Board based on OPC's deemed denials of its claims. OPC moved to dismiss the appeals on the basis that OPC is not

subject to the QPA. We agreed and dismissed the appeals.

DISCUSSION

DOXA does not dispute that if the Public Service Commission is exempt from the QPA, then the Office of People's Counsel is also exempt. This conclusion follows from a review of Chapter 8 of Title 34 of the D.C. Code where OPC is created within the PSC:

There is hereby established within the Public Service Commission of the District of Columbia, established by § 34-801, an office to be known as the Office of the People's Counsel. The Office shall be a party, as of right, in any investigation, valuation, revaluation, or proceeding of any nature by the Public Service Commission of or concerning any public utility operating in the District of Columbia.

D.C. Code § 34-804(a).

DOXA argues in its motion for reconsideration that we incorrectly concluded that OPC remains exempt from the QPA and PPA after the Procurement Reform Amendment Act of 1996 ("PRAA"), D.C. Law 11-269, 44 D.C. Reg. 1423, expanded the scope of the QPA and PPA to include "independent agencies" of the District Government. DOXA cites the following language from the section-by-section analysis of the Council's Report on Bill 11-705, The Procurement Reform Amendment Act of 1996, dated September 24, 1996, at 9:

Title III – (j) Section 310 amends D.C. Code §§1-1171 and 1-1175 (Quick Payment Act) to make the quick payment provisions applicable to all District agencies and recognizes the Director's centralized role in the procurement system.

Section 310 of the PRAA replaced the phrase "other than an independent agency" with "including, unless otherwise provided, an independent agency" as shown in the current Definitions section of the QPA, D.C. Code § 2-221.01 (emphasis added):

(3) "District agency" means any office, department, division, board, commission, or other agency of the District government, *including, unless otherwise provided, an independent agency*, required by law or by the Mayor or the Council to administer any law or any rule adopted under the authority of a law. For the purposes of this definition, the term "independent agency" means any agency of government not subject to the administrative control of the Mayor and includes, but is not limited to, the Superior Court of the District of Columbia, District of Columbia Court of Appeals, Council of the District of Columbia, Board of Elections and Ethics, Armory Board, Zoning Commission, Convention Center Board of Directors, District of Columbia Board of Education, and Public Service Commission.

However, the PRAA did not amend any other relevant portions of the QPA. Thus, D.C. Code § 2-221.02, which identifies the District agencies required to pay QPA interest penalties, was left

unchanged by the PRAA, and provides in relevant part (emphasis added):

(a)(1) In accordance with rules and regulations issued by the Mayor of the District of Columbia (“Mayor”), each agency of the District of Columbia government (“District”), *under the direct control of the Mayor*, which acquires property or services from a business concern but which does not make payment for each complete delivered item of property or service by the required payment date shall pay an interest penalty to the business concern in accordance with this section on the amount of the payment which is due.

DOXA asserts that the phrase “under the direct control of the Mayor” remains in the QPA “due to an oversight in the task of conforming the QPA as amended by the PRAA.” (Motion for Reconsideration, at 9). Subsection (b)(1A), added by Title IX, Section 902(a)(2) of D.C. Law 12-175, Mar. 26, 1999, 45 D.C. Reg. 7193, 7201-02, states that “[e]ach contract executed pursuant to Chapter 3 of Title 2 shall include in the solicitation a description of the contractor’s rights and responsibilities under the chapter.” Although subsection (a) contains the qualifying language (“under the direct control of the Mayor”), subsections (d) and (e) – relating to contractor-subcontractor payments – do not qualify the term “District agency.” D.C. Code § 2-221.03 – relating to discount interest penalties – also refers to “District agencies” without the qualifying language found in section 2-221.02(a)(1). Section 2-221.04 provides for the filing of QPA claims and appeals to the Contract Appeals Board for “interest penalties which a District agency has failed to pay in accordance with the requirements of §§ 2-221.02 and 2-221.03”

Certainly the QPA legislation, as amended by the PRAA, is not a model of clarity. Nonetheless, the limited question before us is whether the changes effected by the PRAA in 1997 removed the QPA exemption for the Public Service Commission (and thus for the Office of People’s Counsel). We concluded in our decision that the exemption was not removed, but in view of the motion for reconsideration, we elaborate on our rationale. First, DOXA cannot be correct that the PRAA expanded the QPA applicability to all “independent agencies” as that term is defined in D.C. Code § 2-221.01(3) because some of the “independent agencies” – such as the Superior Court and the Court of Appeals – cannot be covered absent Congressional authorization. The Council recognized such exceptions by including the phrase “unless otherwise provided” in the “District agency” definition. The case of the Public Service Commission is analogous to that of the courts because the Commission’s plenary contracting authority was authorized by Congress, *see* Act of Mar. 4, 1913, 37 Stat. at 994, ch. 150, sec. 8, para. 95, and this authority has never been revoked by Congressional legislation. Second, the fact that the Council exempts the PSC from the PPA in D.C. Code § 2-303.20(1) supports the conclusion that the Council had no intention of questioning the PSC’s plenary contracting authority as provided by Congress.

In its motion, DOXA mistakenly suggests that the Board held that OPC is exempt from the QPA *because* it is exempt from the PPA. As elaborated above, we held that OPC is exempt from the QPA because Congress has provided plenary contracting authority to the PSC and thereby to OPC. Elsewhere in its motion, DOXA argues that the Board erred in concluding that the PPA exemption for the PSC is a “blanket” exemption. Again, for the reasons already stated, the PSC is exempt because Congress has provided it with independent contracting authority. In addition, DOXA

incorrectly asserts that none of the exemptions in section 2-303.20 are complete exemptions from the PPA, as are found in section 2-301.04(a). Although some exemptions, such as the one for the District of Columbia Housing Authority, are partial exemptions, others are complete exemptions such as the one for the Sports Commission.

Finally, DOXA argues that our decision is inconsistent with our prior decision in *Curtis Chevrolet*, CAB No. D-1116, Jan. 25, 2001, where we held that the District of Columbia Housing Authority (“DCHA”) was subject to the QPA. DCHA is quite different from the PSC and OPC because DCHA’s contracting authority was not created by Congressional authorization. The contract between Curtis Chevrolet and DCHA was entered into at a time when DCHA was subject to the PPA, see D.C. Law 13-105, effective May 9, 2000, 47 D.C. Reg. 1325, 1352, and, as we held, also subject to the QPA. DCHA did not argue that it was exempt from the QPA under the Council’s “as otherwise provided” qualification in D.C. Code § 2-221.01(3). Our other QPA decisions are consistent with this approach. *See, e.g., Owen E. Jackson*, CAB No. D-1114, Mar. 31, 2005, 2005 DCBCA Lexis 2 (QPA applicable to DCPS subsequent to PRAA); *HRGM Corp.*, CAB No. D-1201, Aug. 19, 2003, 52 D.C. Reg. 4131 (same); *Unfoldment, Inc.*, CAB No. D-1062, Mar. 20, 2002, 50 D.C. Reg. 7404 (QPA applicable to D.C. Child and Family Services Agency); *cf. Hood’s International Foods, Inc.*, CAB No. D-0996, Feb. 20, 1998, 45 D.C. Reg. 8742 (QPA not applicable to DCPS prior to PRAA); *Lutheran Social Services*, CAB No. D-1030, July 8, 1998, 45 D.C. Reg. 8779 (QPA applicable to Commission on Mental Health).

For the reasons discussed above, we deny DOXA’s motion for reconsideration.

SO ORDERED.

DATED: December 22, 2006

/s/ Jonathan D. Zischkau
JONATHAN D. ZISCHKAU
Chief Administrative Judge

CONCURRING:

/s/ Warren J. Nash
WARREN J. NASH
Administrative Judge