



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

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B-164081

August 30, 1973

The Honorable Caspar W. Weinberger
Secretary, Health, Education, and
Welfare

BEST DOCUMENT AVAILABLE

Dear Mr. Secretary:

Reference is made to letter of August 21, 1973, from the Acting Assistant Secretary, requesting our opinion as to whether the Public Works for Water and Power Appropriation Act, 1974, approved August 16, 1973, Pub. L. 93-97, 87 Stat. 3118, makes additional funds available for obligation under Pub. L. 81-874, as amended, 20 U.S.C. 836, et seq., to provide assistance under the impact aid program to local educational agencies in areas effected by Federal activity.

The background of the matter leading up to your request is briefly set out below.

Appropriations for departments and agencies whose fiscal year 1973 annual appropriation act had not been enacted into law as of July 1, 1972, were provided by the so-called "Continuing Resolution," Pub. L. 92-334, approved July 1, 1972, 86 Stat. 402.

Since no annual appropriation act was enacted for fiscal year 1973 for the Department of Health, Education, and Welfare (HEW) the obligations and expenditures of the Department were governed by the provisions of the Continuing Resolution, as amended, during the entire fiscal year.

Under such circumstance, funds available for the impact aid program were required to be apportioned to educational agencies in a manner so as not to distinguish between "section 3(b) students" under Pub. L. 81-874--children whose parents reside or are employed on Federal property-- and "section 3(a) students"--children whose parents reside on and are employed on Federal property.

However, Pub. L. 93-25, approved April 26, 1973, 87 Stat. 26, making supplemental appropriations for certain agencies, contains the following provision--

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"School Assistance in Federally Affected Areas

"None of the funds made available by the Continuing Resolution as amended (Public Law 92-334, Public Law 93-9) for carrying out title I of the Act of September 30, 1950, as amended (20 U.S.C., ch. 13), shall be available to pay any local educational agency in excess of 54 per centum of the amounts to which such agency would otherwise be entitled pursuant to section 3(b) of said title I and none of the funds shall be available to pay any local educational agency in excess of 90 per centum of the amounts to which such agency would otherwise be entitled pursuant to section 3(a) of said title I if the number of children in average daily attendance in schools of that agency eligible under said section 3(a) is less than 25 per centum of the total number of children in such schools."

Thereafter, the 54 percent limitation provided with respect to "section 3(b) students" was increased to 68 percent by a provision contained in the Second Supplemental Appropriations Act, 1973, Pub. L. 93-50, approved July 1, 1973, 87 Stat. 106, as follows:

"School Assistance in Federally Affected Areas

"The paragraph under this heading in Public Law 93-25 is amended by striking out '54%' and inserting in lieu thereof '68%.'"

It should be noted here that Pub. L. 93-50 also provides in section 301 thereof that--"No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein."

Although the Second Supplemental Appropriations Act, 1973, was passed by both bodies of the Congress prior to June 30, 1973, it was not--as indicated above--approved by the President until July 1, 1973. Consequently, since the funds provided therein could not properly be obligated for the purposes for which they were appropriated, provision was made in the Public Works for Water and Power Appropriation Act, 1974 (Pub. L. 93-97) to permit the obligation of such funds within a period of 20 days following the approval of that act (Pub. L. 93-97). Such provision, contained in section 502, reads as follows:

"Notwithstanding the provisions of sections 301 of the Second Supplemental Appropriations Act, 1973

(Public Law 93-50) appropriations contained in that Act shall remain available for obligation for a period of 20 days following the enactment of this Act into law."

The purpose of such provision was stated by Senator Bible, the manager of the appropriation bill, as follows:

"The committee has added a new section 502 under 'title V--general provisions' in the bill which provides for an extension of the availability of appropriations provided in the Second Supplemental Appropriations Act, 1973.

"Section 301 of the Second Supplemental Appropriations Act, 1973 (Public Law 93-50) reads as follows:

"No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

"Since the supplemental was not enacted until the first day after the 'current fiscal year,' agencies were technically barred from obligating some of the funds appropriated under accounts no longer available for obligation after June 30, 1973. The language in section 502 of this bill confirms the intent of Congress to allow the obligation of all funds appropriated in the supplemental, including those which technically became unavailable after June 30, 1973. For this purpose, obligations will be permitted for 20 days following the enactment of this bill. Appropriations made available for longer period will be unaffected by this section.

"It is the committee's intention that obligations made within the 20-day period allowed by section 502 shall be considered for purposes of the 1974 Continuing Resolution (Public Law 93-52), part of the 'current rate.'" (Underscoring added.)

See Cong. Rec., July 23, 1973, p. S14362.

This provision also was referred to by the committee of conference in House Report No. 93-409 wherein on page 29 it is stated that--

"Amendment No. 16: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which will permit appropriations contained in the Second Supplemental Appropriations Act, 1973 (Public Law 93-50) to remain available for obligation for a period of 20 days following enactment of this Act. This will allow the appropriations to be used only for those purposes originally contemplated in that legislation and is needed because it was not signed into law until July 1, 1973." (Under-scoring added.)

The question regarding the availability of additional funds for the impact aid program thus arises because the provision in the Second Supplemental Appropriations Act, 1973, raising the limitation on section 3(b) students from 54 percent to 68 percent, did not specifically appropriate any funds for the impact aid program as such. Nor did such act contain a provision specifically extending the availability of impact aid funds provided by the Continuing Resolution for fiscal year 1973.

While, as indicated above, the Second Supplemental Appropriation Act, 1973, did not specifically appropriate additional funds for the impact aid program, it would have authorized the obligation of additional amounts of funds theretofore appropriated for such program had it been enacted into law prior to July 1, 1973. Consequently, while not technically making an appropriation we believe such provision, by increasing the limitation on funds available for section 3(b) students during fiscal year 1973, can be considered as being at least tantamount to an appropriation of those additional funds, and thus clearly within the intent, if not the actual purview, of that provision in the Public Works for Water and Power Appropriation Act, 1974, extending the period for obligation of appropriations contained in the Second Supplemental Appropriation Act, 1973, for a period of 20 days following the enactment of the Public Works for Water and Power Appropriation Act, 1974.

Accordingly, the question on which our opinion is requested is answered in the affirmative.

Sincerely yours,

(SIGNED) JAMES B. STANTON

Comptroller General
of the United States