



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20543

B-151087

February 17, 1982

The Honorable Jim Sasser
United States Senate

Dear Senator Sasser:

This is in response to your request for us to consider the availability for obligation of certain funds appropriated in fiscal years 1978 through 1981 from the Historic Preservation Fund for the historic preservation grant program. This matter was the subject of our decision B-151087, issued on September 15, 1981, the date of your request to our Office. A copy of that decision is enclosed.

In our decision, which resulted from a request by the Department of the Interior, we concluded that the funds appropriated for the historic preservation grant program for each of the 4 years in question would not be available for obligation beyond the 2-year period specified in each appropriation act. Accordingly, funds appropriated for the program in the 1978 and 1979 fiscal years would have lapsed and been unavailable for obligation if not obligated before the end of the 1979 and 1980 fiscal years, respectively. Having reconsidered our decision as you request, it remains our view, for the reasons set forth hereafter, that the funds appropriated from the Historic Preservation Fund for each of the fiscal years from 1978 through 1981 are only available for obligation for a 2-year period including the fiscal year for which appropriated and the subsequent year.

As explained by the Department of the Interior in its original request to us for a decision, the question arose because of "an apparent conflict between portions of the authorizing legislation for the historic preservation grant program and the annual appropriation legislation for the program." The provision in the authorizing legislation, contained in section 103(b) of the National Historic Preservation Act, Pub. L. No. 89-665, 80 Stat. 915, 916 approved October 15, 1966, as most recently amended by subsection 203(a) of Pub. L. No. 96-515, 90 Stat. 2987, 2993, 16 U.S.C. § 470c(b), provides as follows:

"* * * Any amount of any portion that has not been paid or obligated by the Secretary during the fiscal year in which such notification [of each State's apportionment] is given and for two fiscal years thereafter, shall be reapportioned by the Secretary in accordance with this subsection."

By authorizing the reapportionment of funds that were not paid or obligated by the Secretary of the Interior during the 3-year period covered by the initial apportionment, this provision clearly contemplates the appropriation of monies for the historic preservation grant program on a no-year basis.

Until the 1978 fiscal year, appropriations for the grant program were in fact made on a no-year basis. However, the 1978 fiscal year appropriation for the grant program provided that the funds were "to remain available for obligation until September 30, 1979." Similar language providing for a 2-year period of availability was contained in the appropriation acts for the 1979, 1980, and 1981 fiscal years.

The Department of the Interior argued that the effect of the "new" appropriations language was to reduce the 3-year period for obligation to a 2-year period, without altering the Secretary's authority under 16 U.S.C. § 470c(b) "to reapportion for further obligation funds not obligated by the States during the two-year period." The primary reasons we rejected the Department's position are set forth below.

First, the literal language and plain meaning of the appropriation provision specifically limits the period of availability for obligation of these funds. Neither the statutory language nor its legislative history contains any indication that Congress intended to reduce the 3-year period for initial obligation to 2 years while retaining the reapportionment process.

Second, there is nothing to support the Department's view that Congress evidenced an attempt to reaffirm the reapportionment provision of 16 U.S.C. § 470c(b) when it amended other portions of that section and did not amend or delete the reapportionment sentence. Nor is the so-called "later-in-time" rule particularly helpful for the purpose of deciphering the intended meaning of language in the 1978 and 1979 appropriation acts since the 2-year period specified in the appropriation acts for 1978 and 1979 would have expired before the amendment allegedly reaffirming the intent of Congress to the contrary was enacted. These 2 years are not mentioned in the amendment or its legislative history.

Third, the appropriation acts for each of the 4 years in question contained the standard provision that none of the funds appropriated therein "shall remain available for obligation beyond

the current fiscal year unless expressly so provided herein." Our Office has consistently held that this language establishes that the provisions as to the time availability of funds in an appropriation act take precedence over other statutory provisions. See B-118638, November 4, 1974; 50 Comp. Gen. § 857 (1971); and 58 Comp. Gen. § 321 (1979). Accordingly, we reached the following conclusion in our decision:

"* * * When the express appropriation language is read in conjunction with the standard provision that funds appropriated in a particular fiscal year are only available for obligation beyond that year if expressly provided therein, the only possible conclusion, in our view, is that the funds appropriated for the historic preservation grant program for each of the four fiscal years involved are only available for obligation for a 2-year period; i.e., the year for which each appropriation was made and the subsequent fiscal year."

Your request for us to reconsider and reverse our September 15, 1981 decision appears to rest on two separate arguments. You suggest that since Congress affirmed the authority granted the Secretary of the Interior in 16 U.S.C. § 470c(b) to reapportion funds for the program on a "no-year" basis after the enactment of the appropriations for the 1978 through 1981 fiscal years, the authorizing language should take precedence. That argument was, in our view, considered in our September 15 decision, as summarized above.

Your request also raises an issue which our earlier decision did not specifically address. You suggest that the action by Congress in restoring \$1.5 million of funds for the historic preservation grant program that President Reagan had proposed to rescind should affect our position. We disagree.

In accordance with the requirements imposed by section 1012 of the Impoundment Control Act of 1974, 31 U.S.C. § 1402, President Reagan proposed in a March 7, 1981 report to the Congress to rescind a total of \$11.1 billion in budget authority previously provided by Congress. Included within that amount was a proposed \$8 million rescission of the Historic Preservation Fund appropriation. However, in the Supplemental Appropriations and Rescission Act, 1981, Pub. L. No. 97-12, 95 Stat 14, 44, June 5, 1981, Congress agreed to rescind only \$6.5 million of the funds that had been appropriated for the historic preservation grant program. The result of this legislative action

was, in effect, to "restore" to the program \$1.5 million of the \$8 million that President Reagan had proposed to rescind. The Conference Report on this legislation, H. Rep. No. 97-124, 97th Cong. 1st Sess. 59 (1981), explains the intent of Congress in this respect as follows:

"* * * The \$1,500,000 made available by this amendment is for those states that have not received their survey and planning grants."

For the following reasons, we do not believe that this action has any bearing on the legal issues involved.

The practical problem is that in approving \$6.5 million of the administration's \$8 million rescission request, Congress did not leave the Department with sufficient money to fund the program even at the level it had apparently hoped to. Prior to our decision of September 15, 1981, it appears that the Department of the Interior had been treating the funds appropriated for the 1978 through 1981 fiscal years as no-year funds that would remain available for obligation indefinitely. Therefore, the funds appropriated for the historic preservation grant program for the 1978 and 1979 fiscal years that were not obligated within the 2-year period specified in the appropriation acts for those years and which had already lapsed, were apparently erroneously viewed by the Department as remaining available for obligation during the 1980 and 1981 fiscal years, respectively. It is our understanding that as a result of the Department's interpretation it may have obligated more moneys than were actually available to it in fiscal years 1980 and 1981, thereby placing the Historic Preservation Fund in a "Antideficiency Act" posture for those years. Presumably, the 1981 obligations included the \$1.5 million in fiscal 1981 funds that were restored to the program by Congress. It appears that before our decision of September 15 was issued, the Department of the Interior had already obligated that \$1.5 million as well as all of the other moneys properly available to the Department in fiscal year 1981 for the historic preservation grant program. After our decision was issued the Department had no choice other than the immediate suspension of the program, if it had not already done so, to the extent necessary to insure that the amount of any deficiency was not increased.

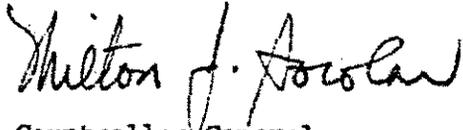
Viewed from this perspective, the action by Congress in restoring \$1.5 million of the fiscal 1981 appropriation for the program cannot be seen as having any impact on the conclusion in our September 15 decision that the funds appropriated for the program in the 1978 and 1979 fiscal years were no longer available for obligation. In other

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words, since our decision was based on the 1978 and 1979 appropriation language that limited the period of availability of these funds, the action by Congress in connection with the 1981 appropriation should have no bearing on it. Furthermore, there is nothing in the legislative history of the Supplemental Appropriations and Rescission Act, 1981 to suggest that by restoring \$1.5 million of 1981 fiscal year funds Congress intended to in any way increase or otherwise alter the period of time during which funds appropriated for the program in prior years would remain available for obligation.

In accordance with the foregoing, our decision B-151087, September 15, 1981, is affirmed.

Sincerely yours,

for 
Comptroller General
of the United States

Enclosure