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John Connolly  
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**DECISION**

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

FILE: B-176994

DATE: MAR 7 1977

MATTER OF: Mississippi's matching contributions to the  
National School Lunch Program

DIGEST: Due to the large number of free and reduced-price lunches served and the low cost of preparing the same, the State of Mississippi did not meet Federal matching requirement mandated by the National School Lunch Act (42 U.S.C. § 1751 et seq.), for fiscal year 1975. Since the Congress has subsequently enacted legislation which would prevent the reoccurrence of this problem and since a contrary result would withhold from the State those Federal funds to which it would otherwise have been entitled, we will not object to the Department of Agriculture's determination not to require repayment of 1975 funds in order for Mississippi to comply with the matching requirements of the Act.

This decision to the Secretary of Agriculture is in response to a submission by Assistant Secretary Richard L. Feltner seeking our concurrence to the Department's proposal to waive the State of Mississippi's obligations under the National School Lunch Program.

In this submission the Assistant Secretary advises that:

"The Mississippi State Educational Agency, in the administration of the National School Lunch Program in that State, failed by \$2,752,460 to meet a State-to-Federal matching requirement of the program for fiscal year 1975. Because of a set of conditions unique to Mississippi, it is the only State that did not meet this requirement. Section 210.6(i) of the USDA's Food and Nutrition Service regulations (7 CFR Part 210) governing this program requires that a State must return the amount of funds under this matching requirement that it fails to match. In this instance, that amount would be \$1,284,023. We recommend for reasons presented in this letter that Mississippi be absolved of any obligation to return these funds and we seek your concurrence. \* \* \*

"Mississippi failed to meet this matching requirement because a high percentage of free and reduced-price lunches was served in that State and the

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average cost of producing a lunch was kept at a minimum. With Section 4 and Section 11 funds meeting nearly all of the costs of producing free and reduced-price lunches in Mississippi, the State had to rely mainly on State, local and child support for paid lunches to meet the matching requirement. This, combined with their low cost of producing a lunch of 66.4 cents, meant they could not meet their matching requirement without (1) decreasing the percentage of free and reduced-price lunches served, (2) raising the cost of producing the average lunch, or (3) reducing their use of Section 11 funds by \$2,752,460 and replacing it with State, local and child payment support (thus reducing the average Section 11 reimbursement from 50.9 cents to 44.9 cents). None of these alternatives is consistent with the intent of Congress."

In an attachment to the Assistant Secretary's letter the Department explains these three alternatives and the reasons it opposed them. The first alternative is to alter the rates of participation in the program by changing the eligibility standards therefor or by not providing any reduced-price lunches. The Department suggests that to cover the deficit, the State might have to increase the number of paid lunches served by nearly 9 million (less than 25 million are currently served) without increasing the number of free or reduced-price lunches served. It states that the alternative is both unrealistic and potentially detrimental to the school lunch program in Mississippi and in contravention of the thrust of recent congressional actions broadening support of this program.

The second alternative is disliked by the Department since Mississippi would have to increase its expenditures, currently 66.40 cents per lunch, by 3.88 cents per lunch to cover the deficit in contravention of the principle that economy of operation in producing nutritional lunches at a relatively low cost should be encouraged.

The third alternative suggested is that the State could forego some of its section 11 funds (6 cents per lunch) and replace them with State and local funds, including child payments. The Department states that the likely effect of this alternative is to harm those schools serving the highest percentage of needy children, an undesirable result. We note that the first two alternatives would not be available for Mississippi's fiscal year 1975 program.

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Food and assistance payments to State educational agencies for agricultural commodities and other foods necessary to serve a nutritious school lunch are authorized by section 4(c) of the National School Lunch Act, 41 U.S.C. § 1753 (Supp. IV, 1974). That section mandated a payment to the States based in part on the number of lunches served to children in schools which participate in the school lunch program. Section 11 of the Act (42 U.S.C. § 1759a (Supp. IV, 1974)) directs the United States Department of Agriculture (USDA) to make additional special cash assistance payments to State educational agencies to enable them to serve free and reduced-price lunches to children eligible for these benefits under criteria established by section 9 of the Act (42 U.S.C. § 1753 as amended). The amount of the special cash assistance payment to each State is determined by multiplying the number of free and reduced-price lunches served to eligible children by a special assistance rate prescribed by the Secretary. The statute proscribes a minimum Federal payment of not less than 45 cents per free lunch and 10 cents less than the free lunch rate for reduced-price lunches; the actual amount of the Federal payment varies with the Consumer Price Index. Thus, the amount of the Federal payment is linked to the number of eligible children served free or reduced-price lunches.

Prior to the enactment of Pub. L. No. 94-105, 89 Stat. 516, on October 7, 1975, section 7 of the National School Lunch Act, 42 U.S.C. § 1756 (1970), required that each dollar of Federal funds used under sections 4 and 5, 42 U.S.C. § 1753 and 1754 (Supp. IV, 1974) had to be matched with three dollars from sources within the State, except that proportionate adjustments are made when the per capita income of a State fell below the national average per capita income. The rate of Mississippi with its low average income was approximately 2.14 to one for fiscal year 1975. See 7 C.F.R. § 210.6(a).

According to the submission, the increase of Federal support during the last 6 years for free and reduced-price lunches and the rising percentage of children receiving those lunches have created a situation which makes it difficult for a State such as Mississippi with a low average cost of producing a lunch to meet the matching requirement. In the last five years approximately forty percent of lunches served nationally under this program were free or reduced-price.

In Mississippi, Federal funds supported nearly all of the costs related to free and reduced-price lunches. The Federal payment has risen to a current rate of 56.75 cents per each free lunch. The

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approximate cost of lunches served in Mississippi is 66.40 cents each. Hence, because the percentage of free and reduced-price lunches were a large enough part of the total number of lunches served, there were not enough expenses not covered by Federal funds left for Mississippi State and local funds and services to meet the matching requirement.

The submission indicates that the possibility of this problem occurring has been known by the Food and Nutrition Service (FNS) for more than 2 years and that it was recognized that legislative change was the most practical means to alleviate it. In response to this problem, Congress passed section 5 of Pub. L. No. 94-105, supra, which amended section 7 of the National School Lunch Act, 42 U.S.C. § 1756 (Supp. V, 1975), to change the matching requirement to cover only those lunches served to paying children. As amended, section 7 of the National School Lunch Act states:

"The requirement in the section that each dollar of Federal assistance be matched by \$3 from sources within the State (with adjustments for the per capita income of the State) shall not be applicable with respect to the payments made to participating schools under section 4 of this Act for free and reduced price lunches: Provided, That the foregoing provision shall not affect the level of State matching required by the sixth sentence of this section."

The Congressional intent of the above-quoted provision is indicated by the following:

"(a) Matching requirement (Sec. 5): The bill makes a change in the \$3 to \$1 State to Federal matching ratio set forth in section 7 of the National School Lunch Act. Historically, the \$3 'State' share has been predominantly from children's payments. However, due to the increasing proportion of free and reduced price meals being served, there has developed in a number of States a shortage of State matching dollars. The new provision eases the \$3 to \$1 matching requirement with respect to meals served free or at a reduced price. The change does not increase the Federal expenditure of funds either for free or for paid lunches; nor does this provision in any way reduce the matching requirements for State appropriations.

"Moreover, the Committee intends that no State shall lose Federal funds because of the amount of funds appropriated by State governments for school meals. States would have maximum flexibility in using section 4 funds and State funds as a means of reaching the paying child." S. Rep. No. 94-239, 94th Cong., 1st Sess., p. 18 (1975).

The Senate Report also stated the following:

"The National School Lunch Act presently requires States, in general, to match every dollar of Federal funds received under section 4 of the National School Lunch Act (general food assistance payments) with \$3 of State and local funds. Section 5 waives the matching requirement with respect to the amount of general food assistance payments received by a State with respect to free or reduced-price lunches. However, the level of State revenues, required by section 7 of the Act to be appropriated or utilized specifically for program purposes for any fiscal year could not be reduced, but would be computed without regard to the waiver affected by this section." S. Rep. No. 94-259, *id.* at 28. See also H.R. Rep. No. 94-68, 94th Congress, 1st Sess. 11 (1974).

It is apparent from the above that the Congress enacted this section in anticipation of the problem which now confronts the State of Mississippi. However, Pub. L. No. 94-105 was enacted and became effective too late to afford relief to Mississippi for the 1975 fiscal year. With respect to the timing, the Assistant Secretary states that this provision was enacted with the concurrence of the Department but that:

"Unfortunately, though the legislation was introduced in both Houses in sufficient time to resolve the issue for fiscal year 1975 as intended, other more comprehensive provisions elicited considerable debate which delayed final passage until fiscal year 1976. Furthermore, there was no retroactive clause included in the new law. The effect of this was that Mississippi would have no relief for fiscal year 1975."

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It was the controversial nature of the Act as a whole (which was enacted over the President's veto) rather than of this section which delayed enactment of this provision.

Mississippi is the only State that did not meet the matching funds requirement of the Act prior to the enactment of Pub. L. No. 94-105, and, of course, this situation will not arise again in the future. The submission states that Mississippi is caught between the three-to-one matching requirement and the legislative mandate to maximize the participation of needy children in the school lunch program. It noted that Mississippi had used the funds to carry out the program and asserts that, for the reasons discussed above, any remedy, other than absolving the State of any debt, would be detrimental to the State's school lunch program and inconsistent with the intent of Congress.

Normally, we would have to conclude that whatever the circumstances, since the then current version of section 7 conditioned Federal payment on the State's complying with the three-to-one matching requirement, Mississippi could not be absolved from repaying the funds here involved. However, we recognize the unusual and one-time-only nature of the instant situation and that the Department of Agriculture believes that it would be disruptive to the school lunch program in Mississippi and inconsistent with the intent of Congress--in enacting section 5 of Pub. L. No. 94-105--for the State to have to repay these funds.

In view of these factors, the good faith efforts of the State to implement this program, and the fact that Congress upon learning of the problem enacted legislation to assure that no State would be caught in this situation, in the future, we will not object if the Department declines to effect collection action against the State on account of its failure to meet the matching requirement in fiscal year 1975 due to a combination of the high number of free and reduced-price meals served and the low cost of meal preparation. We note that to hold otherwise would require Mississippi to give up Federal payments under sections 4(c) and 11 to which--except for conditions unique to it--it would otherwise have then been entitled and to which it would be entitled under current law.

*R.F. KELLER*

Acting

Comptroller General  
of the United States