

Mr. Parson  
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**DECISION**

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

**FILE:** B-200778

**DATE:** June 19, 1981

**MATTER OF:** Department of Interior—Office of Surface Mining—  
Authority to Pay for Costs Not Part of Original Award

**DIGEST:** Under Section 502(e)(4) of Surface Mining Control Act of 1977, 30 U.S.C. § 1252(e)(4), Secretary of the Interior is authorized to reimburse states for interim enforcement program costs not covered in prior grant award so long as payments are from currently available appropriations. Budget change to allow grant costs questioned solely because they exceed condition on budget flexibility, may be allowed under existing obligation where change does not affect purpose or scope of grant award.

A certifying officer for the Office of Surface Mining (OSM), Department of the Interior, has requested our decision concerning payment of certain costs incurred by the Ohio Department of Natural Resources (the State) in carrying out provisions of the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87, 91 Stat. 4, approved August 3, 1977, 30 U.S.C. 1201 et. seq. (Supp. III, 1979) (the Act). As explained below, we conclude that the Secretary of the Interior has authority to reimburse the State for costs incurred in conducting inspections enforcing the Act under an interim enforcement program. He may do so out of current appropriations and is not limited to the amounts previously obligated or budgeted under grant documents covering the period in which the costs were incurred.

According to the certifying officer, on July 26, 1978, the Office of Surface Mining issued the State, under section 502(e)(4) of the Act, 30 U.S.C. § 1252(e)(4), an interim regulatory grant of \$370,541.75 for a budget period, as subsequently amended, of August 3, 1977 to February 28, 1979. In June 1979, after the grant period had ended, an audit disclosed that the State had incurred \$490,640 in grant costs. The auditors found that all of these costs were eligible for reimbursement under the program, but questioned costs in excess of the award (\$120,098) and costs (\$62,404) where the grantee had exceeded its approved budget flexibility without prior OSM approval. The State has since submitted an amended application covering the original budget period with an enlarged budget request of \$487,317 or \$116,775 in excess of the original grant amounts. (We do not know why the State did not request the total \$490,640.) In November 1979, OSM approved the budget changes that exceeded the budget flexibility previously given the State.

The certifying officer has asked the following specific questions:

- "1. Was it proper to approve the amended grant budget and its payment to the State of Ohio proper for the additional \$116,775?

[State Reimbursement For Costs Incurred in Enforcement of Surface Mining Control and Reclamation Act of 1977]  
017328

- "2. If not, would it be proper for the State of Ohio to apply for a new grant for \$116,775 of additional costs incurred during the period August 3, 1977, through February 28, 1979?
- "3. If the after-fact approval of Ohio's grant budget is not allowable, should OSM pursue collection of \$62,404 from the State of Ohio for the difference between the audit report's eligible costs of \$308,138 and the grant payments of \$370,542?"

The certifying officer summarizes the issue in this case as--

"\* \* \* whether or not a State can be reimbursed for incurred interim program allowable costs which are in excess of the total funds specified in the grant agreement."

He goes on to note that his concern about payments in excess of the original grant award stems from several of our decisions including 39 Comp. Gen. 296, 298 (1959).

#### The Addition of \$116,775 to the Grant

Normally grant programs are designed to provide grantees with advance funding rather than reimbursements. The award under such grants creates a fixed obligation against which the grantee is able to keep from the advanced funds the allowable costs it incurs under the grant. When the grantee's costs exceed the amount of the grant award, the grantee may only be paid for such costs if there is a supplemental or new award that creates an obligation sufficient to cover the excess costs. If such a supplemental award is made from an appropriation that became available only after the original grant appropriation had ceased to be available, the supplemental award must meet the needs of the appropriation available for obligation at the time the supplemental award is made. The guiding principle in deciding whether an obligation is proper in such situations is the extent to which Congress gave the Government authority to pay costs incurred during the period in question. See 56 Comp. Gen. 31 (1976); B-197699, June 3, 1979.

In the instant case, the grant to the State was made under Section 502(e)(4) of the Act, 30 U.S.C. § 1252(e)(4) which provides:

"(e) Within six months after the date of enactment of this Act, the Secretary shall implement a Federal enforcement program which shall remain in effect in each State as surface coal mining operations are required to

comply with the provisions of this Act, until the State program has been approved pursuant to this Act or until a Federal program has been implemented pursuant to this Act. The enforcement program shall—

\* \* \* \* \*

"(4) provide that moneys authorized by section 712 shall be available to the Secretary prior to the approval of a State program pursuant to this Act to reimburse the State for conducting those inspections in which the standards of this Act are enforced and for the administration of this section." (Emphasis supplied.)

This section clearly authorizes the Secretary to reimburse States even for interim program costs not covered by a grant agreement when they were incurred. While it may be administratively sound for OSM and financially prudent for the State to agree upon the program before the project is implemented, section 502(e)(4) permits the Secretary to look back at the project and determine what costs he will allow even without a prior commitment. Accordingly, in the case presented, OSM may reimburse the State for any allowable costs attributable to the interim enforcement program since the language of section 502(e)(4) provides a clear statutory basis for such payments. On the other hand, since section 502(e)(4) only makes money available to the Secretary to reimburse the States, this section does not create a right in the States to reimbursement. Accordingly, the Secretary also has discretion under section 502(e)(4) not to reimburse the State for those costs that exceed the existing project award.

The issue that remains concerning the funds to be added to the program is not whether the Government is authorized to take the contemplated action, but which appropriation will be charged with the additional obligation resulting from the new award of funds to the State. The appropriation under which the original grant award in this case was made is no longer available for obligation. The fiscal year 1979 appropriation to carry out programs under the Act, 92 Stat. 1286, expired on September 30, 1979. Section 308, Pub. L. 95-465, 92 Stat. 1303, October 17, 1978. Any additional obligations for the State's interim program will have to come from currently available appropriations.

The decisions that cause the certifying officer concern, such as 39 Comp. Gen. 296, supra, involve cases where changes in grants occurred after the appropriation under which they were made had ceased to be available for obligation. See also, 58 Comp. Gen. 676 (1979); 57 id. 459 (1978); 57 id. 205 (1978). As we said at 57 id. 460 supra:

B-200778

"It is well established that agencies have no authority to amend grants so as to change their scope after the appropriations under which they have been made have ceased to be available for obligation."

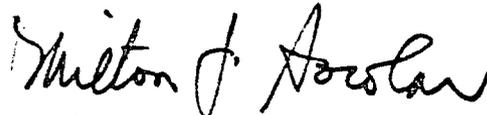
By extension, agencies with program authority can change the scope of grants if current appropriations are used.

#### The Changes in the Grant Budget

These decisions also have relevance to the certifying officer's question concerning the post-audit approval of changes in grant budgets that do not involve the addition of funds after the period in which the original obligation was made, and which the Government could have approved if prior approval had been sought. However, under normal circumstances this is not the kind of change that affects the scope or purpose of a grant so that the cited decisions would not preclude its approval. On the basis of the facts in this case we see no reason to conclude that the changed budget affects the scope or purpose of the original award. Consequently, the original obligation can be applied to the \$62,404 of questioned costs that were approved in the amended grant budget.

#### Conclusion

We conclude with respect to the two aspects of the certifying officer's first question that (1) the \$62,404 budget change approved after the grant budget period had ended may be allowed under the existing obligation and (2) payments to the State of the additional \$116,775 of allowable costs requested and not already the subject of an award are within the discretion of the Secretary of Interior or those to whom he has given his authority to act so long as they are made from currently available appropriations. Such payments may be made under amendments to the original grant documents or under a new application so long as the payments conform to the regulations adopted by the Department of Interior for this program.



Acting Comptroller General  
of the United States