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

10,621

FILE: B-118370 DATE: June 29, 1979

MATTER OF: Administrative costs limitation; Pittman-Robertson, Dingell-Johnson Acts

DIGEST: The 3 percent administrative overhead and indirect cost limitations of the Pittman-Robertson and Dingell-Johnson Acts, 16 U.S.C. §§ 669e(c) and 777e (c) respectively, apply to costs incurred by an agency or department--a central service activity--of the State whose functions include regularly performing services not for its own constitutent elements but all agencies of the State. Therefore, they do not apply to costs incurred by the Colorado Department of Natural Resources (DNR) in providing services to its Division of Wildlife even though the Division may exercise control over its programs, since for administrative purposes it is a part of DNR and any services provided by DNR to it are of an intra-departmental nature.

Title

This decision is in response to a request from the Deputy Solicitor, Department of the Interior for an interpretation of two laws prescribing a limitation on overhead or indirect costs assessed for State central services to grantee agencies. His letter describes the problem as follows:

"We would appreciate your advice on the interpretation of a provision of concern to this Department's Fish and Wildlife Service (FWS) Federal Aid program, under the Pittman-Robertson and Dingell-Johnson Acts, 16 U.S.C. § 669 et seq. and § 777 et seq., respectively. Section 6(c) of the Pittman-Robertson Act, 16 U.S.C. § 669e(c), provides: [footnote omitted]

> 'Administrative costs in the form or overhead or indirect costs for services provided by State central service activities outside of the State agency having primary jurisdiction over the wildlife resources of the State which may be charged against programs or projects supported by the fund established by Section 669b of this title shall not exceed in any one fiscal year 3 per centum of the annual apportionment to the State.' [Emphasis added.]

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"The problem that has arisen is caused by the recent trend of several states (including Colorado which gives rise to this request) to create a new administrative agency called the Department of Natural Resources (DNR), under which are placed several subordinate agencies, including the Division of Wildlife and the Division of Parks. In the case of Colorado, by statute, 1977 C.R.S. § 24-1-105, and § 24-1-124(3)(h), it would appear that the Division of Wildlife is 'the State agency having primary jurisdiction over the wildlife resources of the State' for purposes of 16 U.S.C. § 669e(c).

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"The State of Colorado's Division of Wildlife is assessed overhead and indirect costs by its parent agency, DNR. In addition, DNR passes on to the Division of Wildlife certain state central service activity costs which are assessed against DNR for costs attributable to DNR and its constituent agencies.

"Colorado's Division of Wildlife contends that all indirect and overhead costs assessed against it are per se 'outside of the State agency having primary jurisdiction over the wildlife resources of the State' and therefore must be subject to the three percent limitation imposed by section 6(c) of the Pittman-Robertson Act.

"On the other hand, this Department's Office of Audit and Investigation believes that while those indirect and overhead costs assessed against the Division of Wildlife are for services provided outside of the agency having primary jurisdiction over wildlife resources, they fail to meet the other statutory criterion, namely that they be provided 'by State central service activities.'

"Prior to the reorganization in Colorado, the agency having primary jurisdiction over wildlife was the Department of Game, Fish, and Parks, directly under the Governor's office. Thus, any indirect and overhead costs billed to that agency were provided by state central service activities and were outside the agency having primary jurisdiction over wildlife. As a result of the reorganization, certain functions of the Department of Game, Fish, and Parks were removed to the DNR. Consequently, if the DNR were not performing those functions, primarily administrative activities, the Division of Wildlife itself would have to perform them and 16 U.S.C. § 669e(c) would not appear to impose a direct limitation on the extent of these expenditures.

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"We would therefore appreciate your advice as to whether the three percent limitation in section 6(c) of the Pittman-Robertson/Dingell-Johnson Acts, 16 U.S.C. §§ 669e(c) and 777e(c), applies at the Division of Wildlife level, so that all overhead and indirect costs charged to that agency are limited, or at the DNR level, so that only those costs provided by 'State central service activities' are subject to the limitation."

Section 6(c) of the Dingell-Johnson Act, 16 U.S.C. § 777e(c), in language essentially identical to that in the Pittman-Robertson Act, except that it applies to the State fish and game department rather than the State agency with jurisdiction over wildlife resources, provides that:

"Administrative costs in the form of overhead or indirect costs for services provided by State central service activities outside of the State fish and game department charged against programs or projects supported by funds made available under this chapter shall not exceed in any one fiscal year 3 per centum of the annual apportionment to the State." Emphasis added.

Sections 6(c) of both the Pittman-Robertson and the Dingell-Johnson Acts were added by the Federal Aid to Fish and Wildlife Restoration Act Amendments of 1970, Pub. L. No. 91-503, §§ 102 and 202, October 23, 1970, 84 Stat. 1099, 1102. In explaining the purpose of section 6(c) of the Pittman-Robertson Act, to be added by the 1970 amendments, the House Committee on Merchant Marine and Fisheries said:

"Subsequent to the Subcommittee hearings on the legislation, the International Association of Game, Fish, and Conservation Commissioners advised the Subcommittee of its concern over Bureau of the Budget Circular--No. A-87--issued in May of 1968 [now Federal Management Circular 74-4]. The Circular established rules and regulations for determining costs applicable to Federal grants and contracts with State and local government. It applied: to all Federal agencies responsible for administering such programs and was designed to provide the basis for a uniform approach to the problem of determining costs and, at the same time, promote efficiency and better relationships between grantees and their Federal counterparts. The principles to be followed in determining costs were to be applied at the earliest practicable date, but not later than January 1, 1969, with respect to State governments, and January 1, 1970, with respect to local governments.

"Upon investigation, your Committee determined that under the new regulations indirect costs could amount to as much as 15 to 20 percent of the total costs of a project. Naturally, this would result in Federal funds being used for administrative costs that ordinarily would have been used for acquisition of lands and field work. Upon further investigation, your Committee discovered that there had been little experience on which to measure the effects of Circular No. A-87. Several of the States polled indicated indirect costs were running around 1 percent of the total funds apportioned to the State; another State indicated its rate was a flat 2 percent of such funds.

"In view of the foregoing, your Committee determined that a reasonable limitation should be placed on the amount of administrative costs--in the form of overhead or indirect costs for services provided by State central service activities outside of the State agency having primary jurisdiction over the wildlife resources of the State--which may be charged against programs or projects supported by the fund established under Section 3 of this Act (Pittman-Robertson fund).

"Accordingly, your Committee added a new subsection (c) to Section 6 of the Act to provide that indirect * * * [charges] could not exceed 3 percent of the annual apportionment of such funds to the State in any one fiscal year." (Emphasis supplied, H.R. Rep. No. 91-1272, pp. 11-12 (1970)).

The Committee explained the purpose of section 6(c) of the Dingell-Johnson Act as follows:

"* * * a new subsection (c) would provide that indirect charges could not be deducted from the annual apportionment of funds to a State in any one fiscal year in excess of 3 percent. (See Section 6 of Title I of the bill [quoted above] for further explanation of these changes.)" H.R. Rep. No. 91-1272, p. 14 (1970). See also S. Rep. No. 91-1284, pp. 7 and 9 (1970), and statement of Representative Dingell during debate on the 1970 amendments, 116 Cong. Rec. 24962-24963 (1970).

The Colorado Department of Natural Resources, to which the Deputy Solicitor refers, was created by the Colorado Administrative Organization Act of 1968, which established a number of divisions in DNR by transfers of the duties and functions of existing State agencies.

Among the divisions was the--

> "Division of wildlife, the head of which shall be the director of the division of wildlife. The division of wildlife, the office of director thereof, and the wildlife commission, created by article 1 of title 33, C.R.S. 1973, and the powers, duties, and functions thereof concerning game and fish are transferred by a type 1 transfer to the department of natural resources as the division of wildlife." C.R.S. 1973, 24-1-124(3)(h).

A "type 1 transfer" is explained in C.R.S. 1973, 24-1-105(1):

> "Under this article, a type 1 transfer means the transferring intact of an existing department, institution, or other agency, or part thereof, to a principal department established by this article. When any department, institution, or other agency, or part thereof, is transferred to a principal department under a type 1 transfer, that department, institution, or other agency, or part thereof, shall be administered under the direction and supervision of that principal department, but it shall exercise its prescribed statutory powers, duties, and functions, including rule-making, regulation, licensing, and registration, the promulgation of rules, rates, regulations, and standards; and the rendering of findings, orders, and adjudications, independently of the head of the principal department. Under a type 1 transfer, any powers, duties, and functions not specifically vested by statute in the agency being transferred, including, but not limited to, all budgeting, purchasing, planning, and related management functions of any transferred department, institution, or other agency, or part thereof, shall be performed under the direction and supervision of the head of the principal department."

While a definitive determination of the relationship of one State body to the other should come from the Attorney General or other appropriate State authority, we offer the following observations. Based on our reading of the Colorado Statute, the program functions of the Division of Wildlife do not appear to be under the control of the head of the principal agency (DNR) (see State Highway Commissioner of Colorado v. Haase, 537 P. 2d 300 (Sup. Ct. Col. (1975)); only administrative support functions are apparently under the direction and supervision of the principal agency (DNR). Consequently, if this interpretation is correct, there is support for the contention that the Division of Wildlife, rather than DNR, is the "State agency having primary jurisdiction over the wildlife resources of the State" under the Pittman-Robertson Act, 16 U.S.C. § 669e(c).

Furthermore, both the Pittman-Robertson and Dingell-Johnson Acts define the term "State fish and game department" to mean:

> "any department or division of department of another name, or commission, or official or officials, of a State empowered under its laws to exercise the functions ordinarily exercised by a State fish and game department." 16 U.S.C. §§ 669a and 777a(d) (1976), emphasis added.

Thus, there is also support for the contention that "State fish and game department" as used in section 6(c) of the Dingell-Johnson Act, 16 U.S.C. § 777e(c) should be construed to mean the Division of Wildlife.

However, the 3 percent limitations refer to "administrative costs in the form of overhead or indirect costs for services provided by State central service activities." Unless the parent department performs nothing but Pittman-Robertson and Dingell-Johnson Act functions, there obviously will be administrative costs in the nature of indirect costs and overhead that will have to be allocated among the various programs within the department, no matter what its size or functions. It is inherent in the nature of a multi-purpose agency to provide its constituent elements some form of centralized administrative services. However, from the language of the statutory limitations and the legislative history of the two Acts, it was not these costs that the Congress sought to limit.

The kind of costs which are contemplated by the limitations are those incurred by an agency or department of the State--a "central service activity"-- whose functions include regularly performing services not for its own constituent elements but for all agencies of the State. Otherwise, it would not be a State central service activity, but merely a Departmental central service activity. (One agency in Colorado which appears to fit the description of a central service activity is the Department of Administration. See C.R.S. 1973, 24-1-116.) Thus, if our interpretation of Colorado law is correct, even though the Division of Wildlife may exercise control over its programs, for administrative purposes it is a part of DNR, and any service provided by DNR to it is of an intra-departmental nature, not to be considered as being provided by a State central service activity. Only those costs provided by such central service activities are subject to the 3 percent limitation.

T. F. Keller

Acting Comptroller General
of the United States