



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

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B-130515

AUG 11 1970

Dear Mr. Chairman:

By letter dated May 4, 1970, you requested our opinion as to whether the Office of Economic Opportunity (OEO) can legally fund the Opportunity Funding Corporation (OFC) under Title I-D of the Economic Opportunity Act, as added by section 103 of Public Law 90-222, approved December 3, 1967, 81 Stat. 688, 42 U.S.C. 2763 et. seq. (Supp. V) and whether such funding carries out the intention of the Congress in authorizing and funding OEO programs.

On June 29, 1970, OEO funded OFC by a grant from I-D funds in the amount of \$3,900,000. Earlier, on June 26, 1970, OEO used \$3,500,000 to fund a Pilot Program for the Corporation out of funds authorized by section 232 of the Economic Opportunity Act, 42 U.S.C. 2825 (Supp. V), which we understand will finance the administrative expenses of OFC and innovative projects outside of special impact areas.

The OFC is a nationally based not for profit corporation organized under the laws of Delaware with its principal place of business in Washington, D.C. It is contemplated that through a wide range of projects OFC will draw on the resources of the private sector to aid in financing local economic development projects. Specifically, it will undertake programs designed to gauge the feasibility of drawing on the financial resources of the private sector to better the lot of low-income people by adapting tools proven in other areas. It proposes to utilize guarantees, rediscounts, incentive arrangements and capital protection devices to increase the flow and use of private capital and credit in low-income communities. The activities of the corporation are not intended to be in lieu of or to duplicate any existing private or public services currently being rendered in the localities selected but will supplement and complement existing efforts.

While section 304 of the Government Corporation Control Act, approved December 6, 1945, ch. 557, 59 Stat. 602, 31 U.S.C. 869(a) precludes on or after December 6, 1945, the formation of corporations by agencies of the Government for the purpose of acting as an agency or instrumentality of the United States, we have been advised by OEO and a review of the grant documents show that the legal relationship between OEO and OFC is that of grantor and grantee rather than that of an agent. The OFC is wholly independent of OEO and is not a Government corporation or an agent or instrumentality of the Government. The creation of the OFC for the

purpose of carrying out OEO programs is therefore not in violation of the Government Corporation Control Act nor of any other provision of law of which we are aware.

In reaching a conclusion as to the legality of funding OFC under Title I-D our sole consideration must be whether OFC is designed to meet the requirements of Title I-D and the intention of the Congress in enacting the Economic Opportunity Act, as amended. Matters involving the wisdom of such funding or the administrative practicalities of such funding--while of legitimate concern to the Congress and appropriate for consideration in the audit by our Office--will not be determined in this opinion.

The language and legislative history of Title I-D evidence a clear intention that the Special Impact programs authorized to be financed thereunder are to be directed toward particular communities, involve insofar as practicable the inhabitants of the locations selected and afford sufficient financial aid to have an appreciable impact in arresting tendencies toward dependency, chronic unemployment and rising community tensions in the communities chosen. Subsection 152(a) of Title I-D, 42 U.S.C. 2755(a) specifically provides that the Director of OEO shall not provide assistance for any Title I-D program unless he determines that:

"(1) all projects and related facilities will, to the maximum feasible extent, be located in the area served;

"(2) projects will, where feasible, promote the development of entrepreneurial and management skills and the ownership or participation in ownership of assisted businesses by residents of the area served;

"(3) projects will be planned and carried out with the maximum participation of local businessmen by their inclusion on program boards of directors, advisory councils, or through other appropriate means;

"(4) the program will be appropriately coordinated with local planning under this chapter, the Demonstration Cities and Metropolitan Development Act of 1966, and with other relevant plans for physical and human resources of the areas served;

* * * * *

"(6) preference will be given to the residents of the areas served in filling jobs and training opportunities; and

"(7) training programs financed under this part shall be designed wherever feasible to provide those persons who successfully complete such training with skills which are also in demand in communities or neighborhoods other than those for which programs are established under this part."

See also S. Rept. No. 563, 90th Cong. 32-34 and H. Rept. No. 1012, 90th Cong. 66-67.

Item 25 of the Special Conditions to the grant requires that there must be OEO concurrence with OFC proposed programs and item 26 provides, with specific annotations to the appropriate sections of Title I-D, that OFC programs must meet the requirement of those sections in establishing programs. Thus, the very specific powers and responsibilities detailed for the Director of OEO in Title I-D remain with him in his concurring role under item 25. This is the same procedure used by OEO with other Title I-D grantees in meeting its responsibility of administering I-D funds. We therefore are of the opinion that the organization of OFC was not inconsistent with the detailed oversight requirements set for the Director of OEO in Title I-D. Neither can we conclude that the programs here proposed are clearly outside the scope of the extremely broad language used in Title I-D of the OEO act. The practicality of OFC meeting all the requirements of I-D is another matter, it appearing that OFC "projects" will be geared more to inducing the involvement of existing private credit sources than to affording debt free seed capital to impact area businesses.

There is a question however as to whether it would not have been more appropriate to finance these programs with funds authorized for pilot and demonstration projects under section 232 of the OEO act. In enacting section 232 the Congress recognized that new approaches and methods will be needed to be tested and assisted to overcome special problems in the War on Poverty. See H. Rept. No. 866, 90th Cong. 52-53; S. Rept. No. 563, 90th Cong. 96; and H. Rept. No. 1012, 90th Cong. 78. It seems to us that the proposed programs of OFC are the type of programs specifically contemplated by the section 232 authority. The following documentation of the innovative character of OFC programs supports this position:

(1) The undated OEO publication Opportunity Funding an economic development demonstration program on page 3 acknowledges that "the new program being undertaken (OFC) * * * aims to test the effect of strengthening the financial institutions of low income communities as a supplement to the Agency's current economic development activities * * *."

(2) OEO funded the pilot OFC with section 232 funds

(3) The OFC grant specifically states that its purpose is to "gauge the feasibility of drawing on the financial resources of the private sector to better the lot of low-income people."

(4) In a letter to our Office dated July 9, 1970, OEO advised that "These projects are intended, in addition to supplying immediate benefits to the target areas, to assist in gauging the effectiveness of different delivery systems, different techniques and the results of similar techniques under various circumstances."

While as hereinabove indicated the use of Title I-D funds is not illegal, we do believe that the use of section 232 funds would be more consistent with congressional intent.

We understand that your Subcommittee contemplates hearings in the near future on Special Impact programs of OEO. We think there is a real need for the development of criteria for determination of the types of programs to be financed with Title I-D funds and those to be financed with section 232 funds and suggest that this matter be considered during those hearings. The development of such criteria is essential to assure compliance with the mandate of subsection 102(b) of the Economic Opportunity Amendments of 1969, Public Law 91-177, approved December 30, 1969, 42 U.S.C. 2702(b), authorizing specific amounts to be spent on the various OEO programs.

ELMER B. STAATS
 COMPTROLLER
 GENERAL
 UNITED STATES DEPARTMENT OF
 COMMERCE

Sincerely yours,

(SIGNED) ELMER B. STAATS

Comptroller General
 of the United States

The Honorable Gaylord Nelson, Chairman
 Subcommittee on Employment, Manpower
 and Poverty
 Committee on Labor and Public Welfare
 United States Senate