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Bill Phillips
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DECISION

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

FILE: B-180617 DATE: February 9, 1977

MATTER OF: Status of Transit authorities as State agencies or instrumentalities under Intergovernmental Cooperation Act of 1968

DIGEST: 1. Federal grantor agencies should follow State law in determining whether transit authorities are State instrumentalities, and therefore permitted to retain interest earned on Federal grants, or political subdivisions of State, which may not retain such interest, pursuant to section 203 of Intergovernmental Cooperation Act of 1968. Bureau of Census classification or other reasonable criteria may be used to determine status of transit entities in absence of State guidance. Neither Act nor its legislative history requires Bureau of Census classifications to be followed.

2. State entities are entitled to retain interest earned on Federal grants from October 16, 1968, the effective date of section 203 of the Intergovernmental Cooperation Act of 1968 that so provides, or from the date its status as a State entity was created, if later.

We have been asked by the Acting Chief Counsel of the Urban Mass Transportation Administration (UMTA), of Department of Transportation whether certain transit operators are entitled not to be held accountable for interest earned on UMTA financial assistance grants pending program disbursement.

Based on its reading of section 203 of the Intergovernmental Cooperation Act of 1968, Pub. L. No. 90-577, October 16, 1968, 42 U.S.C. § 4213 (1970), and it legislative history, UMTA's Office of Chief Counsel has concluded that any transit entity described as a local government by the Bureau of Census was not entitled to interest earned pending program disbursement. At least one transit operator, the Southeastern Pennsylvania Transportation Authority (SEPTA) has disputed UMTA's legal position. The Acting Chief Counsel has asked us to resolve this dispute.

He also asks our opinion as to the effective date from which interest may be earned by a grantee whose entitlement to retain such interest was in doubt prior to a ruling that it was a State agency or instrumentality. He ask: "Should we permit entitled entities to earn interest

in accordance with the Act. effective the date of our ruling, or should such entities be allowed to recoup any interest they would have earned from the date of the Act on?"

Section 203 of the Intergovernmental Cooperation Act of 1968 (Act), supra, was enacted to provide an expeditious and efficient procedure for the transfer of grant-in-aid funds to the States. The procedures established thereunder are intended to minimize the time lapsing between the transfer and the disbursement of funds for program purposes by the State governments. The final sentence in section 203 provides that:

> "* * * States shall not be held accountable for interest earned on grant-in-aid funds, pending their disbursement for program purposes."

The term "State" is defined in section 102 of the Act as:

> "* * * any of the several States of the United States, the District of Columbia, Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State, but does not include the governments of the political subdivisions of the State." 42 U.S.C. § 4201(2), 1970.

The term "political subdivision," (which is used interchangeably with the term "local government"), is defined in section 103 of the Act as:

> "* * * a local unit of government, including specifically a county, municipality, city, town, township, or a school or other special district created by or as pursuant to State law." 42 U.S.C. § 4201(3), 1970. (Emphasis supplied.)

In other words, "State" in the Act, appears as it is usually defined in Federal statutes except that agencies or instrumentalities of a State are included in the definition and "local governments," or governments of "political subdivisions," or "special districts" are not. The problem is to determine what criteria to use in classifying a given transit authority as either a State or local instrumentality, for purposes of the interest exemption in section 103 of the Act.

In the Senate and House Committee reports to the Congress on the proposed Act an attempt was made to clarify, for the Congress, the meanings of the terms "State," "political subdivisions" and "local government" as used in the Act. The House Report No. 1845 on proposed legislation H.R. 18826 (Intergovernmental Corporation Act of 1968) as prepared by the House Committee on Government Operations contained,

at page 4, a section entitled "Section-by-Section Analysis." There section 103 of the proposed Act was said to define "political subdivision" and "local governments" so that the two terms "* * * includ[ed] jurisdictional units listed by the Bureau of the Census as political subdivisions of a State." The House Report went on to say that:

> "Section 104 defines a 'unit of general local government' as 'any city, county, town, parish, village, or other general purpose political subdivision of a State.' This definition is based on the Census Bureau's treatment of the term." House Report No. 1845, 90th Cong., 2nd Sess., p. 4, August 2, 1968.

Senate Report No. 1456, on proposed legislation S. 698 (Intergovernmental Cooperation Act of 1968) as prepared by the Senate Subcommittee on Intergovernmental Relations for the Senate Committee on Governmental Relations, 90th Congress, 2nd Session, p. 12, July 24, 1968, states in its section-by-section analysis of section 103 of the proposed Act that:

> "Section 103, similarly provides standard definitions for 'political subdivisions' or 'local government', meaning any local unit of government, including county, municipality, city, town, township, or school or other special district created under state law. This definition follows those jurisdictional units listed by the Bureau of the Census as political subdivisions of a State." Emphasis added.

In a memorandum to UMTA grantees, UMTA's Office of Chief Counsel stated that the classification of entities by the Bureau of Census is controlling and will govern whether an entity will be considered an agency or instrumentality of the State or a political subdivision thereof. In reaching this conclusion the memorandum states:

> "In summary, the Act provides that the term 'State' does not include the governments of the political subdivisions of the States, or special districts; according to the Act's legislative history, political subdivisions and special districts are described and listed by the Bureau of the Census.

> "The Bureau of the Census' 1972 Census of Governments (U.S. Bureau of the Census, Census of Governments, 1972, Vol. 1, Governmental Organization; U.S. Government Printing Office, Washington, D.C. 1973) classifies local governments by five major types--counties, municipalities, townships, school districts, and special districts. Any transit system listed under any of these headings is considered, under the Act, a local government and thus would be held accountable to UMTA for interest earned on UMTA financial assistance pending project disbursement."

SEPTA was listed under the heading of "Special Districts" on page 437 of the Bureau of Census' 1972 Census of Governments, Vol. 1 (1973).

As noted above, SEPTA has challenged this ruling. SEPTA was established under the Metropolitan Transportation Authorities' Act of 1963, 66 Pa. Stat. Ann. §§ 2001 et seq. (1963). That statute authorizes creation, in each metropolitan area, of a separate body corporate and politic which "* * * shall exercise the public powers of the Commonwealth as an agency and instrumentality thereof." 66 Pa. Stat. Ann. § 2004(a).

SEPTA's position is set forth in a memorandum of February 25, 1976. In that memorandum to UMTA. SEPTA's Chief Counsel raises several arguments in opposition to UMTA's position.

Its contention is that as an agency and instrumentality of a State (as provided by State law), SEPTA falls within the exact words of the definition of that term in section 102 of the Intergovernmental Cooperation Act. SEPTA states, in effect, that the language of that Act is plain and the application thereof to SEPTA clear. It objects to UMTA's reliance on external materials, namely, the 1972 Census of Governments, to interpret that Act and its application to SEPTA. It states that the statements in the committee report cited by UMTA cannot "serve to introduce an entire range of Census Bureau definitions into the Act where the Act itself is otherwise silent." It further contends that:

> "Even if Congress had manifested an intention that Census classification criteria should be employed in applying the Intergovernmental Cooperation Act of 1968, in the present case the Census Bureau's classification of SEPTA as a 'special district' would be entitled to far less weight than the express declaration of the Pennsylvania legislature that SEPTA is an agency and instrumentality of the State."

SEPTA puts forth three specific reasons for reaching that conclusion. First, it notes that definitions used by the Bureau of Census do not purport to be legal definitions but, according to its own introduction to Volume 1, "are such as, in the judgment of census researchers, tend to facilitate uniformity in data collection and keep classification problems to a minimum." The Bureau of Census also states that classification difficulties were particularly acute in Pennsylvania, which SEPTA feels supports its conclusion that "the classification scheme chosen by Census researchers was based upon the exigencies of data collection rather than upon the underlying organic law governing the formation of each agency, instrumentality, or district. Finally, it points to several judicial decisions from the courts of Pennsylvania which state unequivocally that SEPTA is a "State agency", an instrumentality of the Commonwealth," etc.

We generally agree with SEPTA's legal position. Neither the provisions of the Intergovernmental Cooperation Act of 1968 nor its legislative history requires the use of Census classifications. On the contrary, section 103 of the Act, in defining "political subdivision," refers specifically to "other special district created by or as pursuant to State law." It seems evident to us that the paramount determinent of the status of a given entity is the description of that entity in State law. The legislative history, relied on by the UMTA acting General Counsel merely explains that the committees in drafting the language of the Act used terminology developed by the Census Bureau. The Senate Report, quoted supra, (in contrast to the House Report cited by UMTA), states that the definition includes a "special district created under State law." In any case, neither report suggests that Census Bureau classifications must be used to determine the nature of individual entities.

Accordingly, it is our opinion that a Federal grantor agency is not required by the Intergovernmental Cooperation Act of 1968 and its legislative history to accept the Bureau of Census' classification of an entity, such as SEPTA, in determining whether that entity is a State agency or instrumentality or a political subdivision of the State. It is bound by the classification of the entity in State law. Only in the absence of a clear indication of the status of the entity in State law may it make its own determination based on reasonable standards, including resort to the Bureau of Census classifications. It would not be unreasonable--as informally proposed to us by UMTA representatives--for UMTA to require a transit authority to get an opinion from the State Attorney General as to whether such authority is a State agency or instrumentality in order to assist UMTA in reaching a determination as to whether it may retain interest earned on UMTA grant funds.

In answer to UMTA's final question regarding the effective date from which interest earned by a State entity may be retained, section 203 of the Intergovernmental Cooperation Act of 1968 states that "States shall not be held accountable" for any interest they earn on grant-in-aid funds pending disbursement of the funds for program purposes. State entities are exempt from accountability for such interest as of the effective date of that provision regardless of the date that their status as exempt entities was considered and confirmed. Of course if a given entity's status was changed by State law so as to make it a State instrumentality, after section 203 went into effect, the entity's entitlement would begin only when its status as a State instrumentality was created. We therefore find that SEPTA, having been created as a State instrumentality in 1963, is entitled to recoup all interest earned and paid over to UMTA from October 16, 1968, the effective date of the interest exemption of the Intergovernmental Cooperation Act.

Deputy Comptroller General
of the United States