

DECISION

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

118638

FILE: B-206244

DATE: June 8, 1982

MATTER OF: Payment of Pre-Grant Agreement Costs
When No Grant is Made

DIGEST: Department of the Interior does not have the authority to pay a claim for costs incurred by a state in anticipation of a Youth Conservation Corps grant that was never made because the State withdrew its grant application. Since no grant was ever made and none of the statutory objectives for which funds are appropriated for the YCC grant program were achieved, the Department may not reimburse the State for the expenses involved.

This decision is in response to a request from the Chief, Division of Fiscal Services, Office of Administrative Services, Department of the Interior (Department), for our legal opinion concerning the authority of the Department to pay a \$5,213.37 claim presented to it by the State of Georgia (State). The State's claim represents "pre-agreement costs incurred in anticipation of the award of a grant to operate a Youth Conservation Corps (YCC) program during the summer of 1981". The State never received a YCC grant in fiscal year 1981 because of its decision to withdraw its grant application. In these circumstances it is our opinion that the Department has no legal authority to pay any portion of the State's claim.

Under the Youth Conservation Corps Act of 1970, as amended, 16 U.S.C. §§ 1701 et. seq., the Secretary of the Interior and the Secretary of Agriculture are authorized to make grants " * * * to States to assist them in meeting the cost of projects for the employment of young men and women to develop, preserve, and maintain non-Federal public lands and waters within the States." 16 U.S.C. § 1704(a). A total of \$60 million was appropriated for the YCC program for fiscal year 1981. Pub. L. No. 96-514, 94 Stat. 2957, 2970. Based on the terms of 16 U.S.C. § 1704(d), 30 percent of that amount was to be made available for YCC grants to the states. The remaining amount was to be made available to the Secretaries of Interior and Agriculture for other programs authorized by the Youth Conservation Corps Act.

Subsequently however, the President proposed a \$38.2 million rescission out of the \$60 million YCC appropriation for fiscal year 1981. In June of 1981, Congress enacted legislation which approved a \$34 million rescission of YCC funds for fiscal year 1981, but which also required that \$18 million of the remaining \$26 million YCC appropriation be available for state grant programs. Supplemental Appropriations and Rescission Act 1981, Pub. L. No. 97-12, 95 Stat. 14, 46. This was the same amount that would have been available for state grants under the initial \$60 million appropriation if there had been no rescission (30 percent of \$60 million).

Due to the uncertain status of the YCC state grant program for fiscal year 1981, which was not resolved until Congress enacted Pub. L. No. 97-12 on June 5, 1981, the State of Georgia, by letter dated June 16, 1981, from Joe D. Tanner, Commissioner of the State Department of Natural Resources, withdrew its application for a YCC grant for that year. Commissioner Tanner indicated that the State's decision was based on the uncertainty as to when and how much money would be available for the YCC program and the resulting difficulties the State was encountering in planning a YCC program for the 1981 fiscal year. In that letter, Commissioner Tanner also stated that notwithstanding the State's decision to withdraw its grant application it understood "that funds obligated for recruitment and other administrative expenses obligated thus far would be honored." The \$5,275 total in preparations expenses that was claimed in that letter was subsequently reduced to the present claim of \$5,213.37. An itemized list was provided by the State which included such items as salaries, mailing costs, supplies, and similar types of expenses.

As a result of the State's decision to withdraw its grant application, no YCC grant was ever made to the State in fiscal year 1981 although YCC grant funds were available. Nevertheless the Department believes that "the costs incurred are reasonable and appropriate for reimbursement." The Department requested our concurrence. (Informally, we were advised that if we concurred with the Department's position, undisbursed grant funds from the 1981 fiscal year would be used to pay the State's claim.) For the reasons set forth hereafter, we cannot concur in the Department's position that it has authority to pay the State's claim.

The primary basis for our refusal to agree with the Department's position can be found in the statutory language authorizing the YCC grant program. As stated above, under 16 U.S.C. § 1704, the Secretaries of Interior and Agriculture have the authority to make grants to assist states in funding projects that will employ young men and women for the purpose of developing, preserving, and maintaining

public non-Federal lands within the states, Subsection (b) of that section further provides that no grant shall be made "unless an application therefore has been submitted to, and approved by, the Secretary of the Interior and the Secretary of Agriculture." (Emphasis added). Under the statute, the application is required to contain certain information, including assurances satisfactory to the Secretaries of both Departments that the individuals to be employed, the conditions of employment, and the nature of the projects involved, qualify for grant assistance in accordance with the specified statutory criteria.

In our view, it is clear that the authority of the Departments of Interior and Agriculture to award grants to states to achieve the objectives set forth in the statute cannot, and was never intended to, include authority to reimburse a state for expenses it incurred in preparing for a grant that was never made because the state withdrew its application. Obviously because of the State's decision in this case to withdraw its grant application, the application was never approved and no grant was ever made. The unalterable fact is that the State did not administer a YCC program in the 1981 fiscal year and did not employ any young men and women for the purpose of developing, preserving or maintaining non-Federal public lands within the State. In these circumstances, making what would be in effect a "mini-grant" to the State to reimburse it for the expenses it incurred, without achieving any of the statutory objectives for which YCC grants lawfully can be made, would be contrary to the underlying statutory authority.

In appropriating monies for this program, Pub. L. No. 96-514 specified that the funds were available to pay the expenses necessary to carry out the provisions of the Youth Conservation Corps Act of 1970, as amended. Under 31 U.S.C. § 628, which provides that agencies may use their appropriations only for the purposes for which appropriated, the Department is clearly prohibited from using funds specifically appropriated for the YCC grant program to reimburse a state for expenses that did not achieve any of the purposes for which the YCC appropriation was specifically made.

In reaching this conclusion we are not ignoring the numerous occasions in which our Office has approved the payment of costs incurred by grantees prior to the formal award of a grant. For example, in B-197699, June 3, 1980, we held that the Department of Interior could pay grantees for architectural and engineering costs they incurred prior to, or in conjunction with, the preparation of preapplications for grants under the Urban Park and Recreation Recovery Program. Also, see 32 Comp. Gen. 141, 143 (1952); 31 Comp. Gen. 308 (1952). However, in all of these cases the grant application

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was ultimately approved and the grant program was in fact implemented by the grantee. Our conclusion in each of these cases allowing expenses incurred before the grant award to be included as allowable cost items, together with the other grant costs, was premised on the subsequent award of a grant. The implicit holding of these cases is that preaward costs can only be reimbursed by the granting agency if the "substantive" grant is actually approved.

Further, failure to reimburse the State's expenses will not violate any express or implied contractual obligation of the Department. Certainly, once a grant application is approved a binding contract exists between the granting agency and the grantee. See, e.g., B-151332, December 28, 1976, and cases cited therein. On the other hand, prior to the approval of a project by the granting agency, it has no contractual or other legal obligation to the prospective grantee. See 197256, November 19, 1930.

Therefore, because of the State's decision in this case to withdraw its grant application, regardless of its reasons or good faith in doing so, the Department never approved the application and no contract ever came into existence.

Accordingly, although we appreciate the difficult position the State of Georgia may have been in as a result of its uncertainty and confusion about the status of the YCC grant program during fiscal year 1981, we must conclude that the Department of Interior lacks the authority to pay all or any portion of the State's claim in this case.

for *Milton J. Ardolan*
Comptroller General
of the United States