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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20543

13733

B-198096

May 8, 1980

The Honorable Peter W. Rodino, Jr.
Committee on the Judiciary
House of Representatives

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Dear Mr. Chairman:

This is in response to your request, submitted jointly with Ranking Minority Member Robert McClory, for our opinion on the legality of the scheduled transfer of administrative responsibility for certain law enforcement education programs (LEEP) from the Law Enforcement Assistance Administration (LEAA), Department of Justice, to the new Department of Education. We have reviewed the relevant circumstances and statutory language in light of applicable principles of statutory construction, and are of the opinion that the transfer in question may legally be effected.

Transfer of the LEEP programs, which is to take place in May 1980, is expressly directed by section 305 of the Department of Education Organization Act of 1979 (DOE Act), Pub. L. No. 96-88, approved October 17, 1979, 93 Stat. 668, which reads as follows:

"There are transferred to the Secretary all functions of the Attorney General and of the Law Enforcement Assistance Administration with regard to the student loan and grant programs known as the law enforcement education program and the law enforcement intern program authorized by subsection (b), (c) and (f) of section 406 of the Omnibus Crime Control and Safe Streets Act of 1968."

Section 208 of the Justice System Improvement Act of 1979, Pub. L. No. 96-157, approved December 27, 1979, 93 Stat. 1167, 42 U.S.C. § 3701, (Justice Act) amends the Omnibus Crime Control and Safe Streets Act of 1968. Section 705 of the amended act carries over the LEEP programs as originally codified in section 406 of the Omnibus Crime Control and Safe Streets Act of 1968, thereby retaining administrative authority in the LEAA, with no specific provision for the future transfer of the programs to the Department of Education. The Joint Explanatory Statement of the Committee of Conference on the Justice Act, upon adoption of section 705, expressed the view that,

" * * * the conference substitute will constitute legislative action subsequent to the Department of Education Authorization Act. The conferees are of the opinion that the cumulative effect of reenactment of the LEEP programs within

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LEAA and the deletion of any reference in this legislation to transfer of the programs will have the effect of retaining these LEEP programs within LEAA." H.R. Rep. No. 96-695, 96th Cong., 1st Sess. 76 (1979).

The legislative history of these two acts provides a useful background. In the Senate, two contrasting views were expressed. On March 27, 1979, the Senate Committee on Government Affairs reported a bill, S. 210, the derivative source of the DOE Act, which included a provision to transfer the LEEP programs from LEAA to DOE. S. Rep. No. 96-49, 96th Cong., 1st Sess. 23, 78 (1979). Just under two months later, the Senate Committee on the Judiciary's report on the bill which was the derivative source of the Justice Act simply stated: "Section 705 of the reported bill continues the LEEP program in its present form." S. Rep. No. 96-142, 96th Cong., 1st Sess. 49 (1979). While neither this bill nor the committee report addressed the proposed transfer, the explanation given on the floor during Senate debate over the Justice Act bill indicated the committee's intention to retain LEEP in LEAA. 125 Cong. Rec. S6208-6209 (daily ed., May 21, 1979).

The House of Representatives consistently favored the transfer to DOE. On June 13, 1979, during House deliberations on the DOE Act, an amendment was introduced to omit section 305, the transfer provision. This amendment was defeated by a vote of 275 to 128, and the House passed the bill with the transfer provision in it. On October 12, 1979, the House passed its version of the Justice Act which included a provision transferring the LEEP program to the Department of Education. See H.R. Rep. No. 96-163, 96th Cong., 1st Sess. 94 (1979).

In September, both Houses approved the DOE Act conference committee report which reported that there was no disagreement that the transfer should take place. H.R. Rep. No. 96-459, 96th Cong., 1st Sess. 15, 50 (1979). The DOE Act was signed into law on October 17, 1979. As for the Justice Act, the bills for which had passed on May 21 and October 12 in the Senate and House respectively (with differing views on the LEEP transfer), the conference report was issued on December 10 and the act enacted on December 27. As quoted above, the statement of the conference committee managers expressed the opinion that the legislative history of the Justice Act as a whole was sufficient to overcome the transfer provision in the DOE Act, a view challenged by Congressmen Brooks and Horton during House consideration. Not being in the legislative language, this difference of views was not voted upon, leaving us with the dilemma of how much weight to give the conferees' views.

As a general rule of statutory construction, it will not be presumed that Congress intended a repeal by implication. Indeed, the presumption is always against repeal where express terms are not used and effect can reasonably be given to both statutes. United States v. Burroughs, 289 U.S. 159, 164 (1933). This presumption is particularly strong where, as with the DOE Act and the Justice Act, the two acts were under consideration and enacted during the same session of Congress. This proximity in time is forceful evidence that Congress intended the two statutes to stand together. Morf v. Bingham, 298 U.S. 407, 414 (1935); see also, 1A Sands, Sutherland Statutory Construction 250 (4th ed. 1972). The Supreme Court has termed the presumption a "cardinal rule" and has held that--

" * * * [I] n the absence of some affirmative showing of an intention to repeal, the only permissible justification for a repeal by implication is when the earlier and later statutes are irreconcilable." Morton v. Mancari, 417 U.S. 535, 550 (1974); see also TVA v. Hill, 437 U.S. 153, 190 (1978).

We have two basic reasons for concluding that the transfer is lawful. First, the two statutes may be read together, giving full effect to all the provisions of each. Second, while the Justice Act conferees expressed their view of the legal effect of their actions, we believe that their position on the issue was not necessarily representative of that of the Congress as a whole and, in any event, that they did not accomplish their goal of repealing the DOE Act provision.

First, insofar as LEEP is concerned, section 705 is a reauthorization of those programs, which was accomplished merely by reenacting a provision from the Omnibus Crime Control and Safe Streets Act of 1968. At the time of the Justice Act's enactment, there was no functioning Department of Education to which these programs could immediately be transferred and it would not have made sense to provide for that Department, rather than LEAA, to administer LEEP. This provision merely states that LEEP to be administered by LEAA. The Department of Education Reorganization Act of 1979 specifically provides that within 180 days after the installation of the Education Secretary the LEEP programs will be transferred and, hence no provision to this effect was needed in the Justice Act. Accordingly, in our view, there is no irreconcilable conflict between the Justice Act provision and the DOE Act provision.

Second, the actions of the Justice Act conferees did not have the legal effect that they intended. Their actions were the deletion of the House passed provision to provide for the transfer and the statement of intent in their Joint Explanatory Statement.

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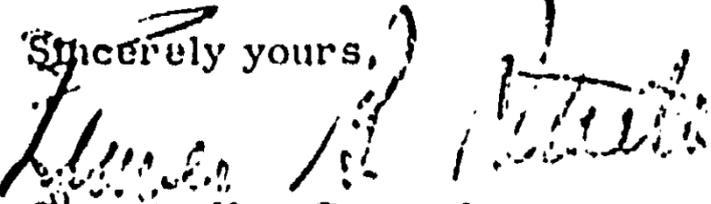
The provision in the House passed version was unnecessary and redundant since the DOE Act has a provision expressly providing for the transfer. In this regard, we further concur in the Justice Department's determination that section 507 of the DOE Act operates as "a rule of statutory interpretation applicable to federal laws." That provision assures that the functions placed within the Department of Education are not concurrently administered by some other entity. It reads as follows:

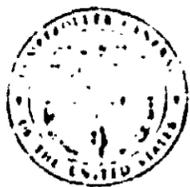
"With respect to any functions transferred by this Act and exercised on or after the effective date of this Act, reference in any other Federal law to any department, commission or agency or any officer or office the functions of which are so transferred shall be deemed to refer to the Secretary, other official, or component of the Department to which this Act transfers such functions."

Since the LEEP program authority vested in LEAA by section 705 of the Justice Act was transferred by the DOE Act, section 507 of the DOE Act may be read to require that statutory reference to LEAA be deemed to refer to the Department of Education.

With respect to the conferees' statement, we have no doubt that they intended that there be no transfer from LEAA. However, this statement of intent alone is not sufficient to accomplish that purpose. First, their opinion was challenged and no vote was taken as to which version was correct. Second, as described above, within a three month period, committee reports on these Acts came to different recommendations. However, only the recommendation of the DOE Act conferees was specifically enacted into law. In these circumstances we believe that this factor must be considered a controlling one. Third, as discussed above, repeal by implication is not readily presumed. When there is substantial doubt as to the Congress' intent, as we have here, it is inappropriate to find such a repeal.

Accordingly, since section 705 of the Justice Act can be interpreted consistently with section 305 of the DOE Act, and for the reasons given above, we conclude that, absent intervening action by Congress, the LEEP functions in question may, and indeed legally must, be transferred from the LEAA to the Department of Education.

Sincerely yours,

Comptroller General
of the United States



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... to public records ...

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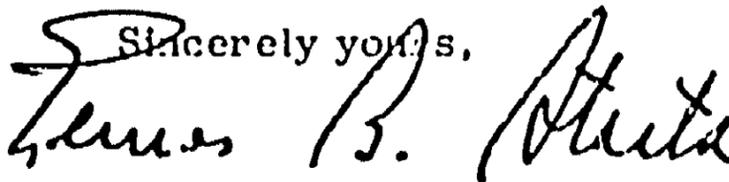
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