



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

B-182398

MAR 29 1976

The Honorable Paul Laxalt
United States Senate

Dear Senator Laxalt:

Reference is made to our response of October 1, 1975 (a copy of which is enclosed for your ready reference), to your request for a complete audit of the activities of the National Commission on the Observance of International Women's Year (Commission), particularly those in support of ratification of the Equal Rights Amendment (ERA).

In that response we explained that while we found nothing improper about the Commission's mandate to advocate adoption of the ERA per se, we had some questions about the authority of individual agencies to use their respective appropriations to fund the Commission's activities. We therefore requested reports from the Departments of Labor, State, Health, Education, and Welfare, Justice, Defense, Commerce, and Agriculture and from the United States Information Agency and the National Aeronautics and Space Administration, concerning the extent of their transfers of funds and personnel to the Commission, and their authority, other than that granted by Exec. Order No. 11,832, January 9, 1975, for making such transfers. These reports have now been received and we can supplement our response to your questions.

The following transfers of funds and personnel for Commission activities were reported:

Department of Labor (Labor) - Labor transferred \$25,000 in funds for fiscal years 1975 and 1976 and detailed one person for calendar year 1975 on a nonreimbursable basis. Salary and benefits for that individual amounted to \$40,000.

Department of State (State) - State transferred \$39,000 in funds for fiscal year 1975 and has received \$450,000 in its 1976 appropriation for support of the Commission. State detailed three positions to the Commission, reprogramming these positions from within State's total employment ceiling. Salaries and benefits of the individuals in these positions amounted to \$15,899 for fiscal year 1975 and will amount to an estimated \$47,697 for fiscal year 1976.

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United States Information Agency (USIA) - USIA detailed two individuals to State * on a nonreimbursable basis whose salaries and benefits amounted to \$32,000 for fiscal year 1975 and will amount to approximately \$63,400 for fiscal year 1976.

Department of Health, Education, and Welfare (HEW) - HEW transferred funds in the amount of \$125,000 to State in support of the Commission in fiscal year 1975.

Department of Justice (Justice) - Justice transferred \$10,000 in funds to State in support of the Commission in fiscal year 1975.

National Aeronautics and Space Administration (NASA) - NASA detailed one individual to State in support of the Commission, whose salary and benefits amounted to approximately \$257 for fiscal year 1975 and will amount to approximately \$11,400 for fiscal year 1976.

Department of Transportation (Transportation) - Transportation transferred \$35,000 in funds to the Commission in fiscal year 1975.

Department of Agriculture (Agriculture) - Agriculture detailed one individual to the Commission, whose salary and benefits amounted to \$675 for fiscal year 1975 and will amount to \$8,310 in fiscal year 1976.

Department of Commerce (Commerce) - Commerce transferred \$15,000 to State in support of the Commission in fiscal year 1975.

Department of Defense (Defense) - Defense detailed one individual to State in support of the Commission on a nonreimbursable basis, whose salary and benefits amounted to \$4,827.47 in fiscal year 1975 and will amount to \$14,225.90 in fiscal year 1976. However, the detail was not approved in accordance with Defense procedures and Defense has requested retroactive reimbursement from State or termination if no reimbursement is possible.

Department of Interior (Interior) - Interior transferred no funds or personnel to the Commission.

* The International Women's Year Secretariat which serves as staff to the Commission is located within State.

In general, unless otherwise authorized by law, transfers of funds between governmental agencies and instrumentalities are prohibited by 31 U.S.C. § 628 (1970) which provides:

"Except as otherwise provided by law, sums appropriated for the various branches of expenditure in the public service shall be applied solely to the objects for which they are respectively made, and for no others."

The general statutory authority allowing for interagency agreements or contracts involving the transfer of funds is found in section 601 of the Act of June 30, 1932, 47 Stat. 417, as amended, 31 U.S.C. § 686 (1970), popularly known as section 601 of the Economy Act of 1932. Section 601 provides, in pertinent part, as follows:

"(a) Any executive department or independent establishment of the Government, or any bureau or office thereof, if funds are available therefor and if it is determined by the head of such executive department, establishment, bureau, or office to be in the interest of the Government so to do, may place orders with any other such department, establishment, bureau, or office for materials, supplies, equipment, work, or services, of any kind that such requisitioned Federal agency may be in a position to supply or equipped to render, and shall pay promptly by check to such Federal agency as may be requisitioned, upon its written request, either in advance or upon the furnishing or performance thereof, all or part of the estimated or actual cost thereof as determined by such department, establishment, bureau, or office as may be requisitioned; * * *."

Section 601 requires as a condition precedent that the department requiring the service must have the funds available therefor. In addition, we have recognized that interagency agreements to transfer funds may be entered into apart from 31 U.S.C. § 686, where there exists specific independent statutory authority for the transaction. 52 Comp. Gen. 128 (1972).

For this reason, we analyzed each of the responses, above, to determine whether each department and agency had the necessary authority to procure the kinds of goods or services for which it transferred funds to the Commission, presumably pursuant to 31 U.S.C. § 686, supra, or whether some other authority for the transfer existed. We believe there is sufficient legal authority for transfers of funds by Labor and State. However, we have not been provided with sufficient factual or legal support to find authority for transfers of funds by HEW, Justice, Transportation, and Commerce.

Labor explains that it transferred funds pursuant to title III of the Comprehensive Employment and Training Act of 1973, Pub. L. No. 93-203, 87 Stat. 839, 857, December 28, 1973, 29 U.S.C. §§ 871 et seq. (1973, Supp. III), to support studies by two committees of the Commission on the problems women have had with employment training and job finding. The authority for such transfers appears clear under 29 U.S.C. § 881 (1973, Supp. III), which provides in pertinent part:

"(a) Establishment of comprehensive program of manpower research. To assist the Nation in expanding work opportunities and assuring access to those opportunities for all who desire it, the Secretary shall establish a comprehensive program of manpower research utilizing the methods, techniques, and knowledge of the behavioral and social sciences and such other methods, techniques, and knowledge as will aid in the solution of the Nation's manpower problems. This program will include, but not be limited to, studies, the findings of which may contribute to the formulation of manpower policy; development or improvement of manpower programs; increased knowledge about labor market processes; reduction of unemployment and its relationships to price stability; promotion of more effective manpower development, training, and utilization; improved national, regional, and local means of measuring future labor demand and supply; enhancement of job opportunities; skill training to qualify employees for positions of greater skill, responsibility, and remuneration; meeting of manpower shortages; easing of the transition from school to work, from one job to another, and from work to retirement, opportunities and services for older persons who desire to enter or reenter the labor force, and for improvements of opportunities for employment and advancement through the reduction of discrimination and disadvantage arising from poverty, ignorance, or prejudice.

* * * * *

"(d) Grants, contracts and other arrangements.

"The Secretary shall conduct such research and investigations as give promise of furthering the objectives of this Act either directly or through grants, contracts, or other arrangements." (Emphasis added.)

A considerable part of the Commission's activities have focused on the problems of women's employment. Accordingly, it appears that Labor had authority to transfer funds to the Commission as an "other

arrangement" under 29 U.S.C. § 881(d) in furtherance of its responsibilities under 29 U.S.C. § 881(a). 52 Comp. Gen. 128 (1972).

State considers the Commission a mechanism to carry out international programs within the Secretary's authority to conduct foreign affairs under 22 U.S.C. § 2656 (1970), which provides:

"The Secretary of State shall perform such duties as shall from time to time be enjoined on or intrusted to him by the President relative to correspondences, commissions or instructions to or with public ministers or consuls from the United States, or to negotiations with public ministers from foreign states or princes, or to memorials or other applications from foreign public ministers or other foreigners, or to such other matter respecting foreign affairs as the President of the United States shall assign to the department and he shall conduct the business of the department in such manner as the President shall direct."

Moreover, additional authority appears to exist by virtue of 22 U.S.C. § 2672 (1970) which provides in part:

"The Secretary of State is authorized to--

"(a) provide for participation by the United States in international activities which arise from time to time in the conduct of foreign affairs for which provision has not been made by the terms of any treaty, convention, or special Act of Congress * * *.

"(b) pay the expenses of participation in activities in which the United States participates by authority of subsection (a) of this section * * *."

HEW states that its authority to transfer funds to State in support of the Commission arose out of the responsibility of its Office for Civil Rights for enforcing the prohibitions against sex discrimination contained in title IX of the Education Amendments of 1972, Pub. L. No. 92-318, 86 Stat. 235, 373, June 23, 1972, 20 U.S.C. §§ 1681 et seq. (1973, Supp. III) and in 42 U.S.C. §§ 295h-9 and 298b-2 (1973, Supp. III), provisions of the Comprehensive Health Manpower and Nurse Training Act of 1971, Pub. L. No. 92-157, 85 Stat. 437, November 18, 1971. In accord with these responsibilities, HEW made a policy determination that the activities of the Commission in exploring and examining sex discrimination would be of significant importance to the Office for Civil Rights

in carrying out its mission. In this regard, HEW states that its transfer meets the requirements of 31 U.S.C. § 673, which provides in pertinent part:

"No part of the public moneys, or of any appropriation made by Congress, shall be used for the payment of compensation or expenses of any commission, council, board, or other similar body, or any members thereof, or for expenses in connection with any work or the results of any work or action of any commission, council, board, or other similar body, unless the creation of the same shall be or shall have been authorized by law; nor shall there be employed by detail, hereafter or heretofore made, or otherwise personal services from any executive department or other Government establishment in connection with any such commission, council, board, or other similar body. * * *

(Emphasis supplied.)

The phrase "unless the creation of the same shall be or shall have been authorized by law" in the above provision does not necessarily require that the Commission initially be established by statute. In several decisions, we have held that this language is satisfied if the official or agency creating the Commission has general authority to perform the functions or duties of the Commission itself and if those duties or functions can be performed only by such a group or if it is generally accepted that such duties can best be performed by such a group. 40 Comp. Gen. 478 (1971); 31 *id.* 454 (1952); 11 *id.* 495 (1932). Similarly, in B-152583, November 7, 1963, we held that the President could properly establish the President's Commission on Equal Opportunity in the Armed Forces through Exec. Order No. 9,981, July 26, 1948, and that this authority overcomes the prohibition of 31 U.S.C. § 673. Similarly in this instance, we believe the President had sufficient authority to create the Commission through Exec. Order No. 11,832. However, there is nothing in section 673 that, standing alone, overcomes the prohibition in 31 U.S.C. § 628 against spending money for purposes other than those for which they were appropriated.

We have reviewed the statutory enforcement responsibilities cited by HEW. Under 20 U.S.C. § 1682^{1/2}(1973, Supp. III), HEW, as a Federal department empowered to extend various forms of financial assistance to educational programs or activities, is directed to effectuate the prohibitions against discrimination in such programs or activities contained in 31 U.S.C. § 1681 by issuing rules, regulations, or orders of general applicability. Under 42 U.S.C. § 295h-9, the Secretary of HEW is prohibited from making grants, loan guarantees, or interest subsidy payments to schools and training centers in various health fields, or from entering into contracts with such institutions, unless

he receives satisfactory assurances that there will be no discrimination in admissions on the basis of sex. Similar provisions relating to nursing schools are contained in 42 U.S.C. § 298b-2.

The Commission, with its broad mandate regarding women's activities as contained in Exec. Order No. 11,832, might have performed or contracted for studies of sufficient direct benefit to HEW's enforcement responsibilities cited above (and to other responsibilities not cited by it) to authorize transfers of funds to State in support of the Commission. However, HEW has not explained what particular products or services of the Commission its transfers were intended to procure and our review of the Commission's activities to date reveals only minimal activity directed to the areas of HEW's responsibilities as described. The only activity directly related to title IX of which we are aware involved broad recommendations concerning proposed regulations to title IX approved at the second meeting of the Commission and submitted to HEW and the President shortly thereafter. We are unaware of any activities of the Commission directly related to HEW's enforcement responsibilities under the cited provisions of the Comprehensive Health Manpower and Nurse Training Act of 1971. As HEW has not provided adequate legal and factual justification for its transfer to State in support of the Commission, it would appear that such contribution may be in contravention of 31 U.S.C. § 628.

Justice states that it regards 31 U.S.C. §§ 691 and 673 (1970) as authorizing its transfer of funds in support of the Commission. Section 691 makes the appropriations of executive departments and independent establishments available for expenses of those committees, boards or other interdepartmental groups composed in whole or part of representatives of the departments and establishments. Section 1(b) of Exec. Order No. 11,832, however, limits the Commission's membership to private citizens. Consequently, section 691 is inapplicable to the Commission. Moreover, as previously explained, there is nothing in section 673, standing alone, to overcome the prohibition of 31 U.S.C. § 628.

In support of its transfer of funds to the Commission, Transportation asserts that the Secretary has authority to expend funds for necessary expenses of the Office of the Secretary of Transportation. Specifically, Transportation cites the Commission's responsibility for promoting equal employment opportunity for women and making known to the public major programs and efforts in this area, and points to its own related responsibilities under Exec. Order No. 11,478, August 8, 1969, and the Equal Employment Opportunity Act of 1972, Pub. L. No. 92-261, 86 Stat. 103, March 24, 1972.

Transportation's responsibilities under the cited Executive order and legislation are narrowly focused on its function of preventing discrimination in employment on the basis of sex within its own department. Exec. Order No. 11,478, section 2; 42 U.S.C. § 2000e-16(a) (1973, Supp. III). We are unaware of any activities of the Commission

relating to this intradepartment function. It appears that Transportation's transfer of funds was not properly within the Secretary's responsibility to expend funds for necessary expenses of the office of the Secretary and was, therefore, in contravention of 31 U.S.C. § 628 (1970).

Commerce states that its transfer of funds to the Commission was under authority of 15 U.S.C. § 1512 (1970) which provides:

"It shall be the province and duty of said Department to foster, promote, and develop the foreign and domestic commerce, the mining, manufacturing, shipping, and fishery industries, and the transportation facilities of the United States; and to this end it shall be vested with jurisdiction and control of the departments, bureaus, offices, and branches of the public service hereinafter specified, and with such other powers and duties as may be prescribed by law."

However, Commerce does not explain which duty or duties of the Department was performed through its transfer of funds to the Commission, nor are we aware of any activities of the Commission which might be deemed to be directly relevant to the regular functions of Commerce. As such, it would appear that the cited provision, standing alone, could not authorize a transfer of funds by Commerce to the Commission, and that such contribution was in contravention of 31 U.S.C. § 628 (1970).

As we have previously discussed, a number of departments and agencies have also detailed personnel to the Commission on a nonreimbursable basis. Prior decisions of our Office, presently under review, have determined that nonreimbursable details of personnel do not fall under the constraints of 31 U.S.C. § 628, *supra*, provided the employees detailed are not required by law to be engaged exclusively upon the work for which their salaries are appropriated and provided the employees' services can be spared for the purpose of the details. 13 Comp. Gen. 234 (1934); 14 Comp. Dec. 294 (1907); B-30084, November 18, 1942. Consequently we do not find improper any of the above mentioned nonreimbursable details of personnel to the Commission.

The Commission's activities are presently the subject of an audit by this Office. Upon its completion, we will be happy to share the information developed.

Sincerely yours,

R. F. KELLER

**[Deputy] Comptroller General
of the United States**

Enclosure

DEPARTMENTS AND ESTABLISHMENTS
Services between
Jointly beneficial projects

BOARDS, COMMITTEES, AND
COMMISSIONS
Interagency participation
Fund contributions

RELATIONSHIP

1954-1955