

UNITED STATES GOVERNMENT

GENERAL ACCOUNTING OFFICE

Memorandum

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TO : The General Counsel

B-147637-O.M., Dec. 12, 1974

J. E. THORNTON

FROM : Director, Field Operations Division

SUBJECT: Federal Executive Boards

On November 10, 1961, the President issued a memorandum to the heads of departments and agencies expressing his desire to strengthen the coordination of Government activities outside of Washington. He directed the Chairman of the Civil Service Commission to arrange for the establishment of a Board of Federal Executives in each of the Commission's ten administrative regions. Each executive department and agency also was directed to arrange for the personal participation by heads of its field offices and installations in the work of these Federal Executive Boards (FEBs). The FEBs were established to increase the effectiveness and economy of Federal agencies by providing a means for closer coordination of Federal activities at the regional level. They were not to require additional personnel, and the 1961 Presidential directive contained no provision for financing their operations.

In a letter dated November 21, 1961, B-147637, the Comptroller General advised the President that our Office would cooperate to the fullest extent possible consistent with our responsibilities to the Congress, but that we would not participate as members of the FEBs or other boards or committees that might be established. By memorandum dated November 30, 1961, GAO officials located in Washington and the field were advised of the Comptroller General's intent to cooperate with the executive branch under the President's program.

Over the years the number of FEBs has increased to 25, and in late 1971, GAO began to expand its participation in their activities. Today, our field managers are active FEB members in 18 of the 25 cities where FEBs are located. See attached correspondence between the Comptroller General and the Director, Office of Management and Budget.

Administrative support for each board, including the salary for its Executive Assistant or Secretariat, is provided by a designated agency in each FEB city. Several of the FEBs have established an "operating fund" to help defray the incidental costs associated with their official ongoing activities that are not otherwise absorbed by the designated housekeeping or member agencies. These include expenses such as coffee klatches in connection with board meetings, fees

associated with the sponsorship of a junior achievement company, and employee of the year awards. For example, one FEB assesses each FEB member an annual registration fee of \$20. The members in turn have been encouraged by the FEBs to seek reimbursement from their own agencies rather than pay the fee from personal funds. Another FEB has assessed each member \$100 which is paid by the member's agency.

Section 609 of the "Treasury, Postal Service, and General Government Appropriation Act, 1972," Pub. L. 92-49, 85 Stat. 124, provides as follows:

"No part of any appropriation contained in this or any other Act, shall be available to finance interdepartmental boards, commissions, councils, committees, or similar groups under section 214 of the Independent Offices Appropriation Act, 1946 (31 U.S.C. 691) which do not have prior and specific congressional approval of such method of financial support."

We could find no specific congressional approval for any method of financial support either before or after the FEBs were established.

General guidelines and instructions for the establishment, use, and termination of interdepartmental boards, commissions, councils, committees or other similar groups are contained in Bureau of the Budget Circular No. A-63, dated March 2, 1964.

Since our field managers, as active FEB members, are asked to pay the annual assessments from personal funds as a means of maintaining representation on the boards, the question has arisen as to whether reimbursement for the amounts paid would be proper from the GAO appropriation.

Also, in view of the express prohibition contained in section 609 of Public Law 92-49, your advice is requested as to whether the use of appropriated funds by other agencies is proper for FEB purposes such as administrative support, salaries, and reimbursement or payment of member's assessments for local operating funds.

Attachments

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Indorsement

Director, Field Operations Division

Returned. The prohibition contained in section 609 of Public Law 92-49, cited and quoted in your submission, has been superseded for the current fiscal year by the prohibition contained in the similar section 608 of the Treasury, Postal Service, and General Government Appropriation Act, 1974, Public Law 93-143, 87 Stat. 510, approved October 30, 1973.

On November 10, 1961, when the President first directed the Chairman of the Civil Service Commission to establish a Board of Federal Executives in each of its administrative regions to coordinate Government activities "across department and agency lines in important centers of Federal activity outside of the National Capital area," there not only was no prohibition against use of appropriated funds for such interagency activities, but the Congress had specifically authorized this method of financing them by enacting section 214 of the Independent Offices Appropriation Act, 1946, 59 Stat. 134, approved May 3, 1945, now codified in 31 U.S.C. 691 as follows:

"Appropriations of the executive departments and independent establishments of the Government shall be available for the expenses of committees, boards, or other interagency groups engaged in authorized activities of common interest to such departments and establishments and composed in whole or in part of representatives thereof who receive no additional compensation by virtue of such membership: Provided, That employees of such departments and establishments rendering service for such committees, boards, or other groups, other than as representatives, shall receive no additional compensation by virtue of such service."

This provision removed a longstanding prohibition against use of "public moneys or appropriated funds for payment of compensation or expenses of any commission, council, board, or other similar body, or any members thereof, * * * unless the creation of the same shall be or shall have been authorized by law * * *." (Section 9 of the Act of March 4, 1909, 35 Stat. 1027, 31 U.S.C. 673) at least with respect to the expenses of interagency committees, boards, and similar groups "engaged in authorized activities of common interest" to the Government agencies involved.

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In later years, however, evidence of executive agency abuse of this authority apparently prompted the Congress to reconsider the former restrictions. Concern was voiced by Congressman Jamie Whitten, Chairman of the Appropriations Agriculture Subcommittee during the course of the hearings on the Department of Agriculture's 1968 appropriation bill. Noting nine instances of "diverting funds" to programs and projects of interagency commissions not specifically authorized by the Congress, he warned,

"* * * I think the Committee might be interested in writing a prohibition in the bill to the effect that no part of the funds may be used for purposes for which they were not appropriated. I hope we don't have to come to that, but if it gets out of hand, Congress might feel it might have to do so." Hearings Before the Agriculture Subcommittee of the House Appropriations Committee on Department of Agriculture and Related Agencies Appropriations for 1968, 90th Cong., 1st sess., pt. 1, at p. 36.

The House and Senate conferees, meeting to consider the 1968 Agriculture appropriation legislation echoed his sentiments. They stated--

"The conferees note with concern the growing practice in the executive branch of financing a portion of the cost of various special boards, councils, and commissions created by Executive action from assessments made against appropriations provided for specific programs and projects of the Department of Agriculture.* * * In the opinion of the conferees, this practice results in duplication and overlapping, permits the establishment of less essential programs at the expense of more valuable activities, and therefore should be discontinued. Each such proposed diversion of funds should have prior review and approval of Congress." (Emphasis added.) H. Rept. No. 90-746, at pp. 11-12.

The following year, the House drafted a specific prohibition for the 1969 Agriculture Department appropriation legislation which read--

"None of the funds in this Act shall be available to finance interdepartmental boards, commissions, councils, committees, or similar groups under section 214 of the Independent Offices Appropriation Act, 1946 (31 U.S.C. 691) which do not have prior and specific congressional approval by such method of financial support."

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This language was later enacted as section 508 of the Department of Agriculture and Related Agencies Appropriation Act, 1969, enacted August 8, 1968, Pub. L. 90-463, 82 Stat. 639.

A nearly identical provision (with four limited exceptions not relevant to this discussion) was enacted as section 307 of the Independent Offices and Department of Housing and Urban Development Appropriation Act, 1969, enacted October 4, 1968, Pub. L. 90-550, 82 Stat. 937. The House Committee, which had drafted the language of section 307, stated in its Report--

"Last year the Committee expressed its displeasure with a proposal of the [Civil Service] Commission to finance the cost of its interagency board programs by reimbursements and charges to agencies and departments instead of by direct appropriation. * * * The Committee notes that a number of other activities promoted by the Commission are being financed by charges and reimbursements from agencies and departments. Section 307 of the bill specifically prohibits the use of funds for certain interdepartmental boards, commissions, councils, committees, or similar groups, which do not have prior and specific Congressional approval." H. Rept. No. 1348, 90th Cong., 2d sess., at p. 8.

The hearings before the House and Senate Appropriations Committees on the 1969 Act indicate that virtually every agency spokesman either volunteered or was specifically asked to comment on the proposed section 307 language. Several expressed great concern that the new section would appear to outlaw the financing of any kind of interagency operation and urged that the section be deleted. (See, e.g., statement of John W. Macy, Jr., Chairman of the Civil Service Commission, Senate Hearings on Independent Offices and Department of Housing and Urban Development Appropriations for Fiscal Year 1969, May 22, 1968, at pp. 1143-46) I, too, testified (at that time, I was General Counsel of NASA) that according to my reading of section 307, " * * * transfer of NASA funds to support directly any interdepartmental committee or board where such method of financing has not been approved by Congress would be prohibited." Senate Hearings, supra, at p. 1408.

Notwithstanding these expressions of concern, the Congress enacted the prohibition in section 307 and continued to include it in appropriation acts each year thereafter. Section 609 of the Treasury, Postal Service, and General Government Appropriation Act,

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1972, Pub. L. 92-49, 85 Stat. 124, enacted July 9, 1971, utilized for the first time general language making the restriction applicable to appropriations contained in "this or any other Act." (Emphasis added.)

In applying this prohibition we have held that unless specific congressional authorization has been given for such financing inter-agency groups may not be financed with appropriated funds. 49 Comp. Gen. 305 (1969). See also B-17457 of January 5, 1972. We see no possible alternative in the instant case to concluding the language of section 608 of Pub. L. 93-143, supra, similarly prohibits the GAO and all other Federal agencies from using their appropriated funds to provide administrative support, salaries, and reimbursement or payment of a member's assessments for Federal Executive Board activities. It may be desirable to bring the hardship this decision may cause to individual Federal Executive Board members who must defray membership expenses from personal funds to the attention of the Congress and seek specific authorization to pay these expenses from appropriated funds. However, as matters now stand, we cannot approve the proposed reimbursements to our field managers for annual Federal Executive Board assessments nor could we approve similar expenditures made by other Federal agencies.

~~Paul G. Dembling~~

Paul G. Dembling
General Counsel

Attachment

FEDERAL EXECUTIVE BOARDS

Operating expenses
Congressional approval
requirement

APPROPRIATIONS

Availability
Federal Executive Boards

APPROPRIATIONS

Restrictions
Boards, committees and
commissions

BOARDS, COMMITTEES AND COMMISSIONS

Interagency participation
Fund contributions

FEDERAL EXECUTIVE BOARDS

Compensation
Appropriation prohibitions

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