



REHELD - FOR CIRCULATION - HJM

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

B-153694

SEP 2 1964

RELEASED

Dear Mr. Laird:

This is in response to your letter of August 19, 1964, requesting that we ascertain the number of newly authorized programs initiated by the Department of Health, Education, and Welfare, prior to appropriations therefor and that we advise you of our opinion concerning the legality of such activities.

Several new programs to be administered by the Department were authorized in fiscal year 1964. However, to date, funds for these newly authorized programs have not been appropriated. You point out that when the House Committee on Appropriations acted on the Department's requests for fiscal year 1965 funds, it disallowed amounts also requested as supplemental appropriations for 1964 which were included to cover the new programs authorized in that year. The Committee, in effect, combined the amounts requested for 1964 and 1965 as one total for 1965, and made provision for this total to be available immediately upon enactment of the bill even though such enactment might have occurred prior to the close of fiscal year 1964. You further point out that one of the main reasons for this action was that not even the preliminary work of drawing up regulations, drafting and printing application forms, setting up advisory committees, etc., could be done until an appropriation was available to cover such expenses, and thus the programs could not be inaugurated as rapidly as the budget estimates presumed. You quote the statement appearing in the Committee's report with respect to the new program for expansion and improvement of vocational education that there is "serious question concerning the legality, or at least the propriety, of appointing the [National advisory] committee before appropriations are available for the program."

Your letter to us was prompted by information contained in the report of the Senate Committee on Appropriations in connection with the item "Health Professions Educational Assistance," another of the new programs authorized in 1964, to the effect that 69 applications had been received totaling \$210,000,000 as the Federal share and that the Advisory Council had acted on applications from dental schools and had approved 11 projects in the amount of \$18,000,000, all prior to any appropriation for the program. It is because of your doubts concerning the legality of this action that you have requested our opinion in the matter and that we advise you whether any other newly authorized programs have actually been initiated by the Department of Health, Education, and Welfare prior to appropriations therefor.

The Health Professions Educational Assistance Act of 1963, approved September 24, 1963, 77 Stat. 164, provides for grants to aid in the construction of teaching facilities for medical, dental, and other health personnel and for loans to students. Section 725 of the Public Health Service Act, 42 U.S.C., Chap. 6A, as added by the act of 1963, provides in part that:

"(a) There is hereby established in the Public Health Service a National Advisory Council on Education for Health Professions, consisting of the Surgeon General of the Public Health Service, who shall be Chairman, and the Commissioner of Education, both of whom shall be ex officio members, and sixteen members appointed by the Secretary \* \* \*."

Section 727 provides that:

"(a) The Surgeon General, after consultation with the Council and with the approval of the Secretary, shall prescribe general regulations for this part covering the eligibility of institutions, the order of priority in approving applications, the terms and conditions for approving applications, determinations of the amounts of grants, and minimum standards of construction and equipment for various types of institutions.

"(b) The Surgeon General is authorized to make, with the approval of the Secretary, such other regulations as he finds necessary to carry out the provisions of this part."

Pursuant to the provisions of the act, the Secretary appointed the National Advisory Council on Education and Health Professions. The Council has acted on many grant applications and has recommended to the Surgeon General for approval eight of these with a recommendation that three others be deferred. Final approval by the Surgeon General on the eight recommended applications is being withheld pending the appropriation of the applicable grant moneys. Thus, there has been no commitment of Federal funds to the projects involved. However, you question the propriety of expending any funds in connection with starting up this program "before a cent has been appropriated for the purpose."

The authorizations for appropriations contained in the act relate solely to the moneys required for the various types of grants authorized therein. Moneys required for administration of the Public Health Service Act, to which the Health Professions Educational Assistance

Act of 1963 is an amendment, are provided for separately. See the Department of Health, Education, and Welfare Appropriation Act, 1964, under the heading "Public Health Service," 77 Stat. 233, providing "For necessary expenses in carrying out the Public Health Service Act, as amended \* \* \*." (Underscoring supplied.) See also Public Law 88-325, approved June 29, 1964, 78 Stat. 223, a joint resolution making continuing appropriations for the fiscal year 1965. It is under these authorities that the expenses related to exercising the administrative functions preliminary to actual disbursement of grant funds were financed. Our Office has uniformly held that existing department and agency appropriations which generally cover the type of expenditures involved are available to defray the expenses of additional duties imposed upon them by proper legal authority. See 15 Comp. Gen. 167; 30 id. 205; 31 id. 258; 32 id. 347. The questions for consideration are, therefore, whether it may be said that enactment of the Health Professions Educational Assistance Act of 1963 imposed additional duties upon the Public Health Service prior to the appropriation of grant moneys authorized therein and whether existing appropriations of the Department of Health, Education, and Welfare generally covered the kinds of expenses incurred.

The act by its terms establishes the National Advisory Council on Education for Health Professions--subject to appointment of 16 of its members by the Secretary of Health, Education, and Welfare--and directs the Surgeon General, after consultation with the Council and with approval of the Secretary, to prescribe regulations covering the program. There would not appear to be any question, under the cited line of Comptroller General decisions, but that appropriations of the Department for general administrative expenses were available for the expenses connected with carrying out these functions together with printing and distributing of related materials. Nor would we consider to be legally objectionable, the agency's action in considering a number of applications for grants, in the absence of a commitment of Federal funds in advance of appropriations. In this connection it should be noted that the House Report to which you refer recognized the necessity for preliminary work of the nature under consideration. The refusal to appropriate grant moneys for fiscal year 1964 was stated to be because "it would be unfair to lead anyone to believe this program is likely to actually start operations in the states in fiscal year 1964." Page 10 (underscoring supplied.) Also, the Senate Report clearly recognized the action that had been taken without questioning the matter.

It is our view that the initiation of preliminary administrative functions in situations such as are involved here is within the discretion of the responsible agency officials to the extent that the

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cost can be met from appropriations generally available for the administrative expenses of the agency. And it would seem to us that until there is some legislative indication that authorized program funds will not be appropriated, there is no violence to the appropriation process in carrying out the necessary preliminary administrative functions within the limits of otherwise available administrative expense appropriations prior to appropriation of the program funds.

It may well be that the appropriation for salaries and expenses of the Office of the Surgeon General would generally be available for the preliminary administrative expenses under consideration. However, we understand that the Public Health Service has charged the preliminary administrative expenses concerning the Health Professions Educational Assistance Act to its appropriations for fiscal years 1964 and 1965 made specifically available for only hospital construction activities under title VI of the Public Health Service Act, as amended. Since the Educational Assistance Act falls under title VII, it would not appear that the appropriations utilized may properly be said to have been in any way available for such purposes.

Accordingly, we are today addressing a letter to the Secretary of Health, Education, and Welfare requesting his views in the matter. A copy of that letter is enclosed for your information. Upon receipt of the Secretary's reply, we shall promptly advise you of our determination.

Sincerely yours,

R.F. KELLER

Acting Comptroller General  
of the United States

Enclosure

The Honorable Melvin R. Laird  
House of Representatives

APPROPRIATIONS

Availability

New Projects

Preliminary administrative  
functions prior to  
appropriations therefor

HEALTH, EDUCATION AND WELFARE DEPT.

Initiation of new projects  
prior to appropriations therefor

APPROPRIATIONS

Objects other than as specified

New administrative programs



COMPTROLLER GENERAL OF THE UNITED STATES  
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RELEASED

Dear Mr. Secretary:

As you are aware, several new programs to be administered by your Department were authorized by the Congress in fiscal year 1964: The Clean Air Act, 77 Stat. 392; The Mental Retardation Facilities and Community Mental Health Centers Act, id. 262; The Higher Education Facilities Act of 1963, id. 363; The Vocational Education Act, id. 403; and The Health Professions Educational Assistance Act of 1963, id. 164. To date funds for these newly authorized programs have not been appropriated.

Notwithstanding the failure of appropriations for these newly authorized programs, we understand that certain preliminary administrative activities short of making actual grants have been carried out in pursuance of the programs. These activities include the appointment of advisory councils, the drafting and promulgation of regulations, the printing and dissemination of forms, and the time of your staff devoted to performing these functions and to assessing numerous grant applications which have been received. With respect to The Health Professions Educational Assistance Act, we further understand that these administrative expenses have been charged to fiscal year 1964 and 1965 appropriations of the Public Health Service made specifically available for only hospital construction activities under title VI of the Public Health Service Act, as amended. Since the educational assistance act falls under title VII, it would not appear that the appropriations utilized were legally available for the charges involved.

Before reaching our final determination in the matter, we would like to have your views concerning the justification for the appropriation charges made. And we would appreciate your furnishing us a schedule showing the amount of funds obligated to date in connection with each of the newly authorized programs mentioned and the appropriations charged therewith together with whatever comment you might care to make.

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We would like to have your reply within 15 days.

Sincerely yours,

R. F. KELLER  
Acting Comptroller General  
of the United States

The Honorable  
The Secretary of Health, Education,  
and Welfare