DOCUMENT RESUME

01904 - [A1252242]

[Advance Payment of the Federal Agency Share of Student Salaries to Colleges Administering the College Work-Study Program]. B-159715. May 2, 1977. 9 pp.

Decision by Robert F. Keller, Deputy Comptroller General.

Issue Area: Education, Training, and Employment Programs (1100).
Contact: Office of the General Counsel: General Government Matters.
Budget Function: Education, Manpower, and Social Services: Higher Education (502).
Authority: 31 U.S.C. 529. 31 U.S.C. 628. 10 U.S.C. 2307. 41 U.S.C. 255. 42 U.S.C. 2751 et seq. 31 U.S.C. 628. B-158487 (1966). 45 C.F.R. 175.4(c). 45 C.F.R. 175.16(c)(1) (proposed). 40 Fed. Reg. 18273. 40 Fed. Reg. 18277, appendix B.

Phillip Kirk, Secretary of Human Resources for the State of North Carolina, inquired as to whether the prohibition against advance of public funds precludes a Federal agency which employs students under the College Work-Study Program from advancing the employer's 20% share of the students' salaries to their colleges. The state program is called the Plan Assuring College Education. These advance payments appear to fall within the prohibition. Exceptions to the prohibition are not available for this situation. Federal regulations might be changed to allow payment of the grant share of salaries pending receipt of the employer's share, where the employer is a Federal agency. (Author/SC)

01904

DECISION

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

FILE: B-159715 DATE: May 2, 1977

MATTER OF: State of North Carolina PACE Program--College Work-Study Program--Advance of Funds

DIGEST: Advance payment of 20 percent Federal agency share of student salaries to colleges administering College Work-Study Program (42 U.S.C. § 2751 et seq. (1970)) appears to fall within prohibition against advances of public funds, 31 U.S.C. § 529 (1970). Exceptions to 31 U.S.C. § 529, including 41 U.S.C. § 255 and 10 U.S.C. § 2307 (1970), which provide for advance payments under contracts for property or services where Government's interest is adequately protected, are not available. GAO suggests that Office of Education consider changing regulations to allow 80 percent grant share of salaries to be paid pending receipt of employer's share, where employer is Federal agency.

This decision results from an inquiry by Phillip Kirk, the Secretary of Human Resources, State of North Carolina, as to whether the prohibition against advances of public funds, contained in 31 U.S.C. § 529 (1970), precludes a Federal agency which employs students under the College Work-Study Program administered by the Department of Health, Education, and Welfare, from advancing the employer's 20 percent share of the students' salaries to their colleges, to be paid over to the students by the colleges after the work is performed, along with the 80 percent share administered by the colleges.

Each summer, according to Mr. Kirk, the North Carolina Department of Human Resources coordinates summer work-study assignments in North Carolina by arranging off-campus placements for approximately 1,500 to 2,000 students from 60 to 90 institutions of higher education. This program effort is called Plan Assuring College Education--in North Carolina, or PACE.

Ordinarily, under the College Work-Study Program, as administered by the Office of Education, Department of Health,

Education, and Welfare (HEW) 42 U.S.C. § 2751 et seq. (1970), an eligible institution (which may be an institution of higher education or a certain kind of vocational school (42 U.S.C. § 2753) and is hereafter referred to as a "college" for convenience) that assigns students, under a work-study arrangement, to a public or private nonprofit off-campus organization, pays the students their salaries. These salaries consist of 80 percent work-study funds provided to a college under a grant from HEW's Office of Education and 20 percent local share provided by the employer, a public or private nonprofit organization. 42 U.S.C. § 2754. Because of the administrative requirements of working out the exact split after the students have performed their work, the colleges or universities that have administered such grants have often in the past advanced the 20 percent employer share and recovered the amount at a later date.

In his letter, the North Carolina Secretary of Human Resources describes the particular problem PACE has encountered with Federal agencies as follows:

> "The PACE program, of course, must confirm to the Office of Education rules and regulations pertaining to the Higher Education Act of 1965, amended, title IV-C, specifically to having the matching 20% funds on deposit before the 80% federal college work-study funds can be disbursed to a student.
>
> "We would like to be in a position to continue to place college work-study students in federal agencies as in the past under special arrangements for payment of the local 'match' of 20% for wages, current rate of employer's share of social security, and workman's compensation to the institution at the end of the summer.
>
> "Unfortunately, the institutions with which we negotiate contracts no longer are in a position to pay their PACE students with 80% college work-study funds and 20% institutional funds and wait until the summer is over to receive the federal agency 'match' to replenish their own disbursed funds. It is also not administratively feasible to wait for a monthly check from a federal agency for work completed. By the time the issuance, disbursing, receiving and re-disbursing process would take place, the summer would be, for the most part, over. By the very nature of the strata of low or moderate income students certified by financial aid officers, these students would be

placed under an extreme hardship of no funds at all during the entire summer.

* * * * *

"We are, therefore, asking for clarification and interpretation of North Carolina federal agencies being allowed to disburse funds to institutions of higher education at the beginning of the contracted dates on students working under the PACE program. These funds would be held in escrow until after the work has been performed and the proper reporting of time to the institution has occurred. At the completion of an institutional work period funds would be withdrawn from the federal agency portion of wages held in escrow at the institution to match Office of Education college work-study funds already on deposit for disbursement to PACE students. Any unused portion of the agency's matching funds would be returned to the agency in total at the completion of the contract."

The issue is whether the PACE proposal violates the prohibition against advances of Federal moneys contained in 31 U.S.C. § 529 (1970). This section provides in part as follows:

"No advance of public money shall be made in any case unless authorized by the appropriation concerned or other law. And in all cases of contracts for the performance of any service, or the delivery of articles of any description, for the use of the United States, payment shall not exceed the value of the service rendered, or of the articles delivered previously to such payment. * * *"

We requested the views of a number of Federal agencies who participate in the PACE program or who would otherwise be affected by our decision.

We have been informed by the Office of Education that it has no legal objection to the proposal as far as the administration of the College Work-Study Program is concerned, but it

expressly refrains from commenting on whether other Federal agencies employing College Work-Study students may advance funds to the colleges. The Civil Service Commission states that it has found nothing to prohibit the arrangements proposed by Mr. Kirk. The Social Security Administration (SSA), one of the principal Federal employers of college work-study students, opposes the proposal in part because advances would deplete Social Security Trust Fund balances, resulting in a loss of income from interest.

In support of the PACE proposal, Mr. Kirk makes the following argument:

> "Your memorandum [our decision, B-159715 (August 18, 1972)] makes it clear that federal law prohibits payment of wages in advance of any time worked or for services to be received by anyone. Our position is that the matching funds sent to an individual institution of higher education for the use of a college work-study student by the federal agency is not payment of wages in advance. The funds are held at the institution until the service is performed or the work week is completed and the proper PACE time card is received by the institutional business office for disbursement of wages, less legal withholding, from the 80% college work-study account and the 20% agency matching account. Therefore, it seems clear that the payment of the matching share to the institution by the agency is not 'wages paid in advance', but rather it is a portion of funds to be used by the institution for matching of wages, social security, and Workman's Compensation after the work has, in fact, been completed.
>
> "We see no disruption of a federal agency's fiscal system in any way, only the point in time at which the matching share is disbursed to the institution of higher education.
>
> "This past summer, the PACE program could not place students with Seymour Johnson AFB (located in Goldsboro, N.C.), the statewide Social Security Administration and several Veterans Hospitals, a prospect of some 75-100 positions. It seems that federal agencies in

> North Carolina should have the same opportunity as other agencies to take advantage of college work-study students working off-campus under the auspices of PACE. By using PACE students the federal agency derives a savings of 75% of wages which would otherwise be paid for the same part-time work to be performed. It is ironic that federal agencies cannot participate in this kind of effort of a federally funded financial aid program with the federal dollar savings that would be realized due to interpretations of what constitutes payment of wages in advance."

As noted by Mr. Kirk, in B-159715, August 18, 1972, a case concerning advance payments under the college work-study program, we were faced with a proposal to have the Federal agency employing work-study students pay the students the full amount due them--i.e., both the employer's 20 percent share and the college's 80 percent share--and collect the 80 percent work-study grant funds from the college at a later date. We held that:

> "The use of a Federal agency's appropriation to pay a college's share of wages due a student under the Work-Study Program would result in the Federal agency using its appropriations for a purpose for which its appropriation was not made. This is prohibited by 31 U.S.C. 628 and the use of the agency's funds for such purpose would be a violation of the cited code provision.
>
> "Also, the proposed procedure would in effect constitute the making of an advance payment by the Federal agency in that the agency would be making a payment on behalf of the college involved before receiving payment from the college. This would constitute a violation of 31 U.S.C. 529."

The PACE proposal is distinguishable from our decision in B-159715, August 18, 1972. The advance payment in that decision was not the employer agency's share of wages paid students but the college's share. The employer agency would have

paid the college's share at the time it was to pay the student and been reimbursed later, under the proposal at issue in that case.

Under the PACE proposal, the "advance" in question would be the Federal employer agency's 30 percent share. While this does not pose the problem of using funds for other than the purposes for which they were appropriated, as prohibited by 31 U.S.C. § 628 (1970), which was present in the earlier decision, the PACE proposal does involve an advance of Federal money. The creation of an escrow account or other fund by a college does not change the fact that a Federal agency must provide funds to the college prior to the receipt of services of the work-study students.

Consequently, in order to approve the PACE plan, we must find an exception applicable to the proposed advance that is "authorized by the appropriation concerned or other law." 31 U.S.C. § 529. The only exception pertinent here of which we are aware is contained in 41 U.S.C. § 255 (1970). B-158487 (April 4, 1966). This section provides as follows:

> "(a) Any executive agency may--
>
> (1) make advance, partial, progress or other payments under contracts for property or services made by the agency;
>
> * * * * *
>
> "(b) Payments made under subsection (a) of this section may not exceed the unpaid contract price.
>
> "(c) Advance payments under subsection (a) of this section may be made only upon adequate security and a determination by the agency head that to do so would be in the public interest. Such security may be in the form of a lien in favor of the Government on the property contracted for, on the balance in an account in which such payments are deposited, and on such of the property acquired for performance of the contract as the parties may agree. This lien shall be paramount to all other liens."

A similar provision, 10 U.S.C. § 2307, provides defense agencies with authority to make advance payments under contracts

Although there are slight variances between the two sections, 41 U.S.C. § 255 and 10 U.S.C. § 2307 are materially the same for present purposes. We will confine our discussion to 41 U.S.C. § 255; similar conclusions can be drawn based on 10 U.S.C. § 2307.

The Civil Service Commission has suggested, in its response to us, that "* * * the proposal outlined in Mr. Kirk's letter could actually be the subject of a contractual arrangement between Federal agencies and educational institutions for the performance of duties by students," which could form the basis for advance payments to the colleges under 41 U.S.C. § 255. The governing regulations of the Office of Education (45 C.F.R. § 175.4(c) (1975)) require that:

> "* * * work for a public or private nonprofit organization other than the institution [college] must * * * be evidenced by a written agreement containing the conditions of such work between the institution and the organization."

In a proposed major revision of these regulations, the Commissioner of Education restated the above provision in substance (see proposed regulation 45 C.F.R. § 175.16(c)(1), 40 Fed. Reg. 18273, October 14, 1975) and appended to it a Model Off-Campus Agreement (Appendix B, 40 Fed. Reg. 18277). This model agreement between the Organization (the off-campus public or private organization that provides work for the student) and the institution (the college) covers among other matters the--

> "* * * total percent, if any, of student compensation that the Organization will pay to the Institution, the total percent, if any, of the cost of employer's payroll contribution to be borne by the Organization."

The model agreement also provides optional clauses that designate the "Organization" or the "Institution" as the "employer" and clauses that require advances or reimbursement payments between the parties depending upon which has assumed the payroll function. Such an agreement is contractual in nature but, in our view, is not the kind of contract for the procurement of services or property contemplated by 41 U.S.C. § 255. Rather, it is simply an agreement whereby the agency agrees to participate in the Work-Study program and to establish the conditions for that participation. We do not believe, therefore, that the agreements required by 45 C.F.R. § 175.4(c), can be relied on as the basis

for the participating Federal agencies to make advance payments to the colleges of students' salaries pursuant to 41 U.S.C. § 255.

In any event, even assuming arguendo that the agreements did fall within 41 U.S.C. § 255, there would appear to be grave practical difficulties in meeting the requirements of subsections (b) and (c) of 41 U.S.C. § 255 that advance payments "not exceed the unpaid contract price" and "be made only upon adequate security and a determination by the agency that to do so would be in the public interest." We assume that an arrangement as proposed, if necessary to promote participation in the work-study program by Federal agencies, could be considered in the public interest.

We would anticipate, however, due to the uncertainty at the beginning of the summer as to the actual amount of hours worked by students, that it would be difficult to make certain that advance payments do not "exceed the contract price." The fact that any excess amount would be subject to a claim by the United States and the college would promise to return it does not satisfy the statute. Indeed, both 31 U.S.C. § 529 and 41 U.S.C. § 255 were designed to avoid such situations.

Further, the proposed escrow account which is to be maintained by the institution itself and is entirely subject to its control does not appear to satisfy the security requirement.

Accordingly, we cannot agree that the PACE proposal as submitted meets the statutory conditions for making advance payments. In any event, the PACE proposal would not entirely solve the problem. The SSA, for example, indicated that it would not willingly make advance payments to the colleges, even if were authorized to do so because of the resulting depletion of trust fund balances and loss of income from interest.

In this connection, the practical difficulty with which PACE is concerned appears to derive at least as much from the administrative requirement of the Office of Education that the employers' 20 percent share be on deposit before the 80 percent Federal share can be disbursed to a student as it does from the prohibition of advance payments. To the extent that this regulatory requirement is intended to protect against default by the employer on its obligations, it should be unnecessary where the employer is a Federal agency. We suggest, therefore, that PACE explore with the Office of Education whether the regulations could be modified to permit disbursement of at least the 80 percent grant funds which the colleges have received in advance for regular salary payments

to the students, deferring only the 2^ percent balance until it is received from the employing agencies. We know of no statutory requirement which makes disbursement of the grant funds dependent on receipt of the Federal "match." We believe that the plight of the low-income student who works without pay all summer as described in Mr. Kirk's submission, could be ameliorated by a change in the above described Office of Education administrative requirements.

P.J. Keller

Deputy Comptroller General
of the United States