DECISION

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

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FILE: B-180812 DATE: March 25, 1976

MATTER OF: Relocation Assistance to persons displaced prior to award of Federal grant

DIGEST: 1. Right of displaced persons to assistance pursuant to section 210 of Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 is not limited to cases where displacement occurs after commitment of Federal assistance.

2. Assistance pursuant to section 210 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act must be provided to those displaced after January 2, 1971, from site which at time of acquisition was planned as site of federally assisted waste treatment facility.

This decision to the Administrator of the Environmental Protection Agency (EPA) is in response to a request by the Assistant Administrator for Planning and Management, EPA, for our opinion concerning the application of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Relocation Act), 42 U.S.C. §§ 4601-4655 (1970), in situations where land acquisition and consequent displacement of occupants of the site occur before the award of a waste treatment facility grant by EPA. Since the resolution of the issues raised is pertinent to grant programs of other Federal agencies, we have obtained the views of the Department of Transportation, the Department of Housing and Urban Development, the Department of the Army and the General Services Administration. Generally these agencies addressed the particular procedures of their own grant programs, which indicates the need to formulate Relocation Act assistance requirements on the facts of each case.

Pursuant to title II of the Federal Water Pollution Control Act (FWPCA), as amended, 33 U.S.C. §§ 1281 et seq. (Supp. III, 1973), the Administrator makes grants, usually to municipalities, for the construction of publicly owned waste treatment works meeting various conditions set forth in the FWPCA and implementing regulations, 40 C.F.R. §§ 35.900-35.960 (1974). Applications are made originally to State water pollution control agencies (State agencies) that recommend which municipalities should receive grants from available funds, and how the awards will be timed, through a priority rating system. 40 C.F.R. § 35.915 (1974).

EPA awards grants, in accordance with the State's priorities, directly to municipalities. 33 U.S.C. § 1285 (1970); 40 C.F.R. § 35.910-1 (1974).

The authority of the Administrator to make waste treatment grants is limited by section 210 of the Relocation Act, 42 U.S.C. § 4630 (1970), which provides that:

> "Notwithstanding any other law, the head of a Federal agency shall not approve any grant to, or contract or agreement with, a State agency, under which Federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the displacement of any person on or after January 2, 1971, unless he receives satisfactory assurances from such State agency that—
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> "(1) fair and reasonable relocation payments and assistance shall be provided to or for displaced persons, as are required to be provided by a Federal agency under sections 4622, 4623, and 4624 of this title;
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> "(2) relocation assistance programs offering the services described in section 4625 of this title shall be provided to such displaced persons;
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> "(3) within a reasonable period of time prior to displacement, decent, safe, and sanitary replacement dwellings will be available to displaced persons in accordance with section 4625(c)(3) of this title."

As a subdivision of a State, a municipality falls within the term "State agency" as defined in section 101(3) of the Relocation Act, 42 U.S.C. § 4601(3) (1970). With certain limitations, the costs of the required relocation services are reimbursed by EPA to the grantee. 42 U.S.C. § 4631 (1970). A "displaced person" is defined in § 101(6) of the Relocation Act as:

> "* * * any person who, on or after January 2, 1971, moves from real property, or moves his personal property from real property, as a result of the acquisition of such real property, in whole or in part, or as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by a Federal agency, or with Federal financial assistance * * *."

The requirements of section 210 of the Relocation Act are clearly applicable when persons are displaced by a municipality after award of a FWPCA waste treatment grant. However, as the Assistant Administrator states, a municipality may find it advantageous to acquire land for a project before award of a grant or even before submission of a grant application. The Assistant Administrator points out that if the Relocation Act is applicable to such preaward acquisition or displacement, municipalities should be so advised, because benefits will be fully and effectively available only if offered at or before the time of acquisition or displacement. He reports that municipalities have in fact asked the EPA when they must make relocation payments to remain eligible for grants, and whether, if payments are made, they may expect reimbursement when they do receive a grant.

The first question presented, therefore, is whether the Relocation Act requires that benefits thereunder be extended to displaced persons prior to Federal commitment of assistance to the project in question. Secondly, if, as EPA contends, the Act does so require, it is necessary to determine what criteria may be used to determine eligibility for Relocation Act benefits where no commitment of Federal financial assistance has yet been made. The Assistant Administrator offers the following list of criteria, one of which, in the view of EPA, must be chosen as controlling the applicability of the Relocation Act to the EPA waste treatment works construction program:

> "(a) All situations where there was displacement after January 1, 1971, from a site which the municipality planned to use as the site of a specific future project, and where—
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> > "(1) prior to displacement, the municipality's grant application covering the project site has been received by the Federal government; or
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> > "(2) prior to displacement, the municipality's grant application covering the site has been forwarded to some intermediate entity (such as the State water pollution control agency), whether or not the Federal government has yet received it, or where (1) above applies; or
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> > "(3) prior to displacement, the municipality has taken some steps required by Federal or State law or regulation to preserve the eligibility of the project or the project site for a possible future Federal grant, or where (1) or (2) above applies.

"(b) All situations where there was displacement after January 1, 1971, from a site which, prior to displacement, was planned as the site of a specific future project, and where Federal grant assistance for such project on such site is later sought.

"(c) All situations where there was displacement after January 1, 1971, from land which is eventually proposed as the site of a Federally-assisted project."

We agree with EPA that benefits under the Relocation Act are not intended to be limited strictly to cases where displacement takes place after the commitment of Federal financial assistance. The language of the statute is susceptible of either construction. However, the legislative history of the Relocation Act evinces a congressional intention that the Act be liberally construed and that, at least in some cases, relocation benefits are to be available before the actual commitment of Federal financial assistance. Thus, the House report accompanying the draft bill, S. 1, 91st Congress, states, regarding the definition of a "displaced person," that:

"The term 'displaced person' means any person who, on or after the effective date of the act, moves from real property, or moves his personal property from real property as a result of the acquisition of such real property, or as the result of the written notice of the acquiring agency or any other authorized person to vacate such property, for a program or project undertaken by a Federal agency, or by a State agency with Federal financial assistance. If a person moves as the result of such a notice to vacate, it makes no difference whether or not the real property actually is acquired.

"It is immaterial whether the real property is acquired before or after the effective date of the bill, or by Federal or State agency; or whether Federal funds contribute to the cost of the real property. The controlling point is that the real property must be acquired for a Federal or Federal financially assisted program or project. For example:

"(a) A number of State highway departments frequently acquire rights-of-way for Federal-aid highways (usually, other than the Interstate System) with non-Federal funds, and seek Federal financial assistance only for the actual construction work. Persons required to move from such rights-of-way are recognized as displaced persons under the relocation provisions of the Federal-Aid Highway Act of 1968 and this bill affirms that principle." H.R. Rep. No. 1656, 91st Cong., 2d Sess. 4 (1970).

However, we find nothing specifically helpful in the legislative history concerning what criteria shall apply to determine at what stage persons displaced prior to the commitment of Federal assistance must be assisted pursuant to section 210. The language itself can reasonably be read to limit assistance only to those displaced after the commitment of Federal assistance. Thus, "displaced persons" are those displaced as the result of "a program or project undertaken * * * with Federal financial assistance" (section 101(6)), which appears to say that those displaced by a program undertaken without a commitment of Federal assistance, even if it is eventually obtained, are not included. Similarly, heads of agencies may not approve grants for programs which "will result in the displacement of any person." Section 210. (Emphasis supplied.) However, the language is sufficiently ambiguous for this reading not to be conclusive, and in fact, a different position was taken by the Court of Appeals for the 9th Circuit in La Raza Unida v. Volpe, 337 F. Supp. 221 (N.D. Calif. 1971); aff'd., 488 F. 2d 559 (9th Cir. 1973), cert. denied, 409 U.S. 890 (1972).

After a close examination of the highway construction grant procedures involved, the District Court in La Raza Unida concluded that Relocation Act protections would be ineffectual unless they reached persons displaced prior to application for Federal assistance:

> "* * * It does little good to shut the barn doors after all the horses have run away. If the federal statutes and regulations are to supply any protection at all it must be prior to the time the residents have left and the deleterious effects to the environment have taken place. All the protections that Congress sought to establish would be futile gestures were a state able to ignore the spirit (and letter) of the various acts and regulations until it actually receives federal funds. Given the realities of actual highway displacement and construction, the statutes and regulations must apply immediately or their purpose will be frustrated." 337 F. Supp. at 231. (Footnote omitted.)

The court found, in the circumstances of that case, that the Relocation Act was applicable upon Federal "location approval," the initial action necessary to qualify the project for Federal funds, even though it was not certain whether the State would eventually request Federal financial assistance and if so whether it would be granted. The Court noted that generally 6 to 8 years elapsed between the first and final stages of approval for the grants involved.

In effect, the District Court in La Raza Unida traced the grant application process back to its primary step—application for "location approval."

The application did not include a specific request for funds, but it did request an agency determination which was required before a grant could be awarded. It was held in effect that the Federal Highway Administration should not have granted location approval without having received the assurances required by section 210 of the Relocation Act that the State had provided for assistance to displaced persons. La Raza Unida, supra, 337 F. Supp. at 227, 231; 488 F.2d at 562.

As EPA points out, there is no precise analogy between the procedure for grant approval which was at issue in La Raza Unida, whereby the State was required to seek preliminary approval from the Federal agency at successive stages of planning a highway project, in advance of the submission of an application for Federal financial assistance, and the procedure for waste treatment works established by EPA. However, under the construction of the statute in La Raza Unida, which we believe to be a reasonable one, the applicant was required to give relocation assistance to displaced persons prior to application for Federal funds. We believe that the same reasoning applies to other forms of Federal assistance programs, such as the waste treatment works program of EPA. See H.R. Rep. No. 1656, at 1, 2.

With regard to the specific question of when, in the preaward process, the Relocation Act requirements should be made applicable to municipalities seeking waste-water treatment facility grants, neither the decision in La Raza Unida nor anything in the statute would appear to require that relocation assistance be given by a State or municipality at the time of displacement of persons from land if the land is not then intended to be the site of a federally assisted project. But if the land was acquired with the intention of using it for construction of a federally assisted project, then EPA may not grant assistance to the municipality unless it is satisfied that Relocation Act benefits have been and will be made available to displaced persons, as defined in the Act. That is, we conclude that it most closely reflects the intention of the Act to require that Relocation Act benefits be available to those displaced after January 1, 1971, from any site which at the time of acquisition (or at any time thereafter prior to actual displacement) was planned as the site of a federally assisted waste treatment works facility.

EPA points out several problems which would accompany the adoption of such a criterion. First, in the event that Federal assistance for a particular project should ultimately not be granted, there would of course be no basis for the municipality to recover a proportion of the costs of relocation assistance already expended. We recognize that the risk tnat they may bear the entire cost of relocation assistance may deter some municipalities from the early acquisition of land for a proposed project. However, as EPA acknowledges, "* * * there is no authority to make a grant for relocation expenses alone." Moreover, under the system whereby EPA

makes allocations of funds to the States and the States determine the priority of various projects, it would appear that, through coordination with the appropriate State agency, a municipality is in a good position to determine the likelihood that its application for a grant would be approved.

In any event, the policy of the Act is that relocation benefits are to be provided to displaced persons, and that Federal assistance will not be granted to applicants which have not provided those benefits. Application of this policy entails, as an inevitable consequence, a degree of risk for an applicant for Federal assistance that the assistance, including reimbursement of relocation costs, will not be granted.

For the above reasons, we would recommend that EPA promulgate regulations providing that waste treatment works construction grants cannot be approved without a showing by the applicant that, at the time it acquired land for the purpose of construction of such a project, it complied with the provisions of the Relocation Act in providing relocation assistance to displaced persons. As EPA points out, it will be necessary to establish by regulation a method for determining whether or not a particular acquisition was for the purpose of using the site for construction of a federally assisted waste treatment works project.

A further related question raised in the letter concerns grant applications from municipalities which have already displaced persons or acquired property without providing relocation benefits. We are asked for our advice on which of several approaches to this problem would be preferable. Specifically, the Assistant Administrator suggests, EPA may (1) waive the impropriety and allow use of the acquired property; (2) require the municipality to attempt to retroactively "cure" deficiencies by locating the affected persons and making payments or furnishing other assistance to the extent practicable; (3) deny the grant application; or (4) require the municipality to acquire a different site for the project and to comply with the Relocation Act requirements for that property. EPA is now, for the most part, following the second alternative.

Problems stemming from failures of grant applications to meet Relocation Act requirements can be minimized by giving adequate notice of EPA's policy to State agencies and potential applicants, and by expediting consideration of this aspect of grant applications received by EPA so that insubstantial deviations from the statutory requirements can be "cured." With respect to the first alternative, we are not aware of any way for the Administrator to "waive" failures to comply with the Relocation Act and avoid the mandate of section 210 not to approve a grant without receiving the required assurances of relocation assistance. The fourth alternative, to require a new site at which the Relocation Act would be complied with, as EPA points out, might be impossible and would not help those displaced at the first site.

The literal language of section 210 of the Relocation Act would appear to require that the grant application be denied, the third alternative listed above, since section 210 apparently requires disapproval of grants where the agency head is not satisfied that relocation assistance will be available prior to displacement. However, the Relocation Act is remedial legislation, to be construed liberally, and its purpose is not served by denial of the grant application, with the result that those displaced are left without any claim to assistance. Accordingly, it would appear to have been within the Administrator's discretion to adopt the second alternative, requiring the municipality to attempt to cure retroactively the failure to comply in the acquisition process with the Relocation Act, as we are advised he has done. Where retroactive measures cannot achieve at least substantial compliance with the law, however, it appears to us that the grant application must be denied.

R. F. Keller

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of the United States