

DOCUMENT RESUME

08004 - [C0288389]

[Statutory Authority for the Presidential Management Intern Program]. B-192657. November 22, 1978. 5 pp.

Decision re: Alan K. Campbell, Chairman, Civil Service Commission; by Elmer B. Staats, Comptroller General.

Contact: Office of the General Counsel: Personnel Law Matters I.
Congressional Relevance: House Committee on Appropriations;
Senate Committee on Appropriations.

Authority: Second Supplemental Appropriations Bill [of] 1978;
H.R. 13467 (95th Cong.). (P.L. 93-508; 38 U.S.C. 2014). 5
U.S.C. 1301. 5 U.S.C. 3301. 5 U.S.C. 3302. Executive Order
12008. Executive Order 11202. Executive Order 11813.
Executive Order 12015. Executive Order 11397. Executive
Order 11521. Executive Order 11219. Executive Order 10577.
42 Op. Atty. Gen. 157. H. Rept. 95-1350. S. Rept. 95-1061.

An opinion was requested as to whether there is statutory authority for the Presidential Management Intern Program administered by the Civil Service Commission. Executive Order 12008 which established the program was issued under the authority of 5 U.S.C. 3301 and 5 U.S.C. 3302 to regulate admission into the civil service and to establish rules governing the civil service. The creation of the Intern Program, therefore, is within the statutory authority of the President.
(RRS)

DECISION

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

*M. Volpe
Per L. J.*

8389

FILE: 8-192657

DATE: November 22, 1978

MATTER OF: Presidential Management Intern Program -
Statutory Authority

DIGEST: Civil Service Commission requests opinion whether there is statutory authority for Presidential Management Intern Program which Commission administers. The Intern Program does have statutory basis since Executive Order 12008 which established Program was issued pursuant to broad authority contained in 5 U.S.C. §§ 3301 and 3302 to regulate admission into civil service and to establish rules governing competitive service.

This action is in response to a request from the Honorable Alan K. Campbell, Chairman, U.S. Civil Service Commission (CSC), for an opinion as to whether there is statutory authority for the Presidential Management Intern Program established under Executive Order No. 12008.

The request states that on August 25, 1977, the President signed Executive Order No. 12008 establishing a Presidential Management Intern Program for the purpose of attracting to Federal service persons who have received special training managing public programs. Federal agencies are authorized to hire recent graduates of advanced-level public management programs under appointments in the excepted service for periods not to exceed 2 years. The maximum number of interns at any time is 500. The Civil Service Commission is directed to develop "appropriate procedures for the recruitment, screening, and selection of applicants" for this Program and to prescribe necessary regulations.

It appears that most of the CSC's work in this Program was funded with existing fiscal year 1978 appropriated funds. However, the CSC, in the Second Supplemental Appropriations Bill, 1978, H.R. 13457, sought an additional \$75,000 for administrative expenses in implementing the program. The House Committee on

B-192657

Appropriations, in its report on H.R. 13467, disapproved the CSC's request with the following statement appearing in H.R. Rep. 95-1350:

"The Committee disallows, without prejudice, the \$75,000 requested for the Presidential Management Intern Program due to the lack of authorizing legislation. The Committee points out that an Executive Order, unless implementing a law, does not give rise to legislative authority to appropriate public funds. The Committee believes that such a program, properly authorized and administered, might be useful to assist in bringing qualified minorities into government service."

The Senate Committee on Appropriations also disapproved the CSC's request, and the Committee issued the following statement in its report, S. Rep. 95-1061:

"The supplemental estimate included \$75,000 for the administrative cost of initiating the Presidential management intern program which was directed by Executive Order 12008. The Committee concurs in the House denial of funding for this program. The Committee is increasingly concerned with the establishment by the President of new programs by executive order prior to completion of the appropriation process.

"The Committee believes the objective of the program--to attract highly committed persons with graduate degrees from public management programs into the career Civil Service--to be extremely worthwhile. However, it is noted that this program is well underway--the selection process has been completed, some finalists have accepted positions--yet, the appropriation of funding for this program remains under consideration. The Civil Service Commission is advised to more adequately justify new programs to the Congress and await appropriation enactment prior to program implementation."

B-192657

The Civil Service Commission contends that under 5 U.S.C. §§ 3301 and 3302 the President is vested with the statutory authority to set rules for admitting individuals into the Civil Service and to establish exceptions from the competitive service. These statutory provisions were cited in the Executive Order as the enabling authority for the Program, and the CSC states that the statutory authority for the Program is, therefore, clear.

Under the provisions of 5 U.S.C. §§ 3301 and 3302 (1976), the President is vested with the following authority:

"§ 3301. Civil service; generally

"The President may --

(1) prescribe such regulations for the admission of individuals into the civil service in the executive branch as will best promote the efficiency of that service;

(2) ascertain the fitness of applicants as to age, health, character, knowledge, and ability for the employment sought; and

(3) appoint and prescribe the duties of individuals to make inquiries for the purpose of this section."

"§ 3302. Competitive service; rules

"The President may prescribe rules governing the competitive service. The rules shall provide, as nearly as conditions of good administration warrant, for--

(1) necessary exceptions of positions from the competitive service; and

(2) necessary exceptions from the provisions of sections 2951, 3304(a), 3306(a)(1), 3321, 7152, 7153, 7321, and 7322 of this title.

B-192657

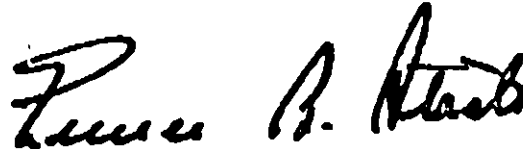
Each officer and individual employed in an agency to which the rules apply shall aid in carrying out the rules."

We note that under this broad statutory authority, the President has, by Executive Order, delegated certain authority and responsibility to the Civil Service Commission in situations similar to the present case. For example, under Executive Order No. 11202, March 5, 1965, superseded by Executive Order No. 11813, October 7, 1974, and Executive Order No. 12015, October 26, 1977, the CSC is authorized to administer the cooperative education program by regulating the conversion of work-study program students to civil service appointments and by coordinating the planning, implementation, and evaluation of employment programs for these students throughout the Government. In addition, prior to the enactment of Pub. L. 93-508 (38 U.S.C. § 2014 (1976)), the authority for the CSC to regulate and permit "veterans readjustment appointments" for veterans of the Vietnam era was contained in Executive Order No. 11397, February 10, 1968, and Executive Order No. 11521, March 31, 1970. There are other examples of delegation of appointment authority to the CSC under the statutory authority of 5 U.S.C. §§ 3301 and 3302 contained in Executive Order No. 10577, as amended, and Executive Order No. 11219, May 6, 1965.

The Congress has, by statute, provided that the President shall prescribe regulations for the admission of persons into the civil service and that the Civil Service Commission shall aid the President in preparing rules for the administration of the competitive service. 5 U.S.C. §§ 1301, 3301, and 3302. Furthermore, it has been recognized that under these statutory provisions, as well as from power derived from the Constitution, the President has broad discretionary authority to prescribe rules to promote the efficiency of the civil service, to supplement the statutory rules by other rules which are not specifically covered by statute, and to impose regulations not positively restricted by statute. 42 Op. Att'y Gen. 157, at 159, 160 (1962). Therefore, we conclude that the creation of the Presidential Management Intern Program under Executive Order 12008 is within the statutory authority of the President, as

B-192657

described above, to regulate admission into the civil service and to make exceptions of positions from the competitive service.



Comptroller General
of the United States