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

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B-202787 December 29, 1981

The Honorable Vin Weber
House of Representatives

Dear Mr. Weber:

You requested this Office to act immediately to halt certain lobbying activities of the Southern Minnesota Regional Legal Services Corporation, a recipient of Federal funds from the Legal Services Corporation (LSC), and recover any appropriated funds that may have been expended in violation of laws precluding lobbying activities with Federal funds. Our review leads us to conclude that the grantee recipient had engaged in prohibited lobbying activities. As explained below, this Office lacks statutory authority to halt lobbying activities by grantees of the Legal Services Corporation or to recover appropriated funds illegally expended by them on such activities.

On June 1, 1981, [redacted], the Managing Attorney of the Southwest Area Office of the Southern Minnesota Regional Legal Services, Inc., located in Worthington, Minnesota, made a mass mailing of a form letter to attorneys practicing in that area of Minnesota. The purpose of the letter was to inform attorneys that the continued existence of the Legal Services Program was in jeopardy and to solicit their active support and assistance in a lobbying campaign designed to continue the program. It was pointed out that both the Senate and House of Representatives were considering proposals in connection with the Legal Services Corporation Act Amendments of 1981, (H.R. 3480) that would drastically reduce funding for the Program. Moreover, it stated that the Reagan Administration had recommended that no funds be appropriated for the Legal Services Corporation in fiscal year 1982.

The letter emphasized the serious impact these funding reductions would have on the local program which could result in the closing of the Southwest Area Office. [redacted] reported that [redacted] had discussed this matter with you and that you had indicated an intention to vote against the continuation of the Legal Services Program on the basis that the local Bar could serve the needs of those currently being served by the recipient. The remaining part of the letter reads as follows:

> "Rep. Weber has other reasons for voting against Legal Services too, but I thought you might want to communicate with him before the upcoming House vote on the capacity of the private bar to give free legal service to the 18,000 poor people in this area.
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> "He would not vote to abolish Medicare on the grounds that doctors could give free medical care; but somehow he assumes that lawyers can give free legal care to all the poor people, and so legal aid is unnecessary.

"Other reasons he stated to me for voting against Legal Services include: a desire to support President Reagan; a desire to please local welfare boards, which have expressed dislike for Legal Services (we have won all but one of our administrative hearings concerning welfare regulations, which might relate to the displeasure the welfare boards feel); a desire to abolish an agency which 'advocates undermining the established functions of government'; and a belief that some other source (such as the Bar Association) will fund legal aid if government funding ceases. He perhaps has additional reasons in mind; my discussion with him lasted only 15 minutes, and I'm sure we did not exhaust the subject.

"If you do choose to communicate with Rep. Weber on this issue, we would suggest that you do so directly with his Washington, D.C. office: 514 Cannon House Office Bldg., Washington, D.C. 20515 (202) 225-2331.

"Of course, we would appreciate it if you would urge him to change his mind and vote in favor of the reauthorization bill, at the full funding level, with no restrictive amendments.

"Our office receives a great many referrals from the local bar, which we appreciate. If we have to stop taking new clients, we will send out an announcement to all local attorneys informing you of that fact."

The letter explicitly suggests that readers contact you on behalf of this recipient's legislative goals. This constitutes "grass roots" lobbying, which we have defined as appeals addressed to the public at large or to selected individuals suggesting that they contact their elected representatives and indicate their support of, or opposition to, legislation being considered by the Congress. B-202116, May 1, 1981, 60 Comp. Gen. ____; 59 Comp. Gen. 889 (1977). Lobbying activities are prohibited by provisions of the Legal Services Corporation Act of 1974, as amended (42 U.S.C. § 2996 et seq.), and restrictions contained in various appropriation acts applicable to Federal funds expended by the Corporation. We shall discuss these statutory restrictions in later paragraphs.

Under the provisions of 42 U.S.C. § 2996f(a)(5) the Corporation is charged with the responsibility of insuring that recipients do not use appropriated funds to influence the passage or defeat of legislation pending before the Congress except when representing a client or when:

"(B) a governmental agency, legislative body, a committee, or a member thereof

"(i) requests personnel of the recipient to testify, draft, or review measures or to make representations to such agency, body, committee, or member, or

"(ii) is considering a measure directly affecting the activities under this title of the recipient or the Corporation."

We think that the exception in 42 U.S.C. § 2996f(a)(5)(B), quoted above, should be construed so as to permit recipients to communicate directly with Members of Congress only when requested to do so or to communicate directly with Members on their own initiative when the Congress is considering legislation that would impact on their Legal Services Program operations. Obviously, Congress did not intend the statutory prohibition against lobbying to preclude officials of recipient organizations from testifying before that body, nor did it aim to preclude these officials from providing the Congress the kind of data that Executive Agencies and Departments normally supply when requested to do so or when they desire to express their views on legislative proposals.

On the other hand, we have construed this statutory anti-lobbying restriction as prohibiting agency and department officials from engaging in grass roots lobbying where they request members of the public to communicate with Congress to achieve their legislative goals. The legislative history of the Legal Services Corporation Act supports our construction. The Conference Report to accompany H.R. 7824, the Legal Services Corporation Act of 1974 (S. Rep. No. 93-845, 92d Cong., 2d Sess. 22) explains the exception that permits the Corporation to expend appropriated funds to influence legislation. The provision for the Corporation is similar to the one here at issue for recipients. The conference report shows what the Congress intended as follows:

"Both the House bill and the Senate amendment prohibit the Corporation from undertaking to influence the passage or defeat of any legislation by the Congress or by any State or local legislative body. The Senate amendment allowed the Corporation to testify and make appropriate comment in connection with legislation or appropriations directly affecting the activity of the Corporation. The House bill contained no comparable provision. The House recedes." (Emphasis added.)

The conference report reveals that the exception was understood to permit only testimony and appropriate comment on legislation affecting the recipient or the Corporation. It was not intended to allow recipients to expend Federal grant funds to drum up support for their legislative position among members of the public.

The Corporation has erroneously construed the exception applicable to recipients in 42 U.S.C. § 2996f(a)(5)(B)(ii), quoted above, to permit recipients to expend appropriated funds to solicit others to contact their Congressmen in connection with legislation affecting the recipient or the Corporation. LSC has promulgated regulations in 45 CFR § 1612.4 that implement its erroneous interpretation of this statutory provision as follows:

> "(a) No funds made available to a recipient by the Corporation shall be used, directly or indirectly, to support activities intended to influence the issuance, amendment, or revocation of any executive or administrative order or regulation of a Federal, State or local agency, or to influence the passage or defeat of any legislation by the Congress of the United States or by any State or local legislative body or State proposals by initiative petition."
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> "(3) An employee may engage in such activities if a government agency, legislative body, committee, or member thereof is considering a measure directly affecting the activities under the Act of the recipient or the Corporation."

These regulations are interpreted by the Corporation to authorize LSC fund recipients to expend appropriated funds for grass roots lobbying campaigns to drum up public support for LSC positions on legislation or appropriation measures concerning the Legal Services Program pending before the Congress. Because we have long considered these regulations to be inconsistent with 42 U.S.C. § 2996f(a)(5)(B)(ii), the statute on which they are based, we have been trying to persuade LSC to amend them. We wrote the President of the Corporation on November 24, 1980, when we issued our decision B-163762, and again on May 1, 1981, when we issued our decision B-202116, 60 Comp. Gen. _____ supra, recommending that LSC amend these regulations. LSC, however, refuses to change its regulations because it contends that Congress, with the enactment of 42 U.S.C. § 2996f(a)(5)(B)(ii), intended that its recipients should be authorized to expend Federal funds to mount grass roots lobbying campaigns in support of Legal Services Program legislation.

In addition to the restrictions on lobbying activities contained in 42 U.S.C. § 2996f(a)(5), annual appropriation act restrictions have served, in our view, to bar the use of funds for grass roots lobbying throughout the existence of the Legal Services Program. The anti-lobbying provisions of § 607(a) of the Treasury, Postal Service, and General Government Appropriations Act has been included in the act every year since the Corporation was established in 1974 and reads as follows:

> "No part of any appropriation contained in this or any other Act, or of the funds available for expenditure by any corporation or agency, shall be used for publicity or propaganda purposes designed to support or defeat legislation pending before Congress." (Emphasis added.)

90 Stat 903, P.L. 94-363, 7/14/76

We have construed section 607(a) as prohibiting the expenditure of Federal funds by Executive agencies and Government corporations for activities involving appeals addressed to members of the public suggesting that they contact Members of Congress and indicate support of or opposition to legislation pending before the Congress, or that they urge their congressional representatives to vote in a particular manner. 56 Comp. Gen. 889 supra. By its terms section 607(a) is applicable to appropriations contained in all appropriation acts. An appropriation restriction forbids the use of funds by an agency even for activities authorized in its organic legislation. Assuming arguendo that LSC is correct in construing its organic legislation as authorizing it and its recipients to engage in grass roots lobbying campaigns, section 607(a) would prohibit the use of appropriated funds for that activity so long as that restriction remains in force.

Despite the applicability of section 607(a) LSC and its recipients continued to engage in grass roots lobbying activities throughout the late 1970s. In order to curtail such activities, Congress enacted a provision similar to section 607(a), but expanded it to cover State legislatures as well as the Congress, as a proviso to fiscal year 1978 appropriations provided for LSC in the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1979 (Pub. L. 95-431, October 10, 1978, 92 Stat. 1021). This proviso, known as the Moorhead Amendment, reads as follows:

> "* * * Provided, No part of this appropriation shall be used for publicity or propaganda purposes designed to support or defeat legislation pending before Congress or any State legislature."

The Moorhead amendment has been applicable to the Corporation's appropriations each year since it was first introduced and enacted in 1978. Under this restriction, appropriated funds may not be used by recipients to appeal to members of the public to urge their elected representatives to support or defeat legislation pending in the Congress or in any State Legislature. LSC has also failed to implement this restriction.

In reaction to our decision B-202116, May 1, 1981, 60 Comp. Gen. _____, supra, the President of the Corporation wrote us a letter which explained why the Corporation does not accept our construction of the above referenced anti-lobbying restrictions:

> "The major difference between GAO and the Legal Services Corporation on this issue is the intermeshing of the Treasury, Postal Service Appropriations rider, the Moorhead rider and the Legal Services Corporation Act. The Legal Services Corporation concluded that the three must be read together in order to be meaningful and consistent. Contrary to GAO's statement on page 11, [of the decision], it is not the view of the Legal Services Corporation that the Treasury, Post Service rider is inapplicable to LSC appropriations on the basis that it was originally adopted prior to the establishment of the Corporation. Rather it is our view that the Treasury, Postal Service rider, the Moorhead rider and the LSC Act must be viewed as an integral whole to fully determine Congressional intent with regard to this subject. It is a well established rule of statutory construction that two legislative provisions which appear to conflict should be construed, if possible, in a manner which renders them capable of co-existence."

This LSC rationale overlooks the fact that most appropriation restrictions are intended to restrict implementation of organic legislation. Indeed, one of the primary purposes of an appropriation restriction is to prohibit an agency from expending its appropriations on goods or services it might otherwise be authorized to procure or for purposes which would otherwise be authorized. As a general rule, appropriation restrictions are temporary prohibitions on the expenditure of appropriated funds to exercise authority contained in organic legislation and expire with the appropriation act in which they are contained unless re-enacted in subsequent appropriation acts. Accordingly, it defeats the purpose of appropriation restrictions to insist, as LSC does, that on the basis of statutory construction principles, such restrictions must be harmonized with the Corporation's organic legislation. Moreover, there is a presumption against a construction which renders statutory provisions such as appropriation restrictions meaningless, superfluous or ineffective. International Tel. & Tel. Corp. v. American Tel. & Tel. Co., 444 F. Supp. 1148 (1978).

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With regard to your request that we recover any appropriated funds expended by this recipient in violation of anti-lobbying restrictions, we are unable to do so because we lack the requisite statutory authority in this case. We are not authorized to settle the accounts of the Corporation pursuant to the provisions of 31 U.S.C. Chapter 2.[7] Consequently, the Corporation is neither bound by our decisions nor are we able to take exception to the accounts of the Corporation for any appropriated funds which may have been illegally expended here. We do not think, as a practical matter, that the Government would be successful in attempting to recover any funds illegally expended by the recipient on the grass roots lobbying campaign, since LSC's regulations and current policies authorize recipients to conduct such lobbying campaigns in derogation of the above-cited restrictions.

We note that section 17 of H.R. 3480, the Legal Service Corporation Act Amendments of 1981, which passed the House on June 18, 1981, would empower this Office to settle and adjust the accounts of the Corporation. This provision would, in our view, have the effect of making our decisions binding on the Corporation with regard to the legality of expenditures of Federal funds. Also, it would empower this Office to take exception to the accounts of the Corporation with regard to expenditures that we conclude are illegal. We have some doubt about the Corporation's acceptance of our interpretation. However, because of the unique status of the Corporation as a District of Columbia private nonmembership nonprofit corporation, staffed with officers and employees who are not officers and employees of the Federal Government, we would be unable to exercise the ultimate sanction of holding a certifying officer pecuniarily liable for an illegal or improper payment, if such action became necessary as a last resort to ensure compliance. Accordingly, even under H.R. 3480, we might still be unable to insure compliance with our decisions if the Corporation chose to disregard them.

We trust our decision is responsive to your request. If we can be of further assistance to you with regard to this matter, please call on us.

Sincerely yours,

Harry R. Van Cleve

For the Comptroller General
of the United States