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DECISION



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

FILE: B-219742

DATE: July 1, 1986

MATTER OF: Veterans Administration Funding of Federal
Executive Boards

DIGEST: The General Accounting Office agrees with the Veterans Administration's legal analysis that a general Government-wide Appropriation Act fiscal year restriction (currently contained in section 608 of the Treasury, Postal Service, and General Government Appropriation Act for fiscal year 1986, H.R. 3036) on the use of appropriated funds for interagency financing of boards or commissions "which do not have prior and specific statutory approval to receive financial support from more than one agency or instrumentality," applies to the Federal Executive Boards since the Boards do not have statutory approval for interagency financing. However, single agency financing of the Boards is not prohibited by the restriction.

The Administrator of the Veterans Administration (VA) has requested our opinion on the lawfulness of funding Federal Executive Boards (Boards) using interagency fund transfers. Specifically, he asks whether we agree with a VA Acting General Counsel's opinion that section 610 of the Treasury, Postal Service, and General Government Appropriation Act for fiscal year 1985, H.R. 5798 (incorporated by reference into the Continuing Appropriation Act for Fiscal Year 1985, Pub. L. No. 98-473, 98 Stat. 1837 (October 12, 1984)), restricts interagency funding of the Boards. As discussed below, we agree with the VA that interagency funding of the Boards is prohibited by the restriction contained in section 610 of H.R. 5798, supra.^{1/} The Boards do not have "prior and specific statutory approval." On the other hand, we think that financial support of the Boards is lawful as long as only one agency pays the costs involved.

^{1/} For fiscal year 1986, the restriction is provided by section 608 of the Treasury, Postal Service, and General Government Appropriation Act for Fiscal Year 1986, H.R. 3036 (incorporated by reference into the Continuing Appropriation Act for Fiscal Year 1986, Pub. L. No. 99-190, 99 Stat. 1185, 1291 (December 19, 1985)).

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In fiscal year 1984, the VA Medical Center at Dallas, Texas, had been financially supporting the local Federal Executive Boards and had been billing each participating Federal agency its pro-rata share of the cost. The Small Business Administration (SBA) indicated that it would not pay its share, since in its view, interagency financial support was contrary to a GAO interpretation of a similar provision contained in section 608 of the Treasury, Postal Service and General Government Appropriation Act for Fiscal Year 1977, Pub. L. No. 94-363. The VA's legal office concurred with the SBA's position that section 610 of H.R. 5798, supra, the successor to section 608 of Pub. L. No. 94-363, prohibits interagency financing of the Boards. In addition, the VA's legal office recommended that the VA discontinue contributing personnel, property and financial support to all Federal Executive Boards. The VA's Administrator asked that we review this opinion.

Background

Federal Executive Boards are interagency coordinating groups created to strengthen Federal management practices, improve intergovernmental relations, and participate, as a unified Federal force, in local civic affairs. The Boards were established by President Kennedy in November 1961. The Boards rely on voluntary participation by members to accomplish their goals. They have no legislative charter and receive no congressional appropriations.

When the Boards were first established, Congress had specifically authorized the use of appropriated funds of member agencies to finance interagency activities. Section 214 of the Independent Offices Appropriation Act, 1946, 31 U.S.C. § 691 (now substantially recodified as 31 U.S.C. § 1346(b)) provided:

"Appropriations of the executive departments and independent establishments of the Government shall be available for the expenses of committees, boards, or other interagency groups engaged in authorized activities of common interest to such departments and establishments and composed in whole or in part of representatives thereof who receive no additional compensation by virtue of such membership: Provided, That employees of such departments and establishments rendering service for such committees, boards, or other

groups, other than as representatives, shall receive no additional compensation by virtue of such service."

However, in the late 1960's, Congress was growing concerned that section 214 was being used to divert appropriated funds to interagency programs not specifically authorized by Congress. To remedy this, Congress provided a specific restriction on the authority of section 214 in section 508 of the Department of Agriculture and Related Agencies Appropriation Act, 1969, Pub. L. No. 90-463, 82 Stat. 639 (1968), as follows:

"None of the funds in this Act shall be available to finance interdepartmental boards, commissions, councils, committees, or similar groups under section 214 of the Independent Offices Appropriation Act, 1946 * * * which do not have prior and specific congressional approval of such method of financial support."

A similar restriction, appearing in section 307 of the Independent Offices and Department of Housing and Urban Development Appropriation Act, 1969, Pub. L. No. 90-550, 82 Stat. 937, was enacted October 4, 1968, over the objections of agency spokesmen that this legislation would appear to outlaw the financing of any kind of interagency operation. See Senate Hearings on Independent Offices and Department of Housing and Urban Development Appropriation for Fiscal Year 1969, May 22, 1968, at pp. 1143-46, 1408.

In 1971, section 609 of the Treasury, Postal Service, and General Government Appropriation Act, Pub. L. No. 92-49, 85 Stat. 108 (1978), first made the restriction (which had been included in appropriation acts since 1968) applicable to appropriations made in "this or any other Act." (Emphasis added.) This restriction was included in Treasury's Appropriation Acts for each successive year until 1982.

Since 1982, the language of the restriction has appeared in its current form:

"No part of any appropriation contained in this or any other Act, shall be available for interagency financing of boards, commissions, councils, committees, or similar groups (whether or not they are interagency entities) which do not have prior and specific statutory approval to receive financial support from more than one agency or instrumentality."

Id., Continuing Appropriation Act for fiscal year 1986.

DISCUSSION

We have in the past considered the pre-1982 restriction and concluded that it prohibited the availability of executive agency appropriations, otherwise available to interagency entities under 31 U.S.C. § 1346(b), "* * * unless specific congressional authorization has been given for such method of financing." 49 Comp. Gen. 305, 307 (1969); See also, B-174571, Jan. 5, 1972.

In 1977, we advised the Office of Management and Budget (OMB) (the agency then charged with the oversight responsibility for Federal Executive Boards)^{2/} that:

"* * * absent prior and specific congressional approval, the financing of interagency organizations, including FEBs * * *, with funds appropriated to member agencies is contrary to the plain language of section 608 of the Treasury, Postal Service, and General Government Appropriation Act, supra." Standardized Federal Regions--Little Effect on Agency Management of Personnel. GAO/FPCD-77-39, August 17, 1977.^{3/}

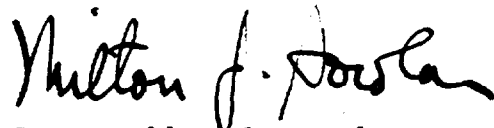
According to the Office of Personnel Management (OPM), which now has oversight over the Federal Executive Boards, interagency contributions to Federal Executive Board activities do not violate the restriction because contributing agencies are merely carrying out the purposes of their own appropriations. The Federal Executive Boards, according to OPM, generate no extra expenses by their existence and operation. In support of this view, OPM points out that both under the prior and the current restriction Congress was clearly aware of agency contributions to FEBs and has taken no steps to expressly prevent them from taking place. In taking this position, OPM stands by the views on this subject expressed in a 1977 memorandum from OMB.

^{2/} This responsibility was transferred to the Office of Personnel Management in June 1982.

^{3/} We are enclosing a copy of this report with the decision.

The OPM position, which relies in part on the decisions of this Office, does not address the fact that our 1977 report had already rejected this OMB position. In our 1977 report we only noted that the form of congressional approval was in doubt; i.e., whether approval should come from the entire Congress or just from an appropriate committee, and whether the approval should be demonstrated by statute or through some less formal action. The 1982 change in the restriction language appears to have answered this area of uncertainty; that is, it makes it clear that statutory approval is required. We therefore agree with the VA's legal analysis that section 608 of H.R. 3036, supra, prohibits interagency financing of Federal Executive Boards. The prohibition will continue as long as the restriction is contained, in its current form, in successive appropriation acts.

The new statutory language also contains two other significant changes. It provides that the restriction on funding boards, committees, etc. applies even if such organizations cannot be characterized properly as "interagency entities." Of primary importance, however, is the specific reference in the restriction to entities receiving "financial support from more than one agency or instrumentality." (Emphasis added.) This language, appearing for the first time in 1982 and repeated in each annual restriction since that time, indicates plainly that the Congress disapproved of the practice of supporting such entities by "passing the hat," as it were, unless otherwise authorized by statute. While interagency funding is prohibited, however, we see nothing to prevent a single entity with a primary interest in the success of the interagency venture, from picking up the entire costs. In this respect, then, we disagree with the VA legal advice to "immediately discontinue" all VA financial support to FEBs to the extent that it is based on the belief that such financial support would be illegal. Of course, it is certainly not required to bear the full operating costs of the FEBs alone. We only mean that it would be proper if it sought to do so.

for 
Comptroller General
of the United States