Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Syracuse University, Interest Earned on Grant Funds

File: B-236549

Date: August 13, 1990

DIGEST

In the Urgent Supplemental Appropriations Act, Pub. L. No. 99-349, 100 Stat. 710, 725 (1986), which directed that Syracuse University receive a research grant, Congress did not evidence a clear intent that the University have the benefit of interest earned on grant funds. The general rule therefore applies that interest earned by a grantee on funds advanced by the United States belongs to the United States rather than the grantee and must be paid to the United States. See 42 Comp. Gen. 289, 293 (1962).

In absence of evidence documenting actual interest earned, Navy properly computed interest by using the 6-month Treasury rate provided in 4 C.F.R. § 102.13(c) (1989). See 31 U.S.C. § 3717 (1982).

DECISION

This decision is in response to an August 11, 1989, letter from Syracuse University (University) asking whether the University must pay the Department of the Navy (Navy) interest earned on a congressionally mandated grant to the University. The Navy contends that the University owes the government over $900,000. The University also raised concerns about the appropriateness of the interest rate used by the Navy to compute the interest due the government. As discussed below, we conclude that the University is required to pay the interest earned on the grant funds and that the 6-month Treasury rate used by the Navy to compute the interest was proper.

BACKGROUND

In the Urgent Supplemental Appropriations Act, Pub. L. No. 99-349, 100 Stat. 710, 725 (1986), Congress provided that of the funds previously made available to the Department of Defense in fiscal year 1986 under Public Law 99-190, $55,600,000 was to be available only for grants or contributions to educational institutions for research

activities "as provided in House Report 99-450 accompanying . . . Public Law 99-190." The Act required that the grants or contributions be provided "expeditiously" and that "such grants or contributions are a one time obligation and expenditure and shall not interfere with or change the existing system of other competitive research grants or contracts."

Since Congress had designated the educational institutions to receive funding and the purposes for that funding, the Deputy Under Secretary of Defense decided that there was no need for grant proposals or a merit evaluation of such proposals. Acting pursuant to the Act, and as required by the Deputy Under Secretary of Defense, the Defense Advanced Research Projects Agency (DARPA) directed the Navy to provide $12,000,000 in grant funds to the University to support the Case Center Computer Research Project (Case Project).

In the University's letter to our Office, the University noted that before the grant was issued, a Navy contracting officer discussed the terms and conditions of the grant with the University. The University contends that the contracting officer informed the University that the government would not be due any interest that might accrue from the grant. In October 1988, however, the Navy demanded that the University remit to the government all interest earned on grant funds prior to their expenditure. We note at the outset that the grant instrument is silent with respect to the disposition of interest earned on grant funds.1/

ANALYSIS

The general rule is that interest earned by a grantee on funds advanced by the United States belongs to the United States rather than the grantee and must be paid to the United States. 64 Comp. Gen. 103, 106 (1984); 62 Comp. Gen. 701, 704-05 (1983). Grantees are considered to hold the advanced funds in trust for the United States pending their application for grant purposes. 64 Comp. Gen. at 106. The rationale for this rule is that statutes authorizing grant programs contemplate that grant funds are to be expended only for the purposes and in the amounts for which they were awarded and are not intended to be used for the profit of the grantee. 62 Comp. Gen. at 702. Stated somewhat differently,

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1/ The Deputy Under Secretary of Defense had instructed the Defense agencies to prepare grant instruments that were essentially limited to a "description of the purpose of the grant to an exact quotation of the language of the . . . Act."

statutes authorizing grant programs contemplate that grantees shall not profit other than in the manner and to the extent provided by law. 64 Comp. Gen. 96, 97-98 (1984).

This general rule is clearly articulated in attachment D of OMB Circular No. A-110, which states that "Interest earned on advances of federal funds shall be remitted to the federal agency." OMB Cir. No. A-110, att. D. sec. 2. The standards outlined in the OMB Circular are applicable to all federal agencies unless the Congress prescribes different policies or specific requirements for a particular grant or grants.2/ In this regard, we have explained that "only the Congress is legally empowered to give away the property or money of the United States, and that when it makes grants of funds . . . it has a right to designate the purpose thereof and to surround the grant by such conditions as it chooses to impose." 42 Comp. Gen. 289, 293 (1962). Agencies do not have authority to agree to allow the grantee to earn and retain interest on grant funds prior to the expenditure unless such authority is expressly provided by the Congress. 62 Comp. Gen. at 702; B-192459, July 1, 1980; 1 Comp. Gen. 652 (1922). Moreover, our decisions make clear that only where Congress clearly and specifically intends to make an unconditional gift will interest earned on grant funds not inure to the benefit of the United States. E.g., 42 Comp. Gen. at 293.

The issue in this case, therefore, is whether the Congress clearly intended the University to have the benefit of interest earned on the grant funds. In this regard, there is nothing in the language of the Urgent Supplemental Appropriations Act to warrant a conclusion that the grant was intended as an unconditional gift. The Act simply states that grants or contributions were required to be made to educational institutions to fund certain research projects.3/

2/ In the Intergovernmental Cooperation Act of 1968, 31 U.S.C. § 6503(a), Congress provided one broad exception to the general rule. States and state instrumentalities are allowed to retain the interest earned on grant advances. This exception does not apply to Syracuse University because the University is a privately funded university and is not an instrumentality of the State of New York.

3/ In 42 Comp. Gen. at 293, we cited to 16 U.S.C. § 500 as an example of statutory language wherein Congress evidenced the intent to make an unqualified gift (a percentage of the monies received from national forests are to be paid to the states for the benefit of public schools and public roads). The University's grant is distinguishable in that the grant

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Nonetheless, the University argues that since this is a legislatively mandated grant, it is not a typical research grant and is not subject to the general limitations on the expenditure of federal grant funds. Their argument focuses on the language of the Act requiring the Navy to provide the grant "expeditiously" and the fact that the grant was to be awarded outside the competitive grant process. We see nothing in such language to support the University's position. The legislated direction to make the grant expeditiously and without competition seems to speak to Congress's impatience with administrative delays in awarding grants for this project. An "expeditious" and "one time" grant award is in no way inconsistent with a requirement that the grant comply with general federal rules governing grantees and grant administration, including those rules on interest earned prior to grant expenditures. We also disagree with the University's argument that the language in the Act requiring grants for "research activities, construction of research related facilities and for other related purposes" evidences a grant that was not conditioned on any specific uses, and hence was an unconditional gift. The University grant was for a very specific use, that being for the Case Project, which was described in some detail in S. Rep. No. 99-176, 99th Cong., 1st Sess. 332 (1985).

Moreover, there is no indication in the legislative history of the Act that Congress intended an unqualified gift. The only reference to the Case Project is included in S. Rep. No. 99-176 at 332 where the Appropriations Committee stated that $12,000,000 was to be appropriated to fund the Case Project. The Committee then described the project as bringing together five research and education programs into a single facility. "The opportunity to consolidate these academic fields at a single new science and technology center will yield synergistic benefits to the university, the State of New York, and the entire Nation." Id.

With respect to the amount of interest owed the United States, the Navy's position is that without proof of the actual interest earned, the Treasury rate of interest is used to determine amounts owed. The University has not provided an accounting of actual interest, nor has it provided an explanation of how the grant funds were invested and the interest rate applicable to such investment.

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amount was fixed by Congress, which indicates that Congress intended to limit the amount of funds available to the University.

The University maintains that since the grant funds were commingled with its other investments, "there is no reasonable way to trace certain funds to certain investments." The University argues that given the nature of grant expenditures, "usually once a week and on many occasions more often," the funds would have necessarily been invested in a daily interest investment, such as a savings account, and that the amount of interest should be determined using a day-of-deposit and day-of-withdrawal bank rate. The University suggests a rate of 5.25 percent. (See Exhibit L attached to University's letter of August 11, 1989.) In a letter to the University, dated July 26, 1989, however, the Navy states that "correspondence [from the University to the Navy] suggests that the grant funds were invested in arrangements other than a day to day savings account." And, the Navy contends that during an audit of the grant, the Navy "was denied access to university investment records because the university is either unable or unwilling to make a full accounting."

The statutory basis for the government's interest rate is provided in 31 U.S.C. § 3717 (1982). See 63 Comp. Gen. 10 (1983). The implementing regulations, issued jointly by the Comptroller General of the United States and the Attorney General of the United States, and known as the Federal Claims Collection Standards, are found at 4 C.F.R. parts 101-105. Under 4 C.F.R. § 102.13(c)(1989), the rate of interest is the rate of the current value of the funds to the Treasury. See B-217215, Mar. 20, 1986 (interest accruing after statutory notice).

Had the University maintained a separate accounting of grant funds in accordance with OMB Circular A-110, the interest rate would not have been at issue.4/ Because the University is unable to document the actual interest earned or to provide information from which the Navy might reasonably ascertain the amount most likely earned (such as where the funds were invested and the interest rate applicable to that investment), we agree with the Navy that the Treasury rate should be used to determine the amount the University owes the Navy.

4/ Grant recipients must follow specific guidelines established by OMB in a 1987 revision to Circular A-110. The revised Circular requires grant recipients to maintain advances of federal funds in interest bearing accounts and to remit such interest promptly, at least quarterly, to the federal agency that provided the funds. (Recipients may retain interest amounts up to $100 per year for administrative expenses.) This revision to OMB Circular A-110 was published in the Federal Register on February 10, 1987, before the Case Project grant was awarded.

Although the alleged erroneous advice provided by the Navy contracting officer to the University and the failure of the grant instrument to address this issue are regrettable, such shortcomings do not authorize the University to retain the interest earned. OPM v. Richmond, 58 L.W. 4771 (U.S. June 11, 1990); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947).

Milton J. Socolar

Acting Comptroller General
of the United States