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B-159715, FEB 11, 1971, 50 COMP GEN 553

COLLEGES, SCHOOLS, ETC. - WORK STUDY PROGRAMS - ECONOMIC OPPORTUNITY ACT - AGENCY PARTICIPATION APART FROM GRANT AGREEMENT THE LIMITATION IN THE ECONOMIC OPPORTUNITY ACT (42 U.S.C. 2754 (B)) REQUIRING THAT WORK-STUDY GRANT AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION PROVIDE THAT THE "FEDERAL SHARE" OF THE COMPENSATION OF STUDENTS EMPLOYED IN THE COLLEGE WORK-STUDY PROGRAM WILL NOT EXCEED 80 PER CENTUM OF THE COMPENSATION PAID TO THE STUDENTS, PERTAINING ONLY TO PAYMENTS FROM GRANTS MADE BY THE OFFICE OF EDUCATION TO THE INSTITUTIONS AND NOT TO THE PAYMENTS MADE BY OTHER FEDERAL AGENCIES WHERE THE STUDENTS ARE EMPLOYED, THE EMPLOYING AGENCIES MAY BEAR A LARGER PORTION THAN 20 PERCENT OF STUDENT EARNINGS SO THAT GRANT FUNDS MAY BE SPREAD OVER A GREATER NUMBER OF STUDENTS. WHETHER AN AGENCY SHOULD PAY A SOCIAL SECURITY TAX ON ITS CONTRIBUTION TO A STUDENT'S SALARY, AND IF SO IN WHAT AMOUNT, IS FOR DETERMINATION BY THE COMMISSIONER OF THE INTERNAL REVENUE SERVICE. PERSONAL SERVICES - PRIVATE CONTRACT V GOVERNMENT PERSONNEL - EMPLOYMENT RECRUITING CONTRACTS WITH THE DISTRICT OF COLUMBIA URBAN CORPS, A PART OF THE D.C. GOVERNMENT, AND SIMILAR URBAN CORPS AND OTHER ORGANIZATIONS, INCLUDING PROFIT-MAKING ORGANIZATIONS, IN OTHER LOCALITIES MAY NOT BE ENTERED INTO BY FEDERAL AGENCIES FOR THE PURPOSE OF RECRUITING STUDENTS AND DEALING WITH EDUCATIONAL INSTITUTIONS BECAUSE THE TYPE OF SERVICES CONTEMPLATED CAN BE PERFORMED MORE ECONOMICALLY AND FEASIBILITY BY THEIR OWN PERSONNEL. EVEN IF A CONTRACT ARRANGEMENT WERE PERMITTED WITH THE D.C. URBAN CORPS, THE "OVERRIDE" PAYABLE WOULD CONSTITUTE A REIMBURSEMENT TO THE D.C. GOVERNMENT THAT IS BARRED BY SECTION 601 OF THE ECONOMY ACT OF 1932 (31 U.S.C. 686); MOREOVER, ANY PAYMENT RECEIVED WOULD BE FOR DEPOSIT INTO THE TREASURY OF THE UNITED STATES TO AVOID THE AUGMENTATION OF THE D.C. APPROPRIATION USED TO FUND THE CORPS.

TO THE CHAIRMAN, UNITED STATES CIVIL SERVICE COMMISSION, FEBRUARY 11, 1971:

THE EXECUTIVE DIRECTOR OF YOUR COMMISSION BY LETTER OF NOVEMBER 24, 1970, REQUESTS OUR ADVICE ON SEVERAL QUESTIONS WITH RESPECT TO RECENT DEVELOPMENTS IN THE COLLEGE WORK-STUDY PROGRAM. THIS PROGRAM IS AUTHORIZED UNDER TITLE I - C OF THE ECONOMIC OPPORTUNITY ACT OF 1964, AS AMENDED, 42 U.S.C. 2751, ET SEQ., AND ITS GENERAL PURPOSE IS TO STIMULATE AND PROMOTE THE PART-TIME EMPLOYMENT OF STUDENTS IN INSTITUTIONS OF HIGHER LEARNING WHO HAVE NEED FOR EARNINGS TO PURSUE THEIR COURSES OF STUDY.

THE PROGRAM IS FUNDED BY GRANTS MADE TO QUALIFYING INSTITUTIONS OF HIGHER EDUCATION BY THE OFFICE OF EDUCATION, AND THE INSTITUTIONS ARE REQUIRED TO OPERATE PROGRAMS OF PART-TIME EMPLOYMENT FOR THEIR STUDENTS. THE STUDENTS MAY WORK FOR THE INSTITUTIONS THEMSELVES OR WORK IN THE PUBLIC INTEREST FOR PUBLIC OR NONPROFIT ORGANIZATIONS. FEDERAL AGENCIES MAY COOPERATE WITH INSTITUTIONS BY

PROVIDING JOB OPPORTUNITIES FOR STUDENTS IN THE PROGRAM, AND IT IS WORK PERFORMED IN AND FOR FEDERAL AGENCIES WHICH GIVES RISE TO THE QUESTIONS PRESENTED.

AT THE PRESENT TIME, INSTITUTIONS PAY UP TO 80 PERCENT OF STUDENT EARNINGS FROM FUNDS GRANTED BY THE COMMISSIONER OF EDUCATION, AND PARTICIPATING FEDERAL AGENCIES HAVE PAID THE REMAINING 20 PERCENT. RECENTLY, SOME FEDERAL AGENCIES HAVE BEEN ASKED BY THE INSTITUTIONS TO BEAR A LARGER PORTION OF STUDENT EARNINGS, SO THAT THE FUNDS GRANTED BY THE OFFICE OF EDUCATION MAY BE SPREAD OVER A GREATER NUMBER OF STUDENTS. WE ARE ASKED TO ADVISE WHETHER UNDER THE LAW THIS IS PERMISSIBLE.

THE LAW FOUND AT 42 U.S.C. 2754(6) REQUIRES THAT AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION FOR WORK-STUDY GRANTS SHALL:

PROVIDE THAT THE FEDERAL SHARE OF THE COMPENSATION OF STUDENTS EMPLOYED IN THE WORK-STUDY PROGRAM *** WILL NOT EXCEED 80 PERCENTUM OF SUCH COMPENSATION. ***

IT HAS ALREADY BEEN DETERMINED THAT IN THIS PROGRAM THE TERM "FEDERAL SHARE" PERTAINS ONLY TO PAYMENTS MADE FROM GRANTS OF THE OFFICE OF EDUCATION AND DOES NOT INCLUDE PAYMENTS MADE BY OTHER FEDERAL AGENCIES WHERE THE STUDENTS MAY BE EMPLOYED. SEE 46 COMP. GEN. 115 (1966).

IT IS OUR VIEW THAT THE LANGUAGE OF 42 U.S.C. 2754(6) CAN ONLY BE CONSTRUED AS AN UPWARD LIMITATION OF 80 PERCENT ON THE FEDERAL SHARE PAYABLE FROM THE GRANT FUNDS. ACCORDINGLY, IF FEDERAL AGENCIES - OR FOR THAT MATTER ANY OTHER "EMPLOYERS" IN THE PROGRAM - ARE AGREEABLE TO HIGHER PAYMENTS (FOR THE AGENCY'S SHARE OF THE STUDENT'S SALARY PAYMENT), SUCH PAYMENTS MAY BE MADE AND THE "FEDERAL SHARES" MAY BE CORRESPONDINGLY REDUCED.

THE SECOND QUESTION RELATES TO SOCIAL SECURITY COSTS OF STUDENT EMPLOYEES. IN 46 COMP. GEN. 115 (1966) WE HELD THAT, IN ADDITION TO SALARY PAYMENTS, FEDERAL AGENCIES MAY PAY UNREIMBURSED ADMINISTRATIVE COSTS SUCH AS SOCIAL SECURITY TAXES, COMPENSATION INSURANCE, AND OTHER STANDARD CONTRIBUTIONS. YOU NOW ASK WHETHER AGENCIES MAY PAY THE FULL SOCIAL SECURITY TAX RATHER THAN MERELY A PROPORTION BASED ON THE AGENCY SHARE OF SALARY PAYMENT. YOU POINT OUT THAT SINCE THE AGENCY IS RECEIVING THE BENEFIT OF THE EMPLOYER'S CONTRIBUTION AND THE SOCIAL SECURITY PAYMENTS WOULD NOT RESULT IN A PROFIT TO THE INSTITUTIONS, FULL PAYMENT BY THE AGENCY WOULD SEEM TO BE JUSTIFIED. WE AGREE WITH THIS POSITION. MOREOVER, AS A MATTER OF POLICY, IT HAS BEEN DECIDED BY THE OFFICE OF EDUCATION THAT NONE OF THE "FEDERAL SHARE" MAY BE USED FOR THE PAYMENT OF SUCH COSTS. SEE SECTION 710, PAGE 7-7, OFFICE OF EDUCATION COLLEGE WORK- STUDY PROGRAM MANUAL, 1968.

WE WOULD POINT OUT, HOWEVER, THAT IT SEEMS TO US THAT IN ORDER FOR FULL REIMBURSEMENT FOR THESE COSTS TO BE MADE BY THE FEDERAL AGENCIES TO THE INSTITUTIONS, THE STUDENTS MUST, IN EVERY CASE, BE EMPLOYEES OF THE INSTITUTIONS. THE FEDERAL INSURANCE CONTRIBUTIONS ACT, AS AMENDED, 26 U.S.C. 3111, PROVIDES THAT THE RATES OF TAX IMPOSED ON AN EMPLOYER RELATES TO WAGES "PAID BY HIM" WITH RESPECT TO EMPLOYMENT. IF IN FACT THE STUDENT EMPLOYEES ARE CONSIDERED EMPLOYEES OF THE AGENCIES WHERE THEY PERFORM THEIR WORK, THE AGENCIES UNDER THE LAW MIGHT BE REQUIRED TO PAY ONLY THE FICA TAXES ON AMOUNTS PAID STUDENTS FROM THEIR APPROPRIATIONS. IT IS RECOMMENDED THAT THIS ASPECT OF THE MATTER BE CLEARED WITH THE COMMISSIONER OF THE INTERNAL REVENUE SERVICE.

THE OTHER TWO QUESTIONS RELATE TO FEDERAL AGENCIES CONTRACTING WITH THE D.C. URBAN CORPS, A PART OF THE DISTRICT OF COLUMBIA GOVERNMENT, AND SIMILAR URBAN CORPS AND OTHER ORGANIZATIONS (INCLUDING PROFIT MAKING ORGANIZATIONS) IN OTHER LOCALITIES FOR THE PURPOSE OR RECRUITING STUDENTS AND DEALING WITH INSTITUTIONS ON BEHALF OF THE AGENCIES. IT IS ENVISIONED THAT THESE CORPS WILL BE PAID AN "OVERRIDE" ON THE WAGES OF STUDENT- ENROLLEES SUPPLIED BY THE CORPS FOR THE STAFF SERVICES UTILIZED AND ADMINISTRATIVE EXPENSES. YOU ASK IF THERE IS ANY LEGAL OBJECTION TO THE PROPOSED ARRANGEMENT, AND IF SO WHETHER THERE IS ANY OTHER BASIS ON WHICH REIMBURSEMENT COULD BE MADE FOR THE PROPOSED SERVICES BY ANY OF THE REFERRED-TO ORGANIZATIONS.

WITH REGARD TO THE MATTER GENERALLY, IT IS A RULE OF LONG STANDING THAT SERVICES NORMALLY PERFORMED BY GOVERNMENT PERSONNEL MAY BE PERFORMED UNDER CONTRACT ONLY IF IT CAN BE SHOWN THAT CONTRACTING OUT TO NON-GOVERNMENT PARTIES IS SUBSTANTIALLY MORE ECONOMICAL OR FEASIBLE OR IS NECESSARY IN THE CIRCUMSTANCES. THAT RULE IS TO BE APPLIED TO CONTRACT PROCUREMENT ON A STRICTLY JOB BASIS, UNDER WHICH THE GOVERNMENT CONTRACTS FOR THE FURNISHING OF A PRODUCT OR THE PERFORMANCE OF A SERVICE WITH NO DETAILED CONTROL OR SUPERVISION OVER THE METHOD BY WHICH THE RESULT REQUIRED IS ACCOMPLISHED. SEE 44 COMP. GEN. 761 (1965). THE SERVICES THAT WOULD BE RENDERED THE AGENCIES BY THESE URBAN CORPS OR OTHER ORGANIZATIONS ARE THE TYPE OF SERVICES FOR WHICH PERSONNEL UNITS OF FEDERAL AGENCIES ORDINARILY ARE MAINTAINED, AND THUS IT WOULD SEEM TO US THAT THEY CAN BE PERFORMED ON A SUBSTANTIALLY MORE ECONOMICAL AND FEASIBLE BASIS BY SUCH PERSONNEL UNITS. THEREFORE, UNLESS IT IS DETERMINED THAT SUCH IS NOT THE CASE, OUR VIEW IS THAT IT WOULD BE IMPROPER TO ENTER INTO SUCH AGREEMENTS. WITH SPECIFIC REFERENCE TO THE D.C. URBAN CORPS, THERE ARE ADDITIONAL REASONS WHY SUCH AN AGREEMENT WOULD NOT BE AUTHORIZED. THE D.C. URBAN CORPS IS A PART OF THE DISTRICT OF COLUMBIA GOVERNMENT; AND THE CONSEQUENCE OF SUCH AN ARRANGEMENT WOULD BE THAT, INSOFAR AS AGENCIES WOULD BE PAYING AN "OVERRIDE" TO THE D.C. URBAN CORPS, THIS WOULD CONSTITUTE A REIMBURSEMENT BY THE AGENCIES INVOLVED TO THE DISTRICT OF COLUMBIA GOVERNMENT. WHILE SUCH REIMBURSEMENTS ARE ALLOWABLE BETWEEN FEDERAL DEPARTMENTS AND AGENCIES UNDER SECTION 601 OF THE ECONOMY ACT OF 1932, AS AMENDED, 31 U.S.C. 686, THAT ACT DOES NOT APPLY TO THE DISTRICT OF COLUMBIA, AND REIMBURSEMENT FOR SERVICES RENDERED BETWEEN THE DISTRICT OF COLUMBIA GOVERNMENT AND FEDERAL AGENCIES IS NOT AUTHORIZED. B 107612, FEBRUARY 8, 1952. MOREOVER, AS THE D.C. URBAN CORPS IS PART OF THE DISTRICT OF COLUMBIA GOVERNMENT, ANY AMOUNTS RECEIVED BY IT FOR THE SERVICES HERE CONTEMPLATED WOULD BE FOR DEPOSIT INTO THE TREASURY OF THE UNITED STATES FOR THE CREDIT OF THE DISTRICT OF COLUMBIA, SINCE, ABSENT A PROVISION OF LAW TO THE CONTRARY, TO PERMIT THE D.C. URBAN CORPS TO RETAIN AND USE SUCH PAYMENT WOULD CONSTITUTE AN IMPROPER AUGMENTATION OF THE DISTRICT OF COLUMBIA APPROPRIATION USED TO FUND THE D.C. URBAN CORPS.