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B-164990, Jan. 10, 1969

Number: B-164990

Date: 1969-01-10

B-164990, JAN. 10, 1969

TO MR. HARDING:

THIS IS IN REFERENCE TO YOUR LETTER OF DECEMBER 10, 1968, AND ENCLOSURE, IN REGARD TO OUR DECISION OF SEPTEMBER 6, 1968, B-164990, CONCERNING THE RECORDING OF OFFICE OF ECONOMIC OPPORTUNITY GRANT OBLIGATIONS PRIOR TO HAVING MET THE REQUIREMENTS OF SECTION 242 OF THE ECONOMIC OPPORTUNITY ACT, AS AMENDED, 42 U.S.C. 2834 1964 ED., (SUPP. III).

THE ENCLOSURE WITH YOUR LETTER, A BRIEF PREPARED BY YOUR LEGAL STAFF, SETS FORTH IN CONSIDERABLE DETAIL THE LEGISLATIVE HISTORY OF SECTION 242 AS WELL AS SUBSEQUENT CONGRESSIONAL REFERENCES TO SUCH SECTION DURING THE APPROPRIATION PROCESS. WE DO NOT DISAGREE WITH THE VIEWS EXPRESSED IN THE BRIEF THAT CONGRESS IS COGNIZANT OF THE PROCEDURE UNDER WHICH THE REQUIREMENTS OF SECTION 242 ARE MET. OUR CONCERN DOES NOT INVOLVE THIS PROCEDURE -- IT RELATES TO THE POINT OF TIME THAT A VALID APPROPRIATION OBLIGATION MAY BE RECORDED. NOTHING WAS CITED IN THE BRIEF TO INDICATE THAT THIS MATTER WAS EVER DISCUSSED, NOR HAVE WE BEEN ABLE TO LOCATE ANY REFERENCE TO THIS QUESTION.

SECTION 1311 OF THE SUPPLEMENTAL APPROPRIATION ACT, 1955, 68 STAT. 830, 31 U.S.C. 200, PROHIBITS THE RECORDING OF AN APPROPRIATION OBLIGATION UNLESS CERTAIN REQUIREMENTS ARE MET, AND SO FAR AS HERE PERTINENT THERE MUST BE DOCUMENTARY EVIDENCE OF A GRANT "PURSUANT TO AGREEMENT AUTHORIZED BY, OR PLANS APPROVED IN ACCORD WITH AND AUTHORIZED BY, LAW; * * *". UNDER THE PROVISIONS OF SECTION 242 OF THE ECONOMIC OPPORTUNITY ACT, AS AMENDED, IT SEEMS QUITE CLEAR THAT THERE CAN BE NO CONTRACT, AGREEMENT, GRANT, LOAN OR OTHER ASSISTANCE UNTIL THE REQUIREMENTS FOR SUBMISSION TO, AND CONSIDERATION BY, THE GOVERNOR OF THE STATE OF A "PROPOSED * * * GRANT" HAVE BEEN MET. A RECORDING OF AN OBLIGATION PRIOR TO SUCH TIME WOULD SEEM TO VIOLATE THE PROVISIONS OF SECTION 1311, CITED ABOVE.

WE HAVE NO ALTERNATIVE BUT TO SUSTAIN THE CONCLUSION REACHED IN OUR DECISION OF SEPTEMBER 6, 1968.

HOWEVER, WE UNDERSTAND FROM YOUR LETTER AND ITS ENCLOSURE THAT UNDER SECTION 242 OF THE ECONOMIC OPPORTUNITY ACT AND ITS PREDECESSOR SECTION 209 (C), YOU HAVE CONSISTENTLY SINCE 1964 FOLLOWED THE PRACTICE OF OBLIGATING FOR GRANTS PRIOR TO SUBMISSION TO THE GOVERNOR CONTINGENT UPON HIS ACTION THEREON AND THAT YOU BELIEVE THAT THE CHANGES REQUIRED TO COMPLY WITH THE DECISION OF SEPTEMBER 6, 1968, WOULD HAVE AN ADVERSE EFFECT UPON THE QUALITY OF YOUR SUPERVISION OF COMMUNITY ACTION PROGRAMS. UNDER THE CIRCUMSTANCES, AND IN ORDER TO AFFORD YOU AN OPPORTUNITY TO PRESENT THE MATTER TO THE CONGRESS FOR ITS CONSIDERATION AND

RESOLUTION OF OUR DIVERGENT VIEWS, WE WILL NOT INSIST UPON COMPLIANCE WITH THAT DECISION DURING THE FIRST SESSION OF THE 91ST CONGRESS. IN THE EVENT THERE IS NO EXPRESSION OF LEGISLATIVE INTEREST BY THE END OF THE FIRST SESSION, HOWEVER, WE SHALL APPLY THE DECISION TO TRANSACTIONS AFTER THAT DATE.