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B-171019, Apr 26, 1971, 50 Comp Gen 750

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STATES - FEDERAL AID, GRANTS, ETC. - RESTRICTIONS IMPOSED BY LAW - REMOVAL - RETROACTIVE APPLICATION THE 1970 AMENDMENT TO THE OMNIBUS CRIME CONTROL ACT OF 1968, WHICH MAKES CLEAR THAT PERSONNEL COMPENSATION LIMITATION ONLY APPLY TO RESTRICT THE USE OF GRANT FUNDS FOR THE PAYMENT OF POLICE AND OTHER REGULAR LAW-ENFORCEMENT PERSONNEL AND NOT TO SUPPORT SERVICES, MAY BE RETROACTIVELY APPLIED TO THE UNOBLIGATED AND UNSPENT GRANTS AWARDED FOR THE FISCAL YEARS 1969 AND 1970 ON A MATCHING BASIS BY THE LAW ENFORCEMENT ASSISTANCE ADMINISTRATION UNDER THE 1968 ACT TO THE STATES FOR SUBGRANTING, AS WELL AS TO THE "DISCRETIONARY" GRANTS MADE TO STATES OR DIRECTLY TO CITIES AND COUNTIES, AS THE RULE AGAINST THE RETROACTIVE APPLICATION OF STATUTES - ABSENT CLEAR INTENT TO THE CONTRARY - PERTAINS TO AN ENACTMENT THAT WOULD PREJUDICIALLY AFFECT VESTED RIGHTS, OR THE LEGAL CHARACTER OF PAST TRANSACTIONS, WHEREAS THE 1969 AND 1970 FISCAL YEAR GRANT FUNDS COMMITTED BY THE GOVERNMENT ARE YET TO BE OBLIGATED BY THE STATES.

TO THE ASSOCIATE ADMINISTRATOR, LAW ENFORCEMENT ASSISTANCE ADMINISTRATION, APRIL 26, 1971:

BY LETTER DATED FEBRUARY 22, 1971, YOU AND ASSOCIATE ADMINISTRATOR COSTER REQUESTED OUR DECISION IN THE FOLLOWING MATTER.

UNDER PART C OF TITLE I OF THE OMNIBUS CRIME CONTROL ACT OF 1968, PUBLIC LAW 90-351, APPROVED JUNE 19, 1968, 82 STAT. 200, 42 U.S.C. 3731 ET SEQ., THE LAW ENFORCEMENT ASSISTANCE ADMINISTRATION (LEAA) MAKES ANNUAL POPULATION-BASED BLOCK GRANTS TO THE STATES FOR LAW ENFORCEMENT IMPROVEMENT PROGRAMS. EACH STATE IS REQUIRED TO SUBGRANT A PERCENTAGE OF THESE FUNDS TO CITIES AND COUNTIES AND THE REMAINDER MAY BE SPENT BY THE STATE FOR STATEWIDE PROGRAMS. ALL OF THESE FUNDS MUST BE SPENT IN ACCORDANCE WITH A COMPREHENSIVE STATEWIDE LAW ENFORCEMENT PLAN DEVELOPED BY THE STATE AND APPROVED ANNUALLY BY LEAA. THESE PLANS DO NOT CONTAIN INDIVIDUAL PROJECT OR PROGRAM SPECIFICATIONS AS SUCH SPECIFICATIONS ARE LEFT TO THE DISCRETION OF THE STATES WITHIN THE GENERAL FRAMEWORK OF THE COMPREHENSIVE PLAN AND SUBJECT TO THE LIMITATIONS AND REQUIREMENTS OF THE ACT. LEAA ALSO MAKES "DISCRETIONARY" GRANTS TO STATES OR DIRECTLY TO CITIES AND COUNTIES. BLOCK GRANTS AND DISCRETIONARY GRANTS ARE AWARDED ON A MATCHING BASIS; THAT IS, THE ULTIMATE GRANTEE MUST PAY A SPECIFIED PART OF THE COST OF FUNDED PROGRAMS.

YOUR ADMINISTRATION HAS THUS FAR BEEN REQUIRED TO AWARD PART C FUNDS BEFORE THE END OF THE FISCAL YEAR FOR WHICH THEY WERE APPROPRIATED. HOWEVER, BECAUSE OF THE NECESSARY DELAYS DUE TO SUBALLOCATION, SUBGRANTING AND CONTRACTING STATES AND CITIES HAVE BEEN PERMITTED TWO ADDITIONAL FISCAL YEARS DURING WHICH TO EXPEND FUNDS. THUS, SOME OF THE STATES AND CITIES STILL HAVE UNOBLIGATED OR UNSPENT FUNDS AWARDED BY LEAA IN FISCAL YEARS 1969 AND 1970.

SUBSECTION 4(4) OF THE OMNIBUS CRIME CONTROL ACT OF 1970, PUBLIC LAW 91- 644, APPROVED JANUARY 2, 1971, 84 STAT. 1892, AMENDED SUBSECTION 301(D) OF PUBLIC LAW 90-351, 42 U.S.C. 3731(D), SO AS TO MAKE CLEAR THAT PERSONNEL COMPENSATION LIMITATIONS HERETOFORE PRESCRIBED SHALL ONLY APPLY TO RESTRICT THE USE OF GRANT FUNDS FOR THE PAYMENT OF THE SALARIES OF POLICE AND OTHER REGULAR LAW-ENFORCEMENT PERSONNEL. IT WAS THE INTENTION OF THIS AMENDMENT THAT THE USE OF BLOCK GRANT FUNDS FOR THE SALARIES OF PERSONNEL WHOSE PRIMARY RESPONSIBILITY IS TO PROMOTE ASSISTANCE, MAINTENANCE, OR AUXILIARY SERVICES OR ADMINISTRATIVE SUPPORT TO THE REGULAR OPERATION COMPONENTS OF LAW-ENFORCEMENT AGENCIES SHALL NOT BE SUBJECT TO THE LIMITATIONS OF SECTION 301 OF PUBLIC LAW 90 351 THAT NOT MORE THAN ONE- THIRD OF ANY GRANT FOR LAW-ENFORCEMENT PURPOSES MAY GO FOR THE COMPENSATION OF PERSONNEL. SEE H. REPT. NO. 91 1174, 11 AND S. REPT. NO. 91-1253,45.

IN ADDITION TO THE PERSONNEL LIMITATION AMENDMENT ABOVE DESCRIBED, SUBSECTION 4(3) OF PUBLIC LAW 91-644 AMENDED PUBLIC LAW 90-351,42 U.S.C. 37311(C), SO AS TO ALLOW UP TO A 75 FEDERAL 25 NONFEDERAL MATCHING FORMULA FOR LAW ENFORCEMENT PROGRAMS. BEFORE THIS AMENDMENT THE MATCHING FORMULAS DEPENDENT ON THE NATURE OF THE PROGRAM FUNDED AND WHILE MOST PROGRAMS WERE SUBJECT TO A 60-40 MATCHING FORMULA, THERE WAS AUTHORITY TO FUND PROGRAMS ON A 75-25 AND 50-50 FORMULAS AS WELL.

IN YOUR SUBMISSION YOU POINT OUT THAT WHILE THE EFFECTIVE DATE OF NEITHER OF THESE AMENDMENTS IS SPECIFIED, THE LEGISLATIVE HISTORY OF PUBLIC LAW 91 -644 MAKES IT CLEAR THAT THE AMENDMENT TO THE MATCHING RATIOS MADE BY SECTION 4(3) APPLIES TO ALL FISCAL YEAR 1971 FUNDS BUT NOT TO FUNDS GRANTED FROM PRIOR FISCAL YEARS' APPROPRIATIONS. THE LEGISLATIVE HISTORY REFERRED TO ARE STATEMENTS TO THIS EFFECT BY THE HOUSE AND SENATE MANAGERS ON THE CONFERENCE BILL; I.E., THE REMARKS OF CHAIRMAN CELLER, MR. POFF, MR. RODINO AND SENATOR HRUSKA IN THE CONGRESSIONAL RECORD OF DECEMBER 17, 1970, H11889, H11892 AND S20475 RESPECTIVELY. IT IS THEREFORE YOUR VIEW THAT THE AMENDMENT MADE BY SECTION 4(4) MUST OPERATE PROSPECTIVELY FROM JANUARY 2, 1971, THE DATE THE PRESIDENT SIGNED PUBLIC LAW 91-644.

YOU GO ON TO STATE THAT IF THIS CONCLUSION IS CORRECT, IT RAISES THE QUESTION OF WHETHER THE LIBERALIZED SALARY SUPPORT PROVISION APPLIES TO GRANT FUNDS AWARDED BY LEAA FROM THE CURRENT FISCAL YEAR APPROPRIATION OR MAY BE CONSTRUED TO APPLY ALSO TO GRANT FUNDS AWARDED BY LEAA FROM PRIOR FISCAL YEARS' APPROPRIATION BUT NOT YET OBLIGATED FOR SPECIFIC PROGRAMS AND PROJECTS BY THE STATES. YOU BELIEVE THAT THE LATTER CONSTRUCTION MAY BE ADOPTED AS: (1) THIS CONSTRUCTION IS CONSISTENT WITH THE NATURE OF THE BLOCK GRANT SINCE BLOCK GRANT FUNDS ARE AWARDED BY LEAA ON A POPULATION BASIS PURSUANT TO A GENERAL STATEWIDE PLAN (2) THEY ARE THEN OBLIGATED FOR SPECIFIC PROGRAMS AND PROJECTS BY THE STATES, AND (3) SPECIFICATIONS RELATING TO MATCHING RATIOS AND SALARY PAYMENTS ARE NOT INTRODUCED UNTIL THE POINT OF OBLIGATION BY THE STATES. YOU EMPHASIZE THAT THE CONSTRUCTION SUGGESTED WILL NOT INCREASE THE EXPENDITURES OF THE FEDERAL GOVERNMENT, IT WILL MERELY AFFECT THE PURPOSES FOR WHICH THE STATES MAY SPEND A FIXED AMOUNT OF FEDERAL DOLLARS, AND THAT YOU BELIEVE THE CONGRESS WOULD PREFER A CONSTRUCTION OF THE 1970 ACT THAT FACILITATES RATHER THAN DISCOURAGES THE EXPENDITURE BY THE STATES OF THEIR FULL 1969 AND 1970 BLOCK GRANTS FOR THE HIGH PRIORITY PURPOSES SET OUT IN THE 1968 ACT.

CENTRAL TO THE QUESTION PRESENTED IS WHETHER THE GENERAL RULE AGAINST RETROACTIVE APPLICATION OF STATUTES - ABSENT CLEAR INTENT TO THE CONTRARY - WOULD PRECLUDE THE APPLICATION OF THE MORE LIBERAL PERSONNEL COMPENSATION

PROVISIONS OF THE 1970 ACT TO UNSPENT 1970 AND 1969 FUNDS. WE DO NOT THINK SUCH APPLICATION PERTAINS. IT HAS BEEN SAID THAT:

IT IS CHIEFLY WHERE THE ENACTMENT WOULD PREJUDICIALLY AFFECT VESTED RIGHTS, OR THE LEGAL CHARACTER OF PAST TRANSACTIONS, THAT THE RULE IN QUESTION APPLIES. EVERY STATUTE, IT HAS BEEN SAID, WHICH TAKES AWAY OR IMPAIRS VESTED RIGHTS ACQUIRED UNDER EXISTING LAWS, OR CREATES A NEW OBLIGATION, OR IMPOSES A NEW DUTY, OR ATTACHES A NEW DISABILITY IN RESPECT OF TRANSACTIONS OR CONSIDERATIONS ALREADY PAST, MUST BE PRESUMED, OUT OF RESPECT TO THE LEGISLATURE, TO BE INTENDED NOT TO HAVE A RETROSPECTIVE OPERATION.

SEE PEOPLE V DILLIARD, 298 N.Y.S. 296, 302 (1937).

BY ALLOWING THE MORE LIBERAL 1970 PERSONNEL RESTRICTIONS TO APPLY TO 1969 AND 1970 FISCAL YEAR FUNDS NOT YET OBLIGATED BY THE STATES AND LOCAL GOVERNMENTS, NONE OF THE EVILS ABOVE DESCRIBED WOULD RESULT. THE STATEMENT FROM THE DILLIARD CASE IS PARTICULARLY FOR APPLICATION HERE BECAUSE (1) THE FEDERAL COMMITMENTS HAVE ALREADY BEEN MADE AND WILL NOT BE INCREASED; (2) NO VESTED RIGHTS ARE TAKEN AWAY OR IMPAIRED VIS A VIS THE STATES AND LOCAL GOVERNMENTS BECAUSE, AS OF THIS TIME, NO SPECIFICATIONS - INCLUDING THOSE CONCERNED WITH PERSONNEL COMPENSATION SPECIFICATIONS - INCLUDING THOSE CONCERNED WITH PERSONNEL COMPENSATION - HAVE BEEN AGREED TO BY THE STATES AND THEIR LOCAL GOVERNMENTS; AND (3) THE FEDERAL GOVERNMENT CANNOT REQUIRE THE STATES AND LOCAL GOVERNMENTS TO ENTER INTO SPECIFIC PROGRAMS AND PROJECTS.

ACCORDINGLY, WE WOULD NOT OBJECT TO THE APPLICATION OF THE MORE LIBERAL 1970 PERSONNEL LIMITATIONS TO 1969 AND 1970 GRANT FUNDS YET TO BE OBLIGATED BY THE STATES AND LOCAL GOVERNMENTS.