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B-178564, DEC. 28, 1977, 57 COMP.GEN. 163

STATES - FEDERAL AID, GRANTS, ETC. - RESTRICTIONS IMPOSED BY LAW - GRANT PERCENTAGES DECISION B-178564, JULY 19, 1977, HOLDING THAT SECTION 13(K) OF NATIONAL SCHOOL LUNCH ACT AS AMENDED BY PUBLIC LAW 94-105, WHICH REQUIRED PAYMENT IN "AMOUNT EQUAL TO 2 PERCENT" OF FUNDS DISTRIBUTED TO EACH STATE, LIMITS AMOUNT PAYABLE TO STATES FOR COSTS INCURRED IN ADMINISTRATION OF SUMMER FOOD PROGRAM IS REAFFIRMED. SECTION 7 OF CHILD NUTRITION ACT CANNOT BE CONSTRUED AS ADDITIONAL SOURCE OF FUNDS FOR SUCH PAYMENTS INDEPENDENT OF 2 PERCENT LIMITATION. HOLDING IN JULY 1977 DECISION IS ALSO CONSISTENT WITH MOST SIGNIFICANT LEGISLATIVE HISTORY OF RECENT STATUTE AMENDING THESE SECTIONS.

IN THE MATTER OF THE SUMMER FOOD SERVICE PROGRAM - ADMINISTRATIVE COST LIMITATIONS, DECEMBER 28, 1977:

THIS DECISION IS IN RESPONSE TO A SUBMISSION FROM LEWIS B. STRAUSS, ADMINISTRATOR OF THE FOOD AND NUTRITION SERVICE, UNITED STATES DEPARTMENT OF AGRICULTURE, ASKING WHETHER STATE ADMINISTRATIVE EXPENSE FUNDS AUTHORIZED BY SECTION 7 OF THE CHILD NUTRITION ACT OF 1966 (CNA), AS AMENDED, 42 U.S.C. 1776 (1970), MIGHT BE USED TO SUPPLEMENT THE 2 PERCENT ADMINISTRATIVE EXPENSE PAYMENTS TO STATES FOR USE IN THE SUMMER FOOD SERVICE PROGRAM FOR CHILDREN AUTHORIZED BY SECTION 13 OF THE NATIONAL SCHOOL LUNCH ACT MODIFICATION OF DECISION B-178564, JULY 19, 1977, WHICH HELD THAT BY VIRTUE OF SECTION 13(K) OF THE NSLA, 42 U.S.C. 1761(K) (SUPP. V, 1975), CERTAIN STATES WHICH INCURRED ADMINISTRATIVE COSTS FOR PRIOR PROGRAM YEARS EXCEEDING THE 2 PERCENT ALLOTMENTS COULD NOT RECEIVE ADDITIONAL PAYMENTS.

BEFORE ADDRESSING THE SPECIFIC QUESTION RAISED, A REVIEW OF THE BACKGROUND TO THIS MATTER IS IN ORDER.

I

PRIOR TO 1975, THE SUMMER AND YEAR-ROUND PHASES OF THE SPECIAL FOOD SERVICE PROGRAM HAD BEEN CARRIED OUT PURSUANT TO AUTHORITY SET FORTH IN SECTION 13 OF THE NSLA. THE SECRETARY WAS AUTHORIZED TO PAY STATES FOR EXPENSES INCURRED IN ADMINISTERING THESE TWO PROGRAMS AND APPROPRIATIONS WERE AUTHORIZED IN SUCH AMOUNTS AS WERE NECESSARY FOR THIS PURPOSE BY SECTION 7 OF THE CNA, WHICH PROVIDED:

THE SECRETARY MAY UTILIZE FUNDS APPROPRIATED UNDER THIS SECTION FOR ADVANCES TO EACH STATE EDUCATIONAL AGENCY FOR USE FOR ITS ADMINISTRATIVE EXPENSES OR FOR THE ADMINISTRATIVE EXPENSES OF ANY OTHER DESIGNATED STATE AGENCY IN SUPERVISING AND GIVING TECHNICAL ASSISTANCE TO THE LOCAL SCHOOL DISTRICTS AND SERVICE

INSTITUTIONS IN THEIR CONDUCTING OF PROGRAMS UNDER THIS ACT AND UNDER SECTIONS 11 AND 13 OF THE NATIONAL SCHOOL LUNCH ACT. SUCH FUNDS SHALL BE ADVANCED ONLY IN AMOUNTS AND TO THE EXTENT DETERMINED NECESSARY BY THE SECRETARY TO ASSIST SUCH STATE AGENCIES IN THE ADMINISTRATION OF ADDITIONAL ACTIVITIES UNDERTAKEN BY THEM UNDER SECTIONS 11 AND 13 OF THE NATIONAL SCHOOL LUNCH ACT, AS AMENDED, AND SECTIONS 4 AND 5 OF THIS ACT. THERE ARE HEREBY AUTHORIZED TO BE APPROPRIATED SUCH SUMS AS MAY BE NECESSARY FOR THE PURPOSE OF THIS SECTION. SEE 42 U.S.C. 1776 (1970).

SECTION 7 OF THE CNA DID NOT ESTABLISH ANY PRIORITY AMONG THE VARIOUS PROGRAMS FOR WHICH IT AUTHORIZED PAYMENT OF STATE ADMINISTRATIVE EXPENSES.

IN OUR REPORT TO THE CONGRESS ENTITLED "AN APPRAISAL OF THE SPECIAL SUMMER FOOD SERVICE PROGRAM FOR CHILDREN" RED 76-336, FEBRUARY 14, 1975, AT PAGES 14-15, WE NOTED CERTAIN PROBLEMS IN THE MANNER OF PAYING STATES FOR THEIR EXPENSES INCURRED IN CONNECTION WITH THE SUMMER FOOD SERVICE PROGRAM. SPECIFICALLY, WE POINTED OUT THAT THE ALLOCATION OF ADMINISTRATIVE FUNDS ON A LUMP-SUM BASIS FOR ALL CHILD NUTRITION PROGRAMS RESULTED IN INADEQUATE REIMBURSEMENT FOR SUMMER FOOD PROGRAM ADMINISTRATIVE COSTS AND, THEREFORE, LESS EFFECTIVE STATE ADMINISTRATION.

AT THE TIME OF THE RELEASE OF OUR REPORT, THE CONGRESS HAD BEFORE IT FOR CONSIDERATION H.R. 4222, 94TH CONG., 1ST SESS., WHICH WAS ENACTED AS THE NATIONAL SCHOOL LUNCH ACT AND CHILD NUTRITION ACT OF 1966 AMENDMENTS OF 1975. PUBLIC LAW 94-105, OCTOBER 7, 1975, 89 STAT. 511, 42 U.S.C. 1751 NOTE (SUPP. V, 1975). SECTION 13 OF H.R. 4222, AS PASSED BY THE HOUSE OF REPRESENTATIVES AND REPORTED BY THE SENATE COMMITTEE ON AGRICULTURE AND FORESTRY PROPOSED TO AMEND SECTION 13 OF THE NSLA TO COVER ONLY THE SUMMER FOOD SERVICE PROGRAM. SECTION 16 OF H.R. 4222 PROPOSED TO ADD A NEW SECTION 17 TO THE NSLA TO AUTHORIZE THE YEAR-ROUND CHILD CARE PROGRAM, THUS REMOVING THIS PROGRAM FROM THE AUTHORITY OF SECTION 13 OF THE NSLA. HOWEVER, SECTION 13 OF H.R. 4222 AS REPORTED BY THE SENATE COMMITTEE DIFFERED FROM THE HOUSE-PASSED VERSION IN MANY WAYS, INCLUDING A REVISION OF SUBSECTION 13(K) OF THE NSLA WHICH READ AS FOLLOWS:

THE SECRETARY SHALL PAY TO EACH STATE FOR ADMINISTRATIVE COSTS INCURRED PURSUANT TO THIS SECTION AN AMOUNT EQUAL TO 2 PER CENTUM OF THE FUNDS DISTRIBUTED TO THAT STATE PURSUANT TO SUBSECTION (B): PROVIDED, THAT NO STATE SHALL RECEIVE LESS THAN $10,000 EACH FISCAL YEAR FOR ITS ADMINISTRATIVE COSTS UNLESS THE FUNDS DISTRIBUTED TO THAT STATE PURSUANT TO SUBSECTION (B) TOTAL LESS THAN $50,000 FOR SUCH FISCAL YEAR.

THE COMMITTEE EXPLAINED THIS AMENDMENT AS FOLLOWS:

THE NEED FOR REVISION OF THE LEGISLATION GOVERNING THE SUMMER FOOD PROGRAM WAS CLEARLY OUTLINED IN THE REPORT SUBMITTED TO CONGRESS BY THE GENERAL ACCOUNTING OFFICE ON FEBRUARY 14, 1975. THE NEW PROVISIONS IN THE BILL BEING REPORTED BY THE COMMITTEE ARE BASED LARGELY ON THAT REPORT.

THE BILL ALSO AUTHORIZES ADMINISTRATIVE FUNDS FOR STATES IN ADMINISTERING THE SUMMER FOOD PROGRAM. THE GAO REPORT STRONGLY RECOMMENDED THIS AMENDMENT. THE GAO FOUND THE STATES TO HAVE PERFORMED INADEQUATELY IN SEEKING ELIGIBLE SPONSORS, IN TRAINING SPONSORS IN MONITORING PROGRAM OPERATIONS, AND IN PROVIDING ASSISTANCE NEEDED BY SPONSORS TO RUN THE PROGRAM WELL. LACK OF ADMINISTRATIVE FUNDS EARMARKED SPECIFICALLY FOR SUMMER FEEDING HAS BEEN A PRINCIPAL REASON FOR THIS POOR PERFORMANCE ACCORDING TO THE GAO REPORT. THE FUNDS PROVIDED UNDER THE NEW

PROVISION APPROVED BY THE COMMITTEE COULD BE USED BY STATES FOR ADMINISTERING ONLY THE SUMMER FEEDING PROGRAM, AND NOT FOR OTHER CHILD NUTRITION PROGRAMS. S. REPT. NO. 94-259, 22-24 (1975).

AS REPORTED OUT BY THE CONFERENCE COMMITTEE AND EVENTUALLY ENACTED, THIS LEGISLATION CONTAINED THE SENATE'S REVISION OF SUBSECTION 13(K) OF THE NSLA.

BOTH BEFORE AND AFTER THE ENACTMENT OF PUBLIC LAW 94-105, THE CONGRESS APPROPRIATED EACH YEAR A SPECIFIC LUMP-SUM AMOUNT FOR THE PAYMENT OF STATE ADMINISTRATIVE EXPENSES UNDER THE VARIOUS NSLA AND THE CNA PROGRAMS. FOR EXAMPLE TITLE III OF THE AGRICULTURE AND RELATED AGENCIES APPROPRIATIONS ACT, 1978, PUBLIC LAW 95-97 (AUGUST 12, 1977), 91 STAT. 810, 825, PROVIDES IN PERTINENT PART AS FOLLOWS:

FOOD AND NUTRITION SERVICE

CHILD NUTRITION PROGRAMS

FOR NECESSARY EXPENSES TO CARRY OUT THE PROVISIONS OF THE NATIONAL SCHOOL LUNCH ACT, AS AMENDED (42 U.S.C. 1751-1761, AND 1766), AND THE APPLICABLE PROVISIONS OTHER THAN SECTION 3 OF THE CHILD NUTRITION ACT OF 1966, AS AMENDED (42 U.S.C. 1773-1785); $2,422,901,000. * * * PROVIDED, THAT OF THE FOREGOING TOTAL AMOUNT THERE SHALL BE AVAILABLE * * * $13,675,000 FOR THE STATE ADMINISTRATIVE EXPENSES: * * *

SEE ALSO PUBLIC LAW 94-351 (JULY 12, 1976), 90 STAT. 851, 865; PUBLIC LAW 94-122 (OCTOBER 21, 1975), 89 STAT. 641, 662, 7 U.S.C. 2254 (SUPP. V, 1975); PUBLIC LAW 93-563 (DECEMBER 31, 1974), 88 STAT. 1822, 1841; PUBLIC LAW 93-135 (OCTOBER 24, 1973), 88 STAT. 468, 489.

II

IN THE MATTER OF SUMMER FOOD SERVICE PROGRAMS-ADMINISTRATIVE COST LIMITATION, B-178564, JULY 19, 1977, WE CONSIDERED THE LEGALITY OF AMENDING THE AGRICULTURE DEPARTMENT'S REGULATIONS TO RELIEVE AFFECTED STATES OF LIABILITY FOR ADMINISTRATIVE EXPENDITURES IN EXCESS OF THE STATUTORY AMOUNT ESTABLISHED BY SUBSECTION 13(K) OF THE NSLA AS ADDED BY PUBLIC LAW 94-105, SUPRA, AND TO REIMBURSE THEM FOR ADMINISTRATIVE COSTS PLANNED AND INCURRED WHEN SUCH COSTS DIRECTLY BENEFITTED THE PROGRAM. OUR DECISION TO THE SECRETARY OF AGRICULTURE WE HELD THAT:

UNDER THE PRESENT STATUTORY LANGUAGE * * * REIMBURSEMENT OF SUCH COSTS IS LIMITED TO 2 PERCENT. THE DEPARTMENT, THEREFORE, MAY NOT AMEND ITS REGULATIONS TO RELIEVE STATES OF LIABILITY FOR OVEREXPENDITURES, OR OTHERWISE VARY THE PERCENTAGE OF THE PAYMENT OF ADMINISTRATIVE EXPENSES, SINCE THE AMOUNT ALLOWABLE FOR ADMINISTRATIVE EXPENSES IS EXPRESSLY STATED IN THE STATUTE. THERE IS NO AUTHORITY TO ISSUE REGULATIONS IN CONTRAVENTION THEREOF.

THUS WE INTERPRETED SUBSECTION 13(K) OF THE NSLA, AS AMENDED BY PUBLIC LAW 94-105, AS LIMITING THE AMOUNT THAT MIGHT BE PAID TO THE STATES FOR ADMINISTRATIVE COSTS CONNECTED WITH THE SUMMER FOOD SERVICE PROGRAM TO 2 PERCENT OF THE AMOUNT OF FUNDS DISTRIBUTED TO EACH STATE.

THE RECENTLY ENACTED NATIONAL SCHOOL LUNCH ACT AND CHILD NUTRITION 1325, GENERALLY AMENDED SECTION 13 OF THE NSLA AND INCLUDED A NEW FORMULA FOR

REIMBURSEMENT OF STATE ADMINISTRATIVE EXPENSES UNDER THE SUMMER FOOD PROGRAM. IN LIEU OF THE 2 PERCENT FORMULA CONSIDERED IN OUR JULY 1977 DECISION, THE NEW SECTION 13(K) FORMULA PROVIDES IN PART:

(1) THE SECRETARY SHALL PAY TO EACH STATE FOR ITS ADMINISTRATIVE COSTS INCURRED UNDER THIS SECTION IN ANY FISCAL YEAR AN AMOUNT EQUAL TO (A) 20 PERCENT OF THE FIRST $50,000 IN FUNDS DISTRIBUTED TO THAT STATE FOR THE PROGRAM IN THE PRECEDING FISCAL YEAR; (B) 10 PERCENT OF THE NEXT $50,000 IN FUNDS DISTRIBUTED TO THAT STATE FOR THE PROGRAM IN THE PRECEDING FISCAL YEAR; (C) 5 PERCENT OF THE NEXT $100,000 IN FUNDS DISTRIBUTED TO THAT STATE FOR THE PROGRAM IN THE PRECEDING FISCAL YEAR; AND (D) 2 PERCENT OF ANY REMAINING FUNDS DISTRIBUTED TO THAT STATE FOR THE PROGRAM IN THE PRECEDING FISCAL YEAR: PROVIDED, THAT SUCH AMOUNTS MAY BE ADJUSTED BY THE SECRETARY TO REFLECT CHANGES IN THE SIZE OF THAT STATE'S PROGRAM SINCE THE PRECEDING FISCAL YEAR. * * * 91 STAT. 1329.

HOWEVER, OUR JULY 1977 DECISION AND THE PRESENT REQUEST FOR MODIFICATION OF THAT DECISION ADDRESS PAYMENT OF STATE ADMINISTRATIVE COSTS FOR PROGRAM YEARS PRIOR TO FISCAL YEAR 1978. THESE PAYMENTS REMAIN SUBJECT TO THE 2 PERCENT FORMULA OF SECTION 13(K) EXISTING BEFORE ITS AMENDMENT BY PUBLIC LAW 95-166 SINCE THE LATTER AMENDMENT IS EFFECTIVE FOR PROGRAM YEARS COMMENCING ON OR AFTER OCTOBER 1, 1977. SEE E.G., H.R. REPT. NO. 95-281, 1 (1977).

III

AS NOTED PREVIOUSLY, OUR JULY 1977 DECISION CONSTRUED THE LANGUAGE OF SECTION 13(K) OF THE NALS AS AMENDED BY PUBLIC LAW 94-105-- PROVIDING THAT THE SECRETARY SHALL PAY TO EACH STATE FOR ADMINISTRATIVE COSTS "AN AMOUNT EQUAL TO 2 PERCENT OF THE FUNDS DISTRIBUTED TO THAT STATE" UNDER THE SUMMER FOOD PROGRAM-- TO BE A LIMITATION UPON THE AMOUNT EACH STATE COULD RECEIVE FOR THIS PURPOSE. IN HIS REQUEST FOR MODIFICATION OF THE JULY 1977 DECISION, THE ADMINISTRATOR DOES NOT CHALLENGE OUR CONSTRUCTION OF THIS LANGUAGE AS A LIMITATION. RATHER, HE MAINTAINS THAT THERE IS A SEPARATE SOURCE OF PAYMENT FOR STATE ADMINISTRATIVE COSTS UNDER THE SUMMER FOOD SERVICE PROGRAM-- SPECIFICALLY SECTION 7 OF THE CHILD NUTRITION ACT (CNA)-- WHICH IS NOT SUBJECT TO THE 2 PERCENT LIMITATION IN SECTION 13(K) OF THE NSLA. IN OTHER WORDS, THE ADMINISTRATOR CONTENDS THAT THE 2 PERCENT FIGURE LIMITS ONLY THE USE OF SECTION 13 FUNDS FOR THIS PURPOSE AND NOT ANY ADDITIONAL FUNDS AVAILABLE UNDER SECTION 7 OF THE CNA. THE ADMINISTRATOR'S SUBMISSION ELABORATES UPON THIS POSITION AS FOLLOWS:

* * * THE COMPTROLLER GENERAL HELD (DECISION B-178564, JULY 19, 1977) THAT THERE WAS NO AUTHORITY TO REIMBURSE STATES WITH FUNDS FROM SECTION 13(K) IN AN AMOUNT EXCEEDING TWO PERCENT OF THEIR EXPENDITURES. HOWEVER, THE DEPARTMENT FAILED AT THAT TIME TO CALL ATTENTION TO THE POSSIBILITY OF USING SECTION 7 FUNDS.

WE BELIEVE THAT THE USE OF SURPLUS SECTION 7 FUNDS TO AUGMENT THE TWO PERCENT ADMINISTRATIVE FUNDS FOR THE SUMMER PROGRAM IS WARRANTED BY PUBLIC LAW 94-105, WHICH AMENDED THE NATIONAL SCHOOL LUNCH ACT, EFFECTIVE OCTOBER 7, 1975. THAT ACT SEPARATED THE SUMMER AND YEAR ROUND PHASES OF THE SPECIAL FOOD SERVICE PROGRAM WHICH HAD FORMERLY BOTH BEEN INCLUDED IN SECTION 13. SECTION 13 OF THE NEW ACT ESTABLISHED THE SUMMER FOOD SERVICE PROGRAM FOR CHILDREN, AND SECTION 17 ESTABLISHED A DISTINCT YEAR-ROUND CHILD CARE FOOD PROGRAM FOR NONRESIDENTIAL CHILD CARE INSTITUTIONS. SECTION 13(K) SPECIFIES THAT THE SECRETARY PAY ADMINISTRATIVE COSTS EQUAL TO TWO PERCENT OF THE SUMMER FOOD PROGRAM FUNDS DISTRIBUTED TO THE STATE; HOWEVER, SECTION 17 CONTAINS NO PROVISION FOR ADMINISTRATIVE COSTS. THE ACT DID NOT ALTER THE LANGUAGE OF SECTION 7 OF THE

CHILD NUTRITION ACT. THE DEPARTMENT HAS CONSTRUED THE REFERENCE IN SECTION 7 TO SECTION 13 AS COVERING ADMINISTRATIVE COSTS UNDER THE NEW SECTION 17 SINCE IT APPEARED CERTAIN THAT CONGRESS INTENDED THAT ADMINISTRATIVE COSTS UNDER THAT SECTION BE COVERED. SINCE THE REFERENCE TO SECTION 13 CONTINUED UNALTERED, WE BELIEVE THAT SECTION 7 ALSO CONTINUES TO PROVIDE AUTHORITY TO PAY ADMINISTRATIVE COSTS INCURRED UNDER THE SUMMER FOOD SERVICE PROGRAM.

THEREFORE, WE PROPOSE TO AMEND 7 CFR PART 235 TO AUTHORIZE PAYMENT OF SECTION 7 FUNDS FOR SUMMER FOOD SERVICE PROGRAM ADMINISTRATIVE EXPENSES WHEN FNS DETERMINES THAT A STATE, THROUGH NO FAULT OF ITS OWN, REQUIRES FUNDS IN EXCESS OF THOSE AVAILABLE UNDER SECTION 13 IN ORDER TO CONDUCT THE PROGRAM WELL. ONLY SECTION 7 FUNDS WHICH ARE IN EXCESS OF THOSE NEEDED FOR THE OTHER PROGRAMS WOULD BE MADE AVAILABLE FOR SUMMER FOOD SERVICE PROGRAM ADMINISTRATIVE EXPENSES.

THE U.S. DEPARTMENT OF AGRICULTURE OFFICE OF THE GENERAL COUNSEL HAS RECOMMENDED THAT WE OBTAIN YOUR FORMAL OPINION ON THE LEGALITY OF THIS PROPOSAL. THE PRESENT SITUATION REQUIRES AN EXPRESS DETERMINATION OF FIRST, WHETHER THE REFERENCE TO SECTION 13 IN SECTION 7 ALLOWS FUNDS APPROPRIATED UNDER SECTION 7 TO BE USED BY STATES IN THEIR ADMINISTRATION OF THE SUMMER FOOD PROGRAM; AND SECOND, WHETHER THE TWO PERCENT LIMIT IN SECTION 13(K) APPLIES SPECIFICALLY TO FUNDS APPROPRIATED UNDER SECTION 13 OR APPLIES TO ALL FEDERAL FUNDS (INCLUDING FUNDS APPROPRIATED UNDER SECTION 7) AVAILABLE FOR STATE EXPENDITURES INCURRED IN THE ADMINISTRATION OF THE SUMMER FOOD PROGRAM. IT APPEARS TO US THAT THESE TWO QUESTIONS ARE SIMPLY DIFFERENT WAYS OF POSING A SINGLE QUESTION, AND THAT ACCORDINGLY THEY MUST BOTH BE ANSWERED THE SAME WAY. IF THE REFERENCE TO SECTION 13 IN SECTION 7 MEANS THAT SAE FUNDS CAN BE APPLIED TO SUMMER FOOD PROGRAM EXPENSES, THEN IN ORDER FOR THE TWO SECTIONS TO BE LOGICALLY CONSISTENT THE TWO PERCENT LIMIT MUST APPLY TO ONLY THOSE FUNDS APPROPRIATED UNDER SECTION 13.

IT IS TRUE THAT AT THE TIME HERE RELEVANT SECTION 7 OF THE CNA, QUOTED SUPRA, DID LITERALLY INCLUDE THE SUMMER FOOD PROGRAM WITHIN ITS AUTHORIZATION OF APPROPRIATIONS FOR PAYMENT OF STATE ADMINISTRATIVE COSTS. HOWEVER, FOR SEVERAL REASONS WE CANNOT AGREE THAT SECTION 7 AFFECTS THE HOLDING OF OUR JULY 1977 DECISION.

FIRST, IT IS HIGHLY QUESTIONABLE THAT THE CONGRESS INTENDED TO CREATE TWO SEPARATE APPROPRIATION AUTHORIZATIONS FOR SUMMER FOOD PROGRAM ADMINISTRATIVE COSTS. SINCE SECTION 13 OF THE NSLA AS AMENDED BY PUBLIC LAW 94-105, SUPRA, CONTAINED A SPECIFIC AUTHORIZATION FOR THIS PURPOSE, THE REFERENCE TO IT IN SECTION 7 OF THE CNA HAD BECOME REDUNDANT. ON THE OTHER HAND AS THE ADMINISTRATOR POINTS OUT, THE YEAR ROUND PROGRAM ESTABLISHED IN SECTION 17 OF THE NSLA AS ADDED BY PUBLIC LAW 94-105 DID NOT SPECIFICALLY AUTHORIZE PAYMENT OF ADMINISTRATIVE COSTS. THUS THERE WAS AN APPARENT OVERSIGHT IN FAILING TO AMEND SECTION 7 OF THE CNA TO REFER TO SECTION 17 OF THE NSLA INSTEAD OF SECTION 13. THIS INTERPRETATION IS SUPPORTED BY THE MOST RECENT AMENDMENT TO SECTION 7 OF THE CNA BY PUBLIC LAW 95-166, 91 STAT. 1338 39, WHICH DELETED THE REFERENCE TO SECTION 13 AND ADDED A REFERENCE TO SECTION 17 OF THE NSLA. THE AGRICULTURE DEPARTMENT HAD IN EFFECT BEEN OPERATING ON THE BASIS OF SUCH AN INTERPRETATION AND WE DO NOT OBJECT TO THIS APPROACH (WHICH, IN ANY EVENT, HAS BEEN RENDERED MOOT BY VIRTUE OF PUBLIC LAW 95-166). HOWEVER, THE DEPARTMENT CANNOT HAVE IT BOTH WAYS BY TAKING THE REFERENCE TO SECTION 13 TO MEAN THE SECTION 17 YEAR ROUND PROGRAM AND NOW ASSERTING THAT THIS REFERENCE ALSO RETAINED EFFECT AS AN ADDITIONAL AND SEPARATE AUTHORIZATION FOR THE RECONSTITUTED SECTION 13 SUMMER FOOD PROGRAM.

SECOND, EVEN ACCEPTING THE PREMISE THAT THERE ARE TWO SEPARATE APPROPRIATION AUTHORIZATIONS FOR PAYMENT OF STATE ADMINISTRATIVE COSTS UNDER THE SECTION 13 PROGRAM, THE ACTUAL APPROPRIATIONS FOR PAYMENT OF ADMINISTRATIVE COSTS HAVE BEEN ENACTED IN SINGLE LUMP-SUM AMOUNTS COVERING ALL NSLA AND CNA PROGRAMS FOR WHICH SUCH PAYMENTS ARE MADE. THUS WE CANNOT AGREE WITH THE ADMINISTRATOR THAT THERE EXISTED IN ANY REAL SENSE TWO SEPARATE "FUNDS" AVAILABLE FOR SUMMER FOOR PROGRAM ADMINISTRATIVE COSTS. WE MIGHT ADD THAT EVEN IF TWO "FUNDS" WERE ARGUABLY AVAILABLE, THE VERY LEAST TO BE SAID IS THAT THE SPECIFIC SECTION 13 "FUND," WITH ITS 2 PERCENT FORMULA, WOULD TAKE PRECEDENCE OVER ANY MORE GENERAL SOURCE OF FUNDING:

* * * IT IS A RULE OF LONG STANDING THAT AN APPROPRIATION MADE AVAILABLE FOR A SPECIFIC OBJECT IS AVAILABLE FOR THAT OBJECT TO THE EXCLUSION OF AN APPROPRIATION WHICH MIGHT OTHERWISE BE APPLICABLE IN THE ABSENCE OF THE SPECIFIC APPROPRIATION, AND THAT WHEN THE SPECIFIC APPROPRIATION TO WHICH AN EXPENSE IS CHARGEABLE IS EXHAUSTED, THE GENERAL APPROPRIATION CANNOT BE USED FOR THAT PURPOSE. 4 COMP.GEN. 476; 5 ID. 399; 7 ID. 400; 10 ID. 440; 19 ID. 633; ID. 892. ALSO, WE HAVE HELD THAT THE INCLUSION OF THE WORDS "NOT TO EXCEED" OR SIMILAR LANGUAGE IS NOT NECESSARY TO ESTABLISH A LIMITATION WHEN AN APPROPRIATION INCLUDES A SPECIFIC AMOUNT FOR A PARTICULAR OBJECT. 19 COMP.GEN. 892; A-99732, JANUARY 13, 1939; B-5526, SEPTEMBER 14, 1939. 36 COMP.GEN. 526, 528 (1957). COMPARE 54 COMP.GEN. 799 (1975); 53 COMP.GEN. 695 (1974); 38 COMP.GEN. 588 (1959); AND 38 COMP.GEN. 758 (1959).

FINALLY, IT HAS BEEN SUGGESTED THAT CERTAIN STATEMENTS MADE DURING CONGRESSIONAL DEBATE ON THE LEGISLATION (H.R. 1139, 95TH CONGRESS) ENACTED AS PUBLIC LAW 95-166 SUPPORT THE VIEW THAT SECTION 7 OF THE CNA IN EFFECT AT THE TIME OF OUR JULY 1977 DECISION DID CONSTITUTE A SEPARATE SOURCE OF FUNDS FOR SUMMER FOOD PROGRAM ADMINISTRATIVE COSTS. DURING CONSIDERATION OF THE CONFERENCE REPORT ON H.R. 1139, REPRESENTATIVES HOLTZMAN AND PERKINS ENGAGED IN A COLLOQUY CONSISTING OF 2 QUESTIONS. THE FIRST QUESTION AND ANSWER ARE RELEVANT HERE AND READ AS FOLLOWS:

MS. HOLTZMAN. * * * MR. SPEAKER, I WOULD LIKE TO ASK THE CHAIRMAN OF THE COMMITTEE AND THE CHAIRMAN OF THE CONFERENCE COMMITTEE TWO QUESTIONS REGARDING STATE ADMINISTRATIVE EXPENSES.

THE FIRST QUESTION HAS TO DO WITH INTERPRETING THE PRESENT LAW'S PROVISIONS REGARDING THE EXPENDITURE OF UNUSED STATE ADMINISTRATIVE FUNDS APPROPRIATED UNDER SECTION 7 OF THE CHILD NUTRITION ACT FOR THE PURPOSE OF ADMINISTRATION IN THE SUMMER FEEDING PROGRAM. IF I UNDERSTAND IT CORRECTLY, THE DEPARTMENT OF AGRICULTURE NOW HAS ON HAND APPROXIMATELY $630,000 IN FUNDS RETURNED TO IT IN FISCAL YEAR 1977 BY STATES WHICH COULD NOT USE THESE FUNDS FOR THE ADMINISTRATION OF THE SCHOOL LUNCH PROGRAM, THE SCHOOL BREAKFAST PROGRAM, AND THE CHILD CARE FEEDING PROGRAM. THE DEPARTMENT WOULD LIKE TO REALLOCATE THE UNUSED FUNDS FROM THESE PROGRAMS TO THE STATES FOR THE PURPOSE OF PAYING FOR THE ADMINISTRATION OF LAST SUMMER'S SUMMER FOOD SERVICE PROGRAM FOR CHILDREN. I WOULD LIKE TO KNOW WHETHER THE CHAIRMAN OF THE COMMITTEE WOULD INTERPRET THIS ACTION AS PERMISSIBLE UNDER THE PRESENT LAW.

MR. PERKINS. * * * I DO BELIEVE THAT IT WOULD BE PERMISSIBLE UNDER THE PRESENT LAW, NAMELY SECTION 7 OF THE CHILD NUTRITION ACT, FOR THE DEPARTMENT TO USE FUNDS RETURNED TO IT BY THE STATES FOR REALLOCATION TO STATES TO PAY FOR THE ADMINISTRATION OF THEIR SUMMER FEEDING PROGRAM DURING FISCAL YEAR 1977. CONG. REC., OCTOBER 27, 1977 (DAILY ED.), H11670 -71.

ALSO REPRESENTATIVE QUIE MADE THE FOLLOWING STATEMENT DURING CONSIDERATION OF THE CONFERENCE REPORT:

* * * I UNDERSTAND THAT LEGAL COUNSEL IN THE DEPARTMENT OF AGRICULTURE HAS RAISED AN ISSUE OF WHETHER EXCESS STATE ADMINISTRATIVE FUNDS PROVIDED BY OTHER SECTIONS OF THESE TWO ACTS COULD BE USED TO BOLSTER STATE ADMINISTRATION OF THIS PROGRAM. I THINK CONGRESS INTENDED THIS TO BE POSSIBLE AND TO CONTINUE TO BE POSSIBLE UNDER THESE AMENDMENTS. THE ALTERNATIVES TO ADEQUATE STATE ADMINISTRATION ARE AN UNCONTROLLED PROGRAM OR ABDICATION OF STATE RESPONSIBILITY IN FAVOR OF FEDERAL ADMINISTRATION. THESE ALTERNATIVES ARE ALMOST EQUALLY UNDESIRABLE. ID. AT H11674. /1/

THE QUOTED STATEMENTS DO NOT RELATE TO ANY PROVISIONS OF THE BILL (H.R. 1139) THEN UNDER CONSIDERATION AND DO NOT PURPORT TO BE MORE THAN OPINIONS AS TO THE MEANING OF THE LAW THEN IN EFFECT. THUS THEY CANNOT BE GIVEN SUBSTANTIAL WEIGHT AS LEGISLATIVE HISTORY. MOREOVER, THESE STATEMENTS APPEAR TO BE INCONSISTENT WITH OTHER EXPLANATIONS OF THE PROVISIONS IN EFFECT PRIOR TO PUBLIC LAW 95-166 WHICH RELATE DIRECTLY TO THE CHANGES MADE BY THAT ACT.

THE REPORT ON H.R. 1139 BY THE HOUSE COMMITTEE ON EDUCATION AND LABOR CLEARLY VIEWED THE 2 PERCENT AMOUNT SPECIFIED IN THE VERSION OF SECTION 13(K) OF THE NSLA THEN IN EFFECT TO BE A LIMITATION ON ADMINISTRATIVE COST PAYMENTS FOR THE SUMMER FOOD PROGRAM. THUS THE REPORT STATES: "THE PRESENT LAW PROVIDES FOR PAYMENT OF A FLAT 2 PERCENT OF THE FUNDS RECEIVED LAST YEAR." H.R. REPT. NO. 95-281, AT PAGE 30 (1977). THE REPORT BY THE SENATE COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY ON ITS VERSION OF THE LEGISLATION ENACTED AS PUBLIC LAW 95-166 ALSO DESCRIBES THE SECTION 13(K) FORMULA THEN IN EFFECT AS A "FLAT" 2 PERCENT. S. REPT. NO. 95-277, 23 (1977). THESE INTERPRETATIONS ARE MORE SIGNIFICANT BECAUSE THEY SERVE TO EXPLAIN THE AMENDMENTS TO THE LAW MADE BY PUBLIC LAW 95-166. THE LANGUAGE OF SECTION 13(K) AS AMENDED BY PUBLIC LAW 95-166, QUOTED SUPRA, REENFORCES THE VIEW THAT THE FORMULA SPECIFIED WAS AND IS UNDERSTOOD TO HAVE A LIMITING EFFECT SINCE THE PERCENTAGE AMOUNTS WERE INCREASED AND THE SECRETARY WAS GIVEN AUTHORITY TO ADJUST SUCH AMOUNTS. AS DISCUSSED PREVIOUSLY, THE AMENDMENT TO SECTION 7 OF THE CNA BY PUBLIC LAW 95-166 (CHANGING THE REFERENCE FROM SECTION 13 OF THE NSLA TO SECTION 17) LIKEWISE REENFORCES THE VIEW THAT SECTION 7 WAS NEVER INTENDED TO CONTINUE AS A SEPARATE AUTHORIZATION FOR PAYMENT OF SUMMER FOOD PROGRAM ADMINISTRATIVE COSTS.

FOR THE REASONS STATED ABOVE, WE REAFFIRM OUR DECISION OF JULY 19, 1977, AS TO THE PAYMENT OF ADMINISTRATIVE COSTS INCURRED FOR PROGRAM YEARS PRIOR TO FISCAL YEAR 1978. IN OUR VIEW ALL SUCH PAYMENTS ARE SUBJECT TO, AND LIMITED BY, THE 2 PERCENT FORMULA OF SECTION 13(K) OF THE NSLA AS AMENDED BY PUBLIC LAW 94-105.

/1/ DURING SENATE DEBATE ON THE CONFERENCE REPORT SENATORS JAVITS AND TALMADGE ALSO DISCUSSED THIS ISSUE, BUT NO SPECIFIC OPINIONS WERE EXPRESSED CONCERNING THE EFFECT OF THE PRESENT LAW. ID., OCTOBER 28, 1977, S. 18004.