



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

Westfall
523143

B-206573

August 16, 1982

The Honorable Paul Simon
Chairman, Subcommittee on
Postsecondary Education
Committee on Education and Labor
House of Representatives

Dear Mr. Chairman:

This is in response to your letter of February 16, 1982, requesting our opinion as to the legality of the Department of Education's expenditure of funds appropriated to carry out programs under the Higher Education Act of 1965, as amended, to pay for field readers, who evaluate and rate proposals submitted to the Department for funding, and other consultant services. You enclosed with your letter a copy of a Department of Education memorandum dated December 8, 1981, which addressed this issue.

The Department essentially utilizes two methods to obtain the subject consultant services. One is to hire individual consultants through the personnel process; these individuals become special Government employees. The other is to contract with individuals or groups or organizations to obtain consulting services.

The Department has determined that the choice of hiring method will determine to some extent which funds will be utilized. After reviewing its legislative authority and past administrative practices, the Department concludes that:

"* * * in the absence of any specific statutory prohibition inserted by Congress in any program's authorizing or appropriations legislation which explicitly forbids the use of those funds for contracts in general, or for contracts for field readers in particular, there is no legal prohibition against the use of program funds for field reader contracts to carry out program purposes.

"* * * it would be of doubtful legality to use program funds to pay for field reader services obtained through the appointment of field readers as consultants, or otherwise, under the personnel process."

We have reviewed the Department of Education's rationale, together with the relevant statutes, and as discussed below, we find no basis to object to its practices.

I. Use of Program Funds for Field Reader Consultant Appointments

We agree with the Department of Education that it does not have the discretion to pay field readers hired under consultant appointments with program funds. Public Law 97-92, as extended by Public Law 97-161, appropriates funds to the Department of Education for FY 1982. Under the heading "Departmental Management, Salaries and Expenses," H.R. 4560, as reported to the Senate on November 9, 1981, appropriates \$216,774,000 "[f]or carrying out, to the extent not otherwise provided, the Department of Education Organization Act * * *." The Senate Report which accompanied H.R. 4560 explained that the Departmental Management, Salaries and Expenses account included "funding for the administration of more than 150 programs and most offices in the Department." It further stated that: "Funds support program management and evaluation, compensation benefits, travel, rent, communications, utilities, printing equipment, and other services." S. Rept. No. 97-268, p. 145.

Since Congress has appropriated funds which are specifically available for the payment of the salaries of employees responsible for administering Department of Education programs, and since consultants hired in this manner are special Government employees, we do not think that program funds may be expended for such a purpose. This Office has long held that an appropriation for a specific purpose is available for that purpose to the exclusion of any appropriation which might otherwise be available for the same or a compatible purpose. See, e.g., 36 Comp. Gen. 526, 528 (1957).

II. Use of Program Funds for Field Reader Contracts

Whether program funds may be used for field reader contracts or other consulting contracts will depend on each agency's statutory authorities and the provisions of the relevant appropriation acts.

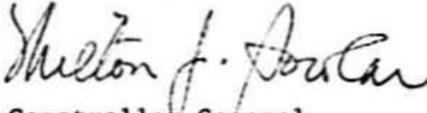
The Department of Education takes the position that there is no legal prohibition against the use of program funds for consultant contracts. We also are unaware of any provisions in the Higher Education Act of 1965, as amended, 20 U.S.C. § 1001 et seq., which prohibit the expenditure of program funds for field reader contracts. Nor are we aware of any such restrictions in the continuing resolution, Public Law 97-92, December 15, 1981, as extended by Public Law 97-161, March 31, 1982, which appropriates funds to the Department of Education for fiscal year 1982.

Accordingly, we are unaware of any specific prohibition on the use of program funds for field reader contracts. However, we note that the Department's Office of General Counsel, having examined the funding history of the various individual programs to determine the propriety of expending program funds for field reader contracts, has concluded that there are very few instances in which the legislative and funding history of a particular program justifies the use of program funds for this purpose. Any request to

use program funds for this purpose must be formally approved by the Department's Office of General Counsel. It has, for example, advised that program funds for Title III (Developing Institutions) may not be used to pay for field reader contracts. 20 U.S.C. §§ 1051 et seq. Finally, we endorse the suggestion made in the Department's General Counsel memorandum of December 8, 1981, that in view of the Department's longstanding practices and justifications to the Congress, if it wishes to begin expending program funds for field reader contract expenses which it has traditionally paid with salaries and expenses monies, it should so advise the appropriate congressional committees.

For the foregoing reasons, we conclude that the Department of Education may not use funds appropriated to carry out programs under the Higher Education Act of 1965, as amended, to pay the salaries of field readers and other consultants hired by the agency, but that it is not legally prohibited from using program funds to pay field reader or other consultant expenses under properly awarded contracts. However, if the Department intends to begin using program monies to fund consultant contracts which have previously been paid with salaries and expenses monies, we think Congress should be notified of the change.

Sincerely yours,

for 
Comptroller General
of the United States

END