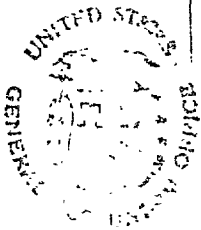


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Review Of The Office Of Economic Opportunity's Use Of Experts And Consultants

B-130515

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BY THE COMPTROLLER GENERAL
OF THE UNITED STATES

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SEPT. 6, 1973



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

B-130515

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r
The Honorable James Abourezk
United States Senate

Dear Senator Abourezk:

Pursuant to your request of March 9, 1973 (see app. I), and subsequent discussions with your office, we have reviewed the manner in which the Office of Economic Opportunity (OEO) used ⁹⁵⁷ its experts and consultants.

In April 1973 we provided your office with information regarding (1) OEO's hiring of experts and consultants, (2) work hours for these experts and consultants, (3) OEO's hiring policy during the freeze, (4) the ability of OEO employees to obtain employment with other Government agencies, and (5) history of Mr. Howard Phillips' employment with OEO.

We made our review primarily at OEO headquarters in Washington, D.C., from March through June 1973 and directed it toward determining whether OEO adhered to Federal instructions governing the use of experts and consultants hired by OEO from January 1, 1973, through March 17, 1973. As agreed, we did not evaluate the personal qualifications of the experts and consultants hired.

We reviewed applicable Federal instructions, OEO policies and instructions, and OEO personnel records, and interviewed OEO officials and nine OEO experts and consultants.

OEO appears to have used some of its 84 experts and consultants improperly because they were in regular full-time positions. Also, in view of the April 11, 1973, order of the U.S. District Court for the District of Columbia, there seemed to be a question concerning payments to some experts and consultants involved in activities which might be considered to violate the order.

We solicited the views of the former acting director of OEO on these matters. In response, OEO's Acting General Counsel advised us by letter dated June 7, 1973, of certain actions that OEO had taken. (See app. II.)

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The Civil Service Commission, at the request of the National Council of OEO Locals, has also reviewed OEO's use of experts, consultants, and certain temporary appointees. Information concerning the results of this review was furnished previously to your office.

USE OF EXPERTS AND CONSULTANTS

OEO employed some experts and consultants in regular full-time positions which could have been held by regular civil service employees.

Instructions on employing experts and consultants are in chapter 304 of the Federal Personnel Manual. The manual states, in part, that an expert or a consultant is used improperly if (1) he is employed to do a job that a regular employee can do just as well, (2) he does a full-time continuous job, (3) he is hired without competition, and (4) he is not paid according to general schedule pay limits.

From January 1, 1973, through March 17, 1973, OEO hired 84 experts or consultants who were each paid between \$60 to \$100 a day.

For six of the nine OEO experts or consultants interviewed, indications showed that the regular general schedule employees could have handled, or had been previously assigned, the jobs done by the experts or consultants. In addition, it appeared that OEO had used other experts and consultants in operating positions instead of regular employees. These include individuals with titles, such as the Acting Deputy Associate Director for Intergovernmental Relations; the Acting Deputy Director, Operations Division, Office of Legal Services; and the Acting Assistant Director for Program Review.

On April 23, 1973, OEO's Director of Personnel informed us that OEO had hired some experts and consultants improperly. However, he said he believed the requirements for employing experts and consultants were not applicable to the unique situation OEO faced in carrying out its role in restructuring the Federal Government's antipoverty activities.

According to the Director of Personnel, the former acting director of OEO needed personnel in whom he could have complete confidence to carry out a drastically different mission than what existing employees had been accustomed to performing. He stated that obtaining these new employees through the expert and consultant method was the only feasible alternative available because OEO had to restructure antipoverty activities by June 30, 1973.

By letter dated May 21, 1973, we brought this matter to the attention of the former acting director of OEO and suggested that OEO expand its review of the propriety of expert and consultant phaseout activities to determine the appropriateness of the hiring of all experts and consultants since January 1, 1973, and OEO's compliance with the Federal requirement governing their use. In his reply of June 7, 1973, OEO's Acting General Counsel informed us that, in accordance with our request and a similar inquiry from the Civil Service Commission dated May 14, 1973, OEO had reviewed all appointments to expert and consultant positions; as a result:

1. Sixteen experts and consultants had been terminated.
2. Thirty-seven experts and consultants had been converted to temporary appointments not to extend beyond June 30, 1973.
3. Forty-nine experts and consultants were allowed to remain on the rolls because OEO believed them to be properly employed as either experts or consultants.

We did not inquire into the adequacy of OEO's review of its experts and consultants in view of the uncertain situation at OEO. The appointments of the experts and consultants converted, as well as those individuals who were to remain on the rolls, were not to extend beyond June 30, 1973.

On June 29, 1973, the Civil Service Commission denied OEO's request to make new temporary limited appointments without regard to civil service registers. The Commission did approve, however, an extension of temporary limited appointments for

2 months not to extend beyond August 31, 1973, for any present employees properly serving under the Commission's previously granted special authorization.

At the request of the National Council of OEO Locals, the Commission reviewed, on a sample basis, OEO's use of experts, consultants, and certain temporary appointees and on July 6, 1973, ordered OEO to remove 3 temporary appointees from their positions because they were unqualified. In view of these findings, the Commission has begun reviewing recent OEO appointments to insure that they were made properly.

ACTIVITIES CONNECTED WITH
RESTRUCTURING ANTIPOVERTY EFFORTS

On April 11, 1973, the U.S. District Court for the District of Columbia declared that actions intended to accomplish the termination of OEO or the termination of funding or functioning of Community Action Agencies are unauthorized by law, illegal, and in excess of statutory authority.

OEO records (showing the duties assigned to the 84 experts or consultants) indicate that some of the 84 consultants or experts were assigned duties which might be considered to violate this court decision. The stated assigned duties included assisting regional employees in job placement efforts, assisting the acting director of the agency in phasing out operational agency programs, and advising a regional director on orderly expeditious phaseout of a regional office.

Also, three of the nine experts or consultants we interviewed were involved in activities which might be considered to violate the court decision. Of these three individuals, two were engaged in these activities at the time of our interviews, which were after the April 11, 1973, court decision.

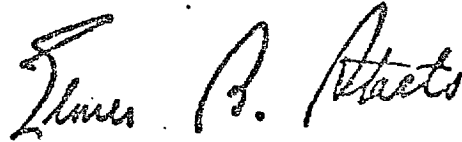
The Acting General Counsel, in his reply of June 7, 1973, stated that OEO did not agree with our interpretation of the April 11, 1973, court decision. However, he stated also that, because of the possibility of misinterpreting the functions of these employees, the duties of certain individuals had been changed and their position descriptions modified accordingly.

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3 As agreed, copies of this report are being made available
to Congressmen Herman Badillo and Robert H. Steele, Congress-
woman Patricia Schroeder, and the Acting Director of OEO.

Sincerely yours,



Comptroller General
of the United States

United States Senate

WASHINGTON, D.C. 20510

March 9, 1973

Mr. Elmer Staats
Comptroller General
General Accounting Office
Washington, D.C.

Dear Comptroller General Staats:

I have been disturbed with a number of developments in the Administration handling of the Office of Economic Opportunity in the interim between the announcement of the President's budget plans and pending Congressional action with respect to OEO. The following items seem to me to warrant investigation. They are drawn from my staff's first hand visit to the Denver Regional Office and the impressions gathered there in just a few hours. I believe there are some irregularities, namely:

I am told that Director Phillips has hired approximately 200 "consultants" at \$100 a day plus expenses plus per diem and that the manner in which these consultants are being used and hired is contrary to rules and regulations governing the agency. It is my understanding that OEO rules and regulations state that consultants must work independently of OEO personnel, cannot do the bidding of OEO personnel on a day-to-day basis, and secondly, that OEO cannot offer clerical support or office support to these consultants. I suspect that Mr. Phillips' new consultants are in violation of certain of these rules.

A second question with respect to these consultants is whether they were hired on a contract which was let by a bidding procedure.

A third question runs to their qualifications as per normal guidelines to do the work they are doing.

A fourth question runs to the sources of their recruitment.

The fifth question runs to the kind of hours they keep. It is my understanding that they are not keeping the full

hours for which they were hired.

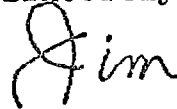
It is my understanding that certain new employees of OEO, and I can point out a specific example to you in the Denver office, have been hired under Civil Service despite the freeze. I would like to know what happened.

My staff discussions with federal OEO employees, conducted at my request, indicate that any number of OEO personnel are by some policy being excluded from seeking employment in other agencies of the government. I would like to know if there is any truth to that allegation.

I have come to understand that Director Phillips has requested an audit of the salaries of the five top employees of every Community Action Agency in the country. It is my suspicion that by the time that audit reaches public light under OEO's new directorship, the statistics could well be juggled and distorted for political purposes, and I wish you would undertake an independent and objective audit of the same subject.

It is my general feeling that OEO is being dismantled in a manner which deliberately seeks to destroy the agency and its grantees before Congress can legislate its intent with respect to OEO. I ask you to appraise all recent directives from OEO to its offices to determine whether anything like that is in fact happening.

Sincerely,



James Abourezk
United States Senate

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EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON, D.C. 20505

OFFICE OF ECONOMIC OPPORTUNITY

June 7, 1973

Mr. Franklin A Curtis
Associate Director
Manpower & Welfare Division
U.S. General Accounting Office
Washington, D.C. 20548

UNAVAILABLE

Dear Mr. Curtis:

This is in response to your letter of May 21, 1973, requesting the results of our review of experts and consultants hired since January 1, 1973.

Use of Experts and Consultants:

In accordance with your letter and a similar inquiry from the Civil Service Commission on May 14, 1973, the Agency has conducted a careful review of all appointments to consultant and expert positions. In making this review particular attention was given to the justification of Agency need, qualifications of individuals for the job, rate of pay, tour of duty, and use of appropriate appointing authority.

During the course of this review the following actions have resulted:

Sixteen Experts and Consultants have been terminated.

Thirty-seven Experts and Consultants were converted to temporary appointments not to exceed June 30, 1973.

Forty-nine Experts and Consultants remain on the rolls who we feel are properly employed as either consultants or experts. Two of these will be subsequently terminated within ten days.

With respect to the nine experts or consultants interviewed, John Gilhooly and Thomas Gibbons have been terminated, Jerome Climer, Philip DeVany, Louise Bundy, Mary George and Barbara Higgins have been converted to temporary GS positions not to exceed June 30, 1973, and Louis Wein and Ernest Ladeira remain as experts with modified duties.

Positions Established for Experts and Consultants:

It is true that some Experts or Consultants are being paid at a rate less than provided by the Guide For Federal Agencies,

Employment and Compensation of Experts and Consultants. The individuals so hired have the skills and knowledge necessary to make substantive contributions to the Agency. It was fortuitous that the Agency was able to obtain their services at a salary commensurate with their salaries in private industry, which although less than a GS-13 equivalent, nevertheless resulted in a monetary savings to the Agency.

Activities Connected with Restructuring Antipoverty Efforts

The report indicates that the U.S. District Court for the District of Columbia on April 11, 1973 declared that actions intended to accomplish the termination of the agency or termination of funding or functioning of Community Action Agencies are unauthorized by law, illegal and in excess of statutory authority. The report further concludes that duties assigned to some consultants might be considered to be in violation of the cited court decision.

Our reading of the court decision is not in accord with the GAO interpretation. The three paragraphs dealing with the termination aspects do not prohibit action being taken by the agency to advise, plan and discuss actions that may have to be taken in the event funds are not appropriated for the funding of OEO as requested in the budget submitted by the President to Congress. The court order provided in all three pertinent paragraphs that acts "heretofore" taken by the agency, directing, providing for, or intended to accomplish the termination, dissolution or abolition of OEO or the termination of funding or functioning of Community Action Agencies are illegal and null and void. The court further ordered that the agency was enjoined from implementing or enforcing or both, anything "heretofore" published, promulgated, or otherwise communicated.

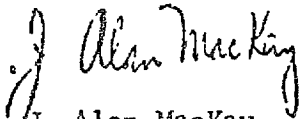
The clear intent of the order was to deal with actions taken prior to the Court's decision as the word "heretofore" is used to explain clearly what actions were enjoined.

It is the view of this agency that so long as no acts are taken which deal with the terminations, there is no violation of the court order. The acts performed by the consultants who were interviewed related to advisory and planning functions and assisting employees to locate jobs in the event a termination of the agency does come about through Congressional action. No acts on the part of these consultants or anyone else in OEO can be considered an action to effectuate the termination of OEO or its programs.

Actions taken to delegate programs pursuant to 602(d), to other agencies, are not contrary to the Court decision provided the effect is not the elimination of the Office of Economic Opportunity. Employees working on plans and advising on these matters are perfectly legal. The Comptroller General has concurred in this view in its opinion of March 7, 1973 to Senator Abraham Ribicoff, Chairman of the Subcommittee on Executive Reorganization and Government Research Committees, Government Operations.

Furthermore, since you raised the issue it is possible that there may be a misinterpretation of the functions of these employees. The duties of the consultants have been changed and their position description modified accordingly to reflect duties that deal with planning for actions in the event funds are not appropriated for any or all of OEO programs.

Sincerely,



J. Alan MacKay
Acting General Counsel

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The Civil Service Commission, at the request of the National Council of OEO Locals, has also reviewed OEO's use of experts, consultants, and certain temporary appointees. Information concerning the results of this review was furnished previously to your office.

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