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DECISION

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

J. Herrick
C-64

FILE: B-146285 DATE: April 10, 1978

MATTER OF: Effect of Intergovernmental Cooperation Act on Smith-Lever and Hatch Act Grant Payments

DIGEST: Department of Agriculture grant payments to State extension services under 7 U.S.C. § 341 et seq., and to State agricultural experimental stations under 7 U.S.C. § 361 et seq., should continue to be disbursed in equal quarterly installments regardless of disbursement need pursuant to 7 U.S.C. §§ 344 and 361a, respectively. There is nothing in the language or legislative history of § 203 of the Intergovernmental Cooperation Act of 1968, 42 U.S.C. § 4213, which requires grant payments to be made to States only as actually needed, to indicate an intention to repeal by implication such statutory payment schedules. Repeal by implication is not to be easily presumed. Moreover, Congress reaffirmed the payment requirements of these two programs in sections 15 and 9, respectively, of the Fiscal Year Adjustment Act.

We have been requested by the Assistant Secretary for Administration, Department of Agriculture (Agriculture), to resolve a dispute between Agriculture and the Department of Treasury, Bureau of Government Financial Operations (Treasury), as to whether grant funds can continue to be distributed in equal quarterly installments by Agriculture's Federal Extension Service pursuant to 7 U.S.C. § 341 et seq. (1970)(Smith-Lever Act), and by the Cooperative State Research Service pursuant to 7 U.S.C. § 361 et seq. (1970)(Hatch Act), to State recipient organizations without regard to their actual and current cash disbursement needs. Agriculture asserts that State recipient organizations, obtaining grants under these programs, are allowed to draw upon funds at their own discretion while Treasury contends that these recipients are required to draw funds only on an immediate needs basis.

To resolve this question, we are requested to determine the applicability of section 203 of the Intergovernmental Cooperation Act of 1968, Pub. L. No. 90-577, 82 Stat. 1101, 42 U.S.C. § 4213 (1970), to the payment of funds made by letters of credit to State organizations under the Smith-Lever and Hatch Acts, supra.

The Federal Extension Service provides grants to State educational institutions for agricultural extension work pursuant to the Smith-Lever Act. Since 1962, funds for this program were required to be distributed to recipient organizations on a specific quarterly payment schedule set forth in 7 U.S.C. § 344 (1970). Until April 21, 1976, this section provided that sums:

> "* * * shall be paid in equal quarterly payments in or about July, October, January, and April of each year to the treasurer or other officer of the State duly authorized by laws of the State to receive the same * * *."

In 1976, this provision was amended by section 15 of the Fiscal Year Adjustment Act, Pub. L. No. 94-273, 90 Stat. 379, requiring the first quarterly payment of each fiscal year to be made in October rather than July.

The Cooperative State Research Service provides for grants to State agricultural experiment stations for research in agriculture pursuant to the Hatch Act. Funds for this program were similarly required to be disbursed to State recipient organizations on a specific quarterly schedule set out in 7 U.S.C. § 361e (1970). This section provided that sums:

> "* * * be paid to each State agricultural experiment station in equal quarterly payments beginning on the first day of July of each fiscal year upon vouchers approved by the Secretary of Agriculture."

This section was also amended in April, 1976 by Pub. L. No. 94-273, supra (section 9), in order to adjust payments to the new Federal fiscal year.

Until 1968, Agriculture made equal quarterly disbursements to State recipient organizations under these programs, based on the above statutory schedules. In that year, the Federal Extension Service and the Cooperative State Research Service changed to a disbursement system under which grant-in-aid funds were advanced by letters of credit through Federal Reserve Banks (and later Treasury Regional Disbursing Offices). Under this system, certified letters of credit were issued by Agriculture in the name of State recipient organizations and were amended quarterly to authorize disbursement of funds to the organizations based on the quarterly

schedules set forth in 7 U.S.C. §§ 344 and 361e, supra, respectively.

Treasury had long found the use of the letter of credit system to be an effective cash management tool to provide some measure of assurance that States would use Federal funds only when necessary. See, Treasury Departmental Circular No. 1075 (May 28, 1964). Congress provided legislative sanction for the use of the letter of credit system in section 203 of the Intergovernmental Cooperation Act of 1968, 42 U.S.C. § 4213, supra. This section provides:

> "Heads of Federal departments and agencies responsible for administering grant-in-aid programs shall schedule the transfer of grant-in-aid funds consistent with program purposes and applicable Treasury regulations, so as to minimize the time elapsing between the transfer of such funds from the United States Treasury and the disbursement thereof by a State, whether such disbursement occurs prior to or subsequent to such transfer of funds. States shall not be held accountable for interest earned on grant-in-aid funds, pending their disbursement for program purposes."

The purpose of the letter of credit system was spelled out by the Senate Government Operations Committee report in explaining section 203 of the Act:

> "This section establishes a procedure to discourage the advancement of Federal funds for longer periods of time than necessary. The Department of the Treasury has already moved administratively to achieve this objective in its Departmental Circular No. 1075, issued May 28, 1964. Under this circular a letter of credit procedure has been established which maintains funds in the Treasury until needed by recipients. Advances are limited to the minimum allowances that are needed and are timed to coincide with actual cost and program requirements. This section is designed to place this administrative practice on a legislative basis and to extend it to cover disbursements which occur both prior and subsequent to the transfer of funds. It is further intended that States will not draw grant funds in advance of program needs." S. Rep. No. 1456, 90th Cong., 2d Sess. 15 (1968).

The House report explained the provision as follows:

> "Section 203 requires Federal agencies to schedule the transfer of grant funds to the States in a manner that reduces to a minimum the time between such transfer and the disbursements of the funds by the State. Thus, Federal funds will be retained by the U.S. Treasury until actually needed by the State for the payment of obligations incurred under the particular grant program." H. Rep. No. 1845, 90th Cong., 2d Sess. 5 (1968).

42 U.S.C. § 4213, supra, in effect, mandated that the letter of credit system prescribed by Treasury be implemented on a Government-wide basis as a means of transferring grant-in-aid funds so that only a minimum time period would lapse between receipt of such funds by the State, and the State's actual use of those funds. Treasury regulations which set forth the procedures to be observed when disbursing program funds to organizations outside the Federal Government, required recipient organizations to draw upon the letter of credit only to meet immediate disbursement needs. These regulations are now codified under the heading Withdrawal of Cash from the Treasury for Advances under Federal Grant and Other Programs, 31 C.F.R. Part 205 (1976).

Section 205.1 of the regulations states:

> "The purpose of this part is to prescribe the timing of such advances and the procedures to be observed to assure that cash withdrawals from the Treasury occur only when essential to meet the needs of a recipient organization for its actual disbursements."

Pursuant to a Memorandum of Understanding between Treasury and Agriculture, dated May 30, 1975, Treasury agreed to treat the disbursements under the Smith-Lever Act and the Hatch Act as exempted from the above regulations. Consequently, the Federal Extension Service and the Cooperative State Research Service have allowed their respective recipients to draw upon the letters of credit, as amended quarterly, in such amounts and at such times as the recipients chose, independent of their current disbursement needs. Apparently, this has been the policy of Agriculture since the letter of credit system was first initiated in 1968.

However, in 1976, Treasury reevaluated its position in this matter and concluded that the grant programs under both the Smith-Lever and Hatch Acts are subject to the requirements instituted under 42 U.S.C. § 4213, supra, thereby requiring advances to State recipients to be timed in accord with the actual, immediate cash requirements of the grant recipient. Treasury requested that the Memorandum of Understanding executed between the two agencies concerning these payments be amended to reflect this position.

Agriculture disagrees with this position, contending that the Intergovernmental Cooperation Act contains no language that repeals or modifies the quarterly payment schedules set out in 7 U.S.C. §§ 344 and 361e. Agriculture argues that Congress amended those particular sections in the Fiscal Year Adjustment Act, supra, to conform the timing of the quarterly payments to the new fiscal year dates. Since this enactment was subsequent to the Intergovernmental Cooperation Act of 1968, it indicates a congressional intent to retain the specific quarterly payment schedules provided in those programs.

Treasury does not flatly contend that the quarterly payment schedules in the two Agriculture acts were modified or repealed by the Intergovernmental Cooperation Act. Instead, it suggests that the statutes can be reconciled. In an opinion dated May 6, 1976, affirmed by another opinion dated November 10, 1976, by members of the Treasury Department's General Counsel's office, it was stated:

> "Under a familiar rule of statutory construction, statutes on the same subject (in pari materia) should be construed together. If there is an apparent conflict, the statutes are to be construed to be in harmony with each other as far as reasonably possible, but if a subsequent act is irreconcilable with an earlier act, the subsequent act controls. This rule may be applied to the statutes concerned here by providing the state recipients with letters of credit on a quarterly basis. * * *".

If the Hatch Act and the Smith-Lever Act had provided only that payments be made on a quarterly basis, we would agree with Treasury that the amount of each payment should be geared to the actual disbursement needs of the State agencies concerned. However, the applicable statutes do not allow this option. They mandate

payment to the appropriate State official in equal quarterly installments. Thus both timing and amount are fixed by law and cannot be withheld under existing law. The provision in the Memorandum of Understanding between Treasury and Agriculture which exempted the Federal Extension Service and the Cooperative State Research Service should therefore be retained.

Neither the language nor the legislative history of 42 U.S.C. § 4213 indicates an intent to repeal any fixed payment amounts and schedules expressly set by statute. Repeal by implication is not to be easily presumed. We note that most Federal grant programs do not have statutory payment schedules and, in our view, it is to those programs that section 203 was addressed. Prior to enactment of the Intergovernmental Cooperation Act of 1968, supra, States frequently obtained Federal grant funds before they were needed and then invested them. This Office in a number of decisions held that States, like other grantees, could not invest grant funds, since the investment of the funds was not an approved grant purpose, and that any income earned on the investments would have to be returned to the United States. See, for example, 42 Comp. Gen. 289 (1962). To facilitate these rulings, we also required separate accounting for these funds. Apparently, these requirements were felt to be an undue administrative burden on the States. Accordingly, Congress enacted section 203 of the Intergovernmental Cooperation Act of 1968, to minimize the time elapsing between the transfer of grant-in-aid funds from the United States and their disbursement by the State recipients. Since the States would then have minimal time in which to use the money for non-grant purposes (i.e., for investment), the Congress decided that it was no longer necessary to hold States accountable for interest earned on grant-in-aid funds, pending their disbursement for program purposes. At any rate, there is no indication that the Congress was aware at that time of the few programs in which fixed amounts and timing of payments were mandated by statute for which the section 203 provisions would be inapplicable.

Moreover, as noted by Agriculture, on April 21, 1976, 8 years after enactment of the Intergovernmental Cooperation Act, section 4 of the Smith-Lever Act and section 5 of the Hatch Act were specifically amended by sections 15 and 9 respectively of the Fiscal Year Adjustment Act, Pub. L. No. 94-273, 90 Stat. 378, 379, so that the first quarterly payment of each fiscal year is to be made in October

rather than July. While not conclusive, this gives added support to the view that Congress intended that payments under these programs continue in essentially the same manner as before.

Accordingly, we must conclude that the equal quarterly payment requirements set forth in 7 U.S.C. §§ 344 and 361e have not been repealed by implication by the enactment of section 203 of the Intergovernmental Cooperation Act of 1968, 42 U.S.C. § 4213, and may not be modified administratively unless the applicable legislative provisions are amended.

P. J. Keller

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