



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

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B-179533

January 10, 1974

The Honorable  
The Secretary of the Interior

Dear Mr. Secretary:

Letter dated August 20, 1973 (H34-PHR), from the Assistant Secretary of the Interior concerns the administration of a program of matching grants to States by the National Park Service to assist the States in the preparation of comprehensive statewide historic surveys and plans and in the acquisition and preservation for public benefit of properties that are significant in American history, architecture, archeology and culture. The Assistant Secretary advises that this program is authorized under the provisions of Title I of the Historic Preservation Act of 1966, 80 Stat. 915, 16 U.S.C. 470, et seq. (1970 ed.). Section 101(b)(1) defines the term State to include, in addition to the several States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa. The Assistant Secretary states that a question has arisen as to the expenditure of funds appropriated to your Department for this program to match the cost of services supplied to the Government of the District of Columbia by the National Capital Planning Commission (NCPC) in connection with a District of Columbia project to prepare its comprehensive historic survey and plan. He requests our decision in the matter. From the information contained in the submission, the facts pertinent to the question raised may be summarized as follows:

The Historic Preservation Act of 1966, Pub. L. 89-665, 80 Stat. 915, 16 U.S.C. 470, is designed to provide Federal assistance up to 50 percent of the cost of the development of comprehensive statewide historic surveys and plans and up to 30 percent of the total cost of historic preservation projects. The act also provides that no grant may be made for any survey or project under the act with respect to which financial assistance has been given or promised under any other Federal program or activity. Specifically, sections 103(a) and 104(a) provide:

"Sec. 103(a) The amounts appropriated and made available for grants to the States for comprehensive statewide historic surveys and plans under this Act shall be apportioned among the States by the Secretary

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on the basis of needs as determined by him; Provided, however, That the amount granted to any one State shall not exceed 50 per centum of the total cost of the comprehensive statewide historic survey and plan for that State, as determined by the Secretary.

"Sec. 104(a) No grant may be made by the Secretary for or on account of any survey or project under this Act with respect to which financial assistance has been given or promised under any other Federal program or activity and no financial assistance may be given under any other Federal program or activity for or on account of any survey or project with respect to which assistance has been given or promised under this Act."

Section 101(b)(1) defines the term "State" to include, in addition to the several States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

In a letter conveying a draft bill, S. 3035, eventually enacted as the Historic Preservation Act of 1966, to the President of the Senate, the Secretary of the Interior stated that (page 11, House Report No. 1916, 89th Congress, 2nd Session):

"The bill also provides that no grant may be made under this Act for or on account of any survey or project with respect to which financial assistance has been given or promised under any other Federal program or activity, and vice versa. This provision will avoid any overlap with other related Federal programs and activities such as the Department of Housing and Urban Development's open-space programs conducted pursuant to title VII of the Housing Act of 1961 (75 Stat. 183, as amended; 42 U.S.C. 1500 et seq.)."

The language referred to by the Secretary, section 104 (a) supra, must, of course, yield to the apparent intention of the legislation if at variance with that intent, and if its language is sufficiently flexible to admit of a construction which would effectuate the legislative intention. Sutherland, Statutory Construction, section 4706. The inclusion of the District of Columbia within the term "State" as used in the historical preservation legislation imports a congressional intention to authorize District participation in the program. Accordingly, the term "any other Federal program or activity," in section 104(a), supra, would not encompass funds appropriated directly to the Government of the District of Columbia for its use.

For the fiscal years 1971 and 1972, the District of Columbia claimed expenditures of \$20,000 and \$30,849 respectively, as its 50 percent share for survey and planning grants under the 1966 act (project nos. 11-71-00001 and 11-72-00003). These expenditures consisted of salary and related costs incurred on the projects by the National Capital Planning Commission (NCPC).

The NCPC, successor to the National Capital Park and Planning Commission, was established by the National Capital Planning Act of 1952, 66 Stat. 782. It was "created and designated as the central planning agency for the Federal and District Governments to plan the appropriate and orderly development and redevelopment of the National Capital and the conservation of the important natural and historical features thereof." (66 Stat. 782)

Although charged with planning for both the Federal and District governments, the NCPC is an independent Federal agency outside of the framework of the District government. It is funded by direct congressional appropriations, distinct from those of the District. The language of section 104(a), prohibiting grants to projects receiving financial assistance from any other Federal program or activity, quite plainly applies to expenditures by the NCPC. Also, the legislative history of section 103 of the 1966 act (Pub. L. 89-665) makes it clear that in "no event can such Federal assistance (i.e. assistance for the comprehensive survey and plan) be more than 50 percent of the cost involved". (Page 5, House Report No. 1916, 89th Congress, 2nd Session.) To permit expenditures made by the NCPC in preparing a comprehensive survey and plan for the District of Columbia--for purposes of the Historic Preservation Act of 1966--to be used by the District for matching planning grants made by the National Park Service under the 1966 act would result in the Federal Government paying 100 percent of the planning costs involved. Furthermore, except for a general desire to authorize District participation, as evidenced by the statutory definition of "State" considered above, the legislative history does not disclose an intent contrary to the language used.

In light of the foregoing it must be concluded that funds expended by the NCPC in preparing a comprehensive survey and plan for the District of Columbia for purposes of the Historic Preservation Act of 1966 may not be used as a basis upon which the District may receive matching assistance from your Department under the last cited act.

We might point out, however, that section 203 of Title II of the District of Columbia Self-Government and Governmental Reorganization Act, enacted December 24, 1973, Pub. L. 93-198, 87 Stat. 774 (Title II being effective July 1, 1974), amends section 2 of the act of June 6, 1924 (D.C. Code 1-1002), to provide that the National Capital Planning

Commission is to be the central Federal planning agency for the Federal Government in the National Capital and is to preserve the important natural features thereof with certain exceptions, not here pertinent. That same section also amends the 1924 act to provide that the Commissioner of the District of Columbia (rather than the National Capital Planning Commission) will be the central planning agency for the Government of the District of Columbia in the National Capital and is to be responsible for coordinating the planning activities of the District Government and for preparing and implementing the District elements of the comprehensive plan for the National Capital but the Commissioner's planning responsibility is not to extend to Federal or international projects as determined by the NCPC. (See also section 423 of Pub. L. 93-198.) Thus, as of July 1, 1974, it appears that the planning functions insofar as the District of Columbia Government is concerned are to be the responsibility of the Commissioner of the District and the costs thereof will be payable from funds of the District of Columbia.

Sincerely yours,

(SIGNED) ELMER B. STAATS

Comptroller General  
of the United States