



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

B-205053

February 5, 1982

The Honorable Peter A. Peyser
House of Representatives

Dear Mr. Peyser:

This is in response to your letter of January 27, 1982, requesting that we investigate a possible unreported impoundment of funds by the Office of Management and Budget.

The funds involved are earmarked for use for library services and interlibrary cooperation programs under Titles I and III of the Library Services and Construction Act (LSCA), 20 U.S.C. §§351 et seq., (Supp. III 1979). 1/ The formula by which the amounts appropriated are to be allotted to eligible States is specified in 20 U.S.C. §351c, which provides in pertinent part:

"(a)(1) From the sums appropriated * * * for any fiscal year, the Commissioner shall allot the minimum allotment, as determined under paragraph (3) of this subsection, to each State. Any sums remaining after minimum allotments have been made shall be allotted in the manner set forth in paragraph (2) of this subsection.

"(2) From the remainder of any sums appropriated * * * for any fiscal year, the Commissioner shall allot to each State such part of such remainder as the population of the State bears to the population of all the States.

1/ The Continuing Resolution, Pub. L. No. 97-92, §101 authorizes funding at the levels specified in the Departments of Labor, Health and Human Services, Education and Related Agencies appropriation bill, 1982. The two LSCA programs and three other library programs are funded out of the same lump-sum appropriation for libraries in the Labor-HHS appropriation bill. The House and Senate reports accompanying the appropriation bill specify the same amounts for allocation from the lump-sum appropriation to the two LSCA programs. See S. Rep. No. 97-268, 140-142 (1981).

"(3) For the purposes of this subsection, the 'minimum allotment' shall be--

"(A) with respect to appropriations for the purposes of title I [20 U.S.C. §§352 et seq.], \$200,000 for each State * * *.

* * * * *

"(C) with respect to appropriations for the purposes of title III [20 U.S.C. §§355e et seq.], \$40,000 for each State * * *.

If the sums appropriated * * * for any fiscal year are insufficient to fully satisfy the aggregate of the minimum allotments for that purpose, each of such minimum allotments shall be reduced ratably." (Emphasis added.)

Under 20 U.S.C. §351c(b), any part of a State's allotment not required by the State is to be reallocated among the other States.

The funding scheme under the LSCA was considered in two lawsuits challenging impoundments of funds available under that Act. Both courts concluded that the language in the LSCA required that all the funds appropriated be allotted to eligible States according to the formula specified in the statute. State of Louisiana v. Weinberger, 369 F. Supp. 856, 862-865 (E.D.La. 1973); State of Oklahoma v. Weinberger, 360 F. Supp. 724, 728 (W.D.Okla. 1973).

We agree with the courts' characterization of the LSCA as a mandatory spending statute. Therefore, it is our view that this impoundment falls within the so-called "fourth disclaimer" in section 1001(4) of the Impoundment Control Act, which provides:

"Nothing contained in this Act or in any amendments made by this Act, shall be construed as--

B-205053

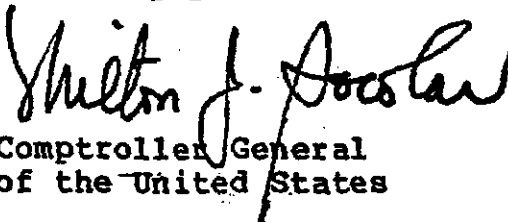
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"(4) superseding any provision of law which requires the obligation of budget authority or the making of outlays thereunder."

Accordingly, it is our position that the Impoundment Control Act is not available to the executive branch for the purpose of withholding the funds in question.

We have sent a copy of this letter to OMB advising them of our views.

Sincerely yours,

for 
Comptroller General
of the United States