DOCUMENT RESUME

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[Review of the Funding of and the Use of Funds by the National Commission on the Observance of International Women's Year]. B-182398; HRD-77-27. January 17, 1977. Released June 20, 1977. 11 pp.

Report to Sen. Henry M. Jackson; by Elmer B. Staats, Comptroller General.

Issue Area: Non-Discrimination and Equal Opportunity Programs (1000).
Contact: Human Resources Div.
Budget Function: General Government: Other General Government (806).
Organization Concerned: National Commission on the Observance of International Women's Year.
Congressional Relevance: Sen. Henry M. Jackson.
Authority: Economy Act of 1932, sec. 601 (31 U.S.C. 686). Comprehensive Employment and Training Act of 1973 (29 U.S.C. 871 et seq.). Education Amendments of 1972 (20 U.S.C. 1681 et seq.). Comprehensive Health Manpower and Nurse Training Act of 1971 (42 U.S.C. 295h.9; 42 U.S.C. 298 b-2). Executive Order 11478. Executive Order 11832. 15 U.S.C. 1512. 31 U.S.C. 628. P.L. 94-121. P.L. 94-167. P.L. 94-303.

Government funds were used by the National Commission on the Observance of International Women's Year to promote the ratification of the Equal Rights Amendment to the Constitution of the United States. Findings/Conclusions: In June 1976, Public Law 94-303 was approved, prohibiting the Commission from lobbying. Up until that time, the Commission's lobbying activities on behalf of the Equal Rights Amendment were not illegal. The question of what lobbying activities are prohibited is before the Federal courts, which recently enjoined the Commission, during pendency of an appeal, from expending public funds for representations to any legislators, State or Federal. For fiscal years 1975 and 1976, six Federal agencies, without proper legal authority, provided the Commission with $245,000. An additional $54,860 was provided by the Department of State under sufficient legal authority. Twelve employees costing about $298,974 were detailed to the Commission from nine Federal agencies. Only one of the staff assignments was improper. The activities of White House employees intended to promote the ratification of the amendment by the several States did not violate the antilobbying laws. (Author/SC)

B-182398

JAN 17 1977

The Honorable Henry M. Jackson
United States Senate

Dear Senator Jackson:

This is in response to your July 17, 1975, letter, which forwarded a letter from a constituent alleging that the National Commission on the Observance of International Women's Year is using Government funds to promote ratification of the Equal Rights Amendment to the Constitution of the United States. Your constituent also questioned whether it was appropriate for other agencies to transfer funds and personnel to the Commission and for White House employees to promote ratification of the amendment.

In June 1976, Public Law 94-303 was approved, prohibiting the Commission from lobbying. Up until that time, the Commission's lobbying activities on behalf of the Equal Rights Amendment were not illegal. The question of what lobbying activities are prohibited is before the Federal courts, which recently enjoined the Commission, during pendency of an appeal, from expending public funds for representations to any legislators, State or Federal.

For fiscal years 1975 and 1976, six Federal agencies, without proper legal authority, provided the Commission with $245,000. An additional $54,860 was provided by the Department of State under sufficient legal authority. Twelve employees costing about $298,974, including salary and benefits, were detailed to the Commission from nine Federal agencies. We believe that only one of these staff assignments, costing $21,234, was improper. Also, we believe that the activities of White House employees intended to promote the ratification of the amendment by the several States did not violate the antilobbying laws.

COMMISSION'S ACTIVITIES ON BEHALF OF THE AMENDMENT

The Commission was established January 9, 1975, by Executive Order 11832 "* * * to promote the national observance in the United States of International Women's Year." The Commission has publicly supported the amendment and appointed a subcommittee to promote its ratification.

Our Office has previously taken the position that the activities of Commission and White House employees to promote ratification of the amendment did not violate the then-existing antilobbying laws. We reasoned that, although there were several statutory restraints on using appropriated funds for lobbying, those restrictions applied only when the prohibited activities were directed to the Congress or to legislation pending before the Congress. We do not know of any attempts to influence the vote of Members of Congress before the amendment was passed by the Congress on March 22, 1972. In fact, the Commission was not established until well after the Congress passed the amendment.

Subsequent to our earlier opinion on this issue, the Congress approved two acts prohibiting the Commission from lobbying. Public Law 94-167, approved December 23 1975, authorizes the appropriation of up to $5,000,000 for organizing and convening the National Women's Conference. It provides, in part, that "No funds authorized hereunder may be used for lobbying activities." Also, Public Law 94-303, approved June 1, 1976, appropriates $5,000,000 to the Commission as authorized by Public Law 94-167 and provides, in part, "* * * That none of the funds appropriated under this paragraph shall be used for lobbying activities."

As their legislative histories indicate, the two above-mentioned laws were enacted in response to concerns expressed by several Members of Congress that funds for the National Women's Conference would be used to promote ratification of the amendment. The prohibition in Public Law 94-303 against using funds appropriated thereunder for lobbying activities appears intended to meet these concerns.

Although the act does not define lobbying activities, the Congress had voted to adopt the amendment long before it considered Public Law 94-167; therefore, the term "lobbying" must have been intended to include efforts to influence the votes of State legislators. Under these circumstances, we consider it appropriate to interpret lobbying activities in its commonly understood sense; that is, direct communication to a member or members of a legislative body, State and Federal, to influence the vote on legislation pending before or proposed to that body or the vote on ratification of constitutional amendments. However, in our view, appearance before a legislative committee taking evidence on the legislation or amendment would not be lobbying. 1/

1/ See Southwestern Electric Power Co. v United States, 160 Ct. Cl. 262, 312 F. 2d 437 (1963).

The restrictions of Public Laws 94-167 and 94-303 relate exclusively to using funds authorized and appropriated thereunder and do not completely prohibit the Commission from lobbying. Thus, the $450,000 made available to the Commission for fiscal year 1976, pursuant to Public Law 94-121, approved October 15, 1975, is not subject to the restrictions of Public Laws 94-167 and 94-303. Similarly, the prohibitions are inapplicable to any funds the Commission may receive pursuant to section 5(b) of Public Law 94-167, which authorizes the Commission "* * * to accept, use and dispose of contributions of money, services, or property."

On August 16, 1976, the U.S. District Court for the Southern District of Illinois issued a preliminary injunction prohibiting the Commission's officers, employees, and other persons in active concert or participation with the Commission from (1) engaging in lobbying activities of any kind, (2) using, directly or indirectly for lobbying activities, any public funds appropriated to the Commission to promote the passage or defeat of any legislation or the adoption, ratification, or defeat of any proposed constitutional amendment by any legislative body, and (3) using any meetings or women's conferences called or sponsored by it, directly or indirectly, to promote the passage, ratification, or defeat of any such proposed legislation or constitutional amendment by any legislative body.

On September 1, 1976, the U.S. Court of Appeals for the Seventh Circuit, acting on a motion by the Department of Justice, stayed the District Court's preliminary injunction pending appeal. The Court of Appeals enjoined the Commission, during pendency of the appeal, from lobbying as previously defined by the Supreme Court's 1953 and 1954 decisions. In those decisions, the Supreme Court defined lobbying as "direct communication with Members of Congress on pending or proposed Federal legislation." On September 9, 1976, the Court of Appeals, acting on a motion to reconsider its stay order, amended that order to enjoin the Commission, during the pendency of the appeal, from using funds appropriated to it for "* * * representations made directly to Congress or to any State legislature, their members or its committees."

FUNDING AND STAFF DETAILS PROVIDED BY FEDERAL AGENCIES

Information provided by the Commission and other Federal agencies shows that, for fiscal years 1975 and 1976, the following agencies transferred funds and/or detailed personnel to the Commission.

Agency	Funds transferred	Personnel detailed	
		Number	Salary and benefits
Department of State	$ 54,960	3	$ 63,600
Department of Labor	25,000	1	40,000
Department of Health, Education, and Welfare	125,000	0	0
Department of Housing and Urban Development	35,000	0	0
Department of Justice	10,000	0	0
Department of Transportation	35,000	0	0
Department of Commerce	15,000	1	21,234
Department of Agriculture	0	1	8,980
Department of Defense (note a)	0	1	19,000
Federal Reserve System	0	1	10,000
General Services Administration	0	1	29,100
National Aeronautics and Space Administration	0	1	11,660
U.S. Information Agency	0	2	95,400
Total	$299,860	12	$298,974

a/This personnel detail did not follow Defense procedures and Defense has requested reimbursement or termination of personnel detail if no reimbursement is possible.

Funding by Government agencies

In general, unless otherwise authorized by law, transfers of funds between government agencies and instrumentalities are prohibited by 31 U.S.C. 628 which provides:

> "Except as otherwise provided by law, sums appropriated for the various branches of expenditure in the public service shall be applied solely to the objects for which they are respectively made, and for no others."

The general statutory authority allowing for interagency agreements or contracts involving transfer of funds is found in 31 U.S.C. 686, popularly known as section 601 of the Economy Act of 1932. Section 601 provides, in part:

> "(a) Any executive department or independent establishment of the Government, or any bureau or office thereof, if funds are available therefor and if it is determined by the head of such executive department, establishment, bureau, or office to be in the interest of the Government so to do, may place orders with any other such department, establishment, bureau, or office for materials, supplies, equipment, work, or services, of any kind that such requisitioned Federal agency may be in a position to supply or equipped to render, and shall pay promptly by check to such Federal agency as may be requisitioned, upon its written request, either in advance or upon the furnishing or performance thereof, all or part of the estimated or actual cost thereof as determined by such department, establishment, bureau, or office as may be requisitioned; * * *."

Section 601 requires as a precondition that the department requiring the service must have the available funds. In addition, we have recognized that interagency agreements to transfer funds may be entered into apart from 31 U.S.C. 686, where specific independent statutory authority for the transaction exists.

We have analyzed the propriety of each agency's transfer of funds to the Commission either under 31 U.S.C. 686 or whatever other authority the agency cited. We believe the Department of State had sufficient legal authority to transfer funds. However, we have not been provided with enough factual or legal support to find authority for transfer of funds by the Departments of Labor; Health, Education, and Welfare; Housing and Urban Development; Justice; Transportation; and Commerce.

The Department of State views the Commission as a means to carry out international programs within the Secretary's authority to conduct foreign affairs under 22 U.S.C. 2656. Moreover, additional authority appears to exist under 22 U.S.C. 2672, which provides in part that:

"The Secretary of State is authorized to--

"(a) provide for participation by the United States in international activities which arise from time to time in the conduct of foreign affairs for which provision has not been made by the terms of any treaty, convention, or special Act of Congress * * *.

"(b) pay the expenses of participation in activities in which the United States participates by authority of subsection (a) of this section * * *."

The Department of Labor said it transferred funds pursuant to title III of the Comprehensive Employment and Training Act of 1973 (29 U.S.C. 871 et seq.) to support studies by two committees of the Commission on problems women have had with employment training and finding jobs.

In previous reports to other Members of Congress, we concluded that the Comprehensive Employment and Training Act of 1973 provided adequate basis for Labor's transfer of funds to the Commission. Subsequently, however, our review showed Labor's commitment to contribute funds was made over 2 months before the establishment of one of the Commission's committees referred to by Labor. Labor records show that its funds were intended to support the Commission generally, rather than to support Labor-related studies.

When asked to provide additional documentation supporting the purpose of its contribution, Labor stated that all such records had been lost. Labor officials also said that they had neither requested nor received the studies; progress reports; or any other goods, services, or identifiable benefits. Thus, it appears that Labor's transfer of funds did not fall under the authority of the Comprehensive Employment and Training Act of 1973. Since Labor did not cite any other authority, we have concluded that the transfer was improper.

The Department of Health, Education, and Welfare (HEW) said its authority to transfer funds to the Department of State in support of the Commission stemmed from its Office for Civil Rights' responsibility for enforcing the prohibitions against sex discrimination contained in title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.) and in the Comprehensive Health Manpower and Nurse Training Act of 1971 (42 U.S.C. 295h-9 and 298b-2). In accordance with these responsibilities, HEW determined that the

Commission's activities in exploring and examining sex discrimination would help the Office for Civil Rights carry out its mission. In this regard, HEW states that its transfer meets the requirements of 31 U.S.C. 673, which provides in part that:

> "No part of the public moneys, or of any appropriation made by Congress, shall be used for the payment of compensation or expenses of any commission, council, board, or other similar body, or any members thereof, or for expenses in connection with any work or the results of any work or action of any commission, council, board, or other similar body, unless the creation of the same shall be or shall have been authorized by law; * * *." [Emphasis supplied.]

The phrase "unless the creation of the same shall be or shall have been authorized by law" does not necessarily require that the Commission initially be established by statute. In several decisions, we have held that this language is satisfied if the official or agency creating the commission has authority to perform the functions or duties of the commission itself and if those duties or functions can be performed only by such a group or if it is generally accepted that such duties can best be performed by such a group.

However, there is nothing in section 673 that overcomes the prohibition in 31 U.S.C. 628 against spending funds for purposes other than those for which they were appropriated.

We have reviewed the statutory enforcement responsibilities cited by HEW. Under 20 U.S.C. 1682, HEW, as a Federal agency empowered to extend various forms of financial assistance to educational programs or activities, is directed to implement the prohibitions against discrimination in such programs or activities contained in 20 U.S.C. 1681 by issuing rules, regulations, or orders of general applicability. Under 42 U.S.C. 295h-9, the Secretary of HEW is prohibited from making grants, loan guarantees, or interest subsidy payments to schools and training centers in various health fields or from entering into contracts with such institutions unless he receives satisfactory assurances that there will be no discrimination in admissions on the basis of sex. Similar provisions relating to nursing schools are contained in 42 U.S.C. 298b-2.

The Commission, with its broad mandate regarding women's activities as contained in Executive Order 11832, might have performed or contracted for studies of sufficient benefit to HEW's enforcement responsibilities cited above (and to other responsibilities not cited by it) to authorize transfers of funds to the Department of State in support of the Commission. However, HEW has not explained what Commission products or services its transfers were intended to procure, and we found only minimal Commission activity directed to HEW's cited responsibilities. The only activity directly related to title IX of which we are aware involved broad recommendations concerning proposed regulations approved at the Commission's second meeting and submitted to HEW and the President shortly thereafter. We are unaware of any Commission activities directly related to HEW's enforcement responsibilities under the Comprehensive Health Manpower and Nurse Training Act of 1971. Since HEW has not provided adequate legal and factual justification for its transfer of funds to the Department of State, it would appear that such contribution may be in contravention of 31 U.S.C. 628.

The Department of Housing and Urban Development said the close relationship between its equal opportunity programs and the Commission's activities was deemed sufficient to support the transfer of funds. Further inquiries indicated that the equal opportunity programs to which the Department referred were initiated pursuant to Executive Order 11478, August 8, 1969, title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3604 et seq.). The Department was unable to cite any specific Commission activities which assisted the Department in carrying out its equal opportunity responsibilities; instead, it referred to the Commission's general activities.

Executive Order 11478 provides that the head of each executive department and agency shall establish and maintain an affirmative action program to insure equal employment opportunities and prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin. Consequently, the Department's responsibilities under the Executive order are narrowly focused on its own employment activities. We are not aware of any Commission activity relating to this intradepartmental function.

Title VI of the Civil Rights Act of 1964 prohibits exclusion from, participation in, denial of the benefits of, or discrimination under any program or activity receiving Federal financial assistance on the basis of race, color, or national origin. Discrimination or exclusion on the basis of sex is not prohibited under title VI, and we could find no relationship between it and the Commission's activities.

Title VIII of the Civil Rights Act of 1968 prohibits discrimination, including sex discrimination, in the sale or rental of housing or in financing real estate transactions. However, we are unaware of any Commission activities relating to the Department's responsibility in this area, and Department representatives did not suggest that the transfer of funds was the result of, or in anticipation of, any such activities. Rather, the funds were in support of the Commission's general activities.

We see no legal basis for the Department's transfer of funds and consider it to be in contravention of 31 U.S.C. 628.

The Department of Justice said 31 U.S.C. 691 and 673 provide authority for its transfer of funds in support of the Commission. Section 691 makes the appropriations of executive departments and independent establishments available for expenses of those committees, boards, or other interdepartmental groups composed of representatives of the departments and establishments. Section 1(b) of Executive Order 11832, however, limits the Commission's membership to private citizens. Consequently, section 691 does not apply to the Commission. Moreover, as previously explained, there is nothing in section 673 to overcome the prohibition of 31 U.S.C. 628.

In support of its transfer of funds, the Department of Transportation asserts that the Secretary has authority to expend funds for necessary expenses of the Office of the Secretary of Transportation. Specifically, Transportation cites the Commission's responsibility for promoting and publicizing equal employment opportunity programs for women and points to its related responsibilities under Executive Order 11478, August 8, 1969, and the Equal Employment Opportunity Act of 1972, Public Law 92-261, 86 Stat. 103, March 24, 1972.

Transportation's functions under the cited Executive order and legislation are narrowly focused on its responsibility for preventing sex discrimination in employment within its own department. We are unaware of any Commission activity relating to this intradepartment function. It

appears that Transportation's transfer of funds was not within the Secretary's responsibility to expend funds for necessary expenses of the Office of the Secretary and was, therefore, in contravention of 31 U.S.C. 628.

The Department of Commerce states that its transfer of funds was under authority of 15 U.S.C. 1512, which states:

> "It shall be the province and duty of said Department to foster, promote, and develop the foreign and domestic commerce, the mining, manufacturing, shipping, and fishery industries, and the transportation facilities of the United States; and to this end it shall be vested with jurisdiction and control of the departments, bureaus, offices, and branches of the public service hereinafter specified, and with such other powers and duties as may be prescribed by law."

However, Commerce does not explain which of its duties were performed as a result of its transfer of funds, nor are we aware of any Commission activity which might be deemed directly relevant to the regular functions of Commerce. As such, it would appear that the cited provision could not authorize Commerce to transfer funds to the Commission and that such contribution was in contravention of 31 U.S.C. 628.

Staff details by Government agencies

As previously discussed, a number of agencies have detailed personnel to the Commission on a nonreimbursable basis. Our prior decisions have determined that as a general rule, nonreimbursable details of personnel do not fall under the constraints of 31 U.S.C. 628, provided the detailed employees are not required by law to be engaged exclusively in the work for which their salaries are appropriated and provided the employees' services can be spared for the details. This general rule was intended to make efficient use of Government personnel and not to avoid existing statutory and budgetary restrictions.

Consequently, except for Commerce, we do not find personnel details to the Commission to be improper. Commerce hired a Schedule C, or political employee, with the prior intent of immediately placing that person on nonreimbursable detail to the Commission. Consequently, we believe Commerce's detail was in contravention of 31 U.S.C. 628.

Sincerely yours,

Comptroller General
of the United States