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OPINION	:	No. 79-1125
of	:	January 31, 1980
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SUBJECT: AG1NG PROGRAMS' FUNDS—State funds qualify as matching funds under the Older Americans Act of 1965, as amended, to the extent that such state funds are administered and controlled by the state grantee of the federal funds, in this case, the state Department of Aging.

The Honorable Janet J. Levy, Director, Department of Aging, requests an opinion on the following question:

Would funds appropriated for state funded aging programs qualify as matching funds (from state sources) under the Older Americans Act of 1965, as amended, in satisfaction of federal requirements, even though such funds are not administered and controlled by the California Department of Aging?

CONCLUSION

State funds qualify as matching funds under the Older Americans Act of 1965, as amended, to the extent that such state funds are administered and controlled by the state grantee of the federal funds, in this case, the state Department of Aging.

ANALYSIS

Federal funds are made available for the benefit of qualifying older individuals in California pursuant to the Older Americans Act of 1965, as amended.

The California Department of Aging, as a grantee of such federal funds, must obtain state matching funds amounting to 15 percent of the total cost of programs for which it seeks federal funding. Not all programs providing services and benefits to elderly persons in California are administered by the state Department of Aging.[1] The issue is whether state funds made available to state agencies other than the Department of Aging, which are also providing services and benefits to elderly persons, may be counted as "matching" funds by the Department of Aging for the purpose of its qualifying for federal fund grants pursuant to the Older Americans Act of 1965, as amended.

The federal Department of Health, Education, and Welfare, through its regional program director, by letter dated October 30, 1979, has advised the Department of Aging that the requisite "matching" funds must consist of state funds that the state Department of Aging administers and controls . . . in the same manner that it administers and controls Federal funds it receives under Titles lll B and C" of the Older Americans Act of 1965, as amended

The requirement that the state provide 15 percent matching funds is found in Public Law 95–478 (92 Stat. 1520) of which section 3 of 1(d) (1) (B) provides in relevant part that:

> "From any State's allotment under this section for any fiscal year—(B) the remainder [after allowing for cost of administration] of such allotment shall be available to such State only for paying such percentage, as the State agency determines, but not more than 90 percent in fiscal years 1979 and 1980, and 85 percent in fiscal year 1981, of the cost of social services and nutrition services authorized under parts B and C provided in the State as part of a comprehensive and coordinated system in planning and service areas for which there is an area plan approved by the State agency.

Further, section 305 (a) of Public Law 95–478 provides in part that.

[1] See, e.g., the Adult Day Health Care Program administered by the Department of Health Services (Welf. & Inst. Code, §§ 14520-14588) and the Multipurpose Senior Services Program administered by the California Health and Welfare Agency. (Welf. & Inst. Code § 9400, *et seq*.)

"In order for a State to be eligible to participate in programs or grants to States from allotments under this title—

"(1) the State shall, in accordance with regulations of the Commissioner, designate a State agency as the sole State Agency to—

"(B) administer the State plan within such State; . . . ."

The state Department of Aging has been designated as the sole state agency to administer the state plan within California for purposes of federal funds to be allocated pursuant to titles B and C of the Older Americans Act of 196,. as amended.

Federal regulations implementing titles B and C of the act are found in 49 Code of Federal Regulations, part 74 of particular relevance is subpart G of part 74, in which the following rules appear:

Section 74.50(a):

"This subpart contains rules for satisfying federal requirements for cost sharing or matching. These rules apply whether the cost sharing or matching is required by Federal statute or by other terms of the grant.

Section 74.51:

"For purposes of this part: 'Cost sharing or matching' means the value of third-party in kind contributions and that portion of the costs of a grant-supported project or program not borne by the Federal Government."

Section 74.52:

"With the qualifications and exceptions listed in section 74.53, a cost-sharing or matching requirement may be satisfied by either or both of the following: (a) *Allowable cost incurred by the grantee*, the subgrantee, or a cost-type contractor *under the grant* or subgrant . . . ." (Emphasis added.)

The qualifications and exceptions contained in section 74.53 are not relevant to the question presented in the opinion request.

It is this provision of section 74.52 of 45 Code of Federal Regulations, part 74, that the federal regional program director of the Department of Health, Education, and Welfare relies upon when he states, in effect, that costs incurred by another state agency, not party

to the grant to the state Department of Aging, may not be considered in determining whether the state Department of Aging has met its 15 percent cost-sharing or "matching" requirement. The concept of "allowable costs" appears to be one that operates to ensure that state funds available to a grantee are to be expended for the purposes of the federal grant and not otherwise.

It is a general principle that "she construction of a statute by those charged with its execution should be followed unless there are compelling indications that it is wrong . . ." (*Mullaney v. Woods* (1979) 97 Cal. App. 3d 710, 717; *New York Dept. of Social Services v. Dublino* (1973) 413 U.S. 405, 421; *Columbia Broadcasting v. Democratic Comm.* (1973) 412 US. 94, 121.) State programs involving federal subsidies are subject to reasonable federal regulations. (*Pearson v. State Social Welfare Board* (1960) 54 Cal. 2d 184, 215.)

Absent such "compelling indications." the federal interpretation of titles lll B and C of the Older Americans Act of 1965, as amended, and of 45 Code of Federal Regulations, part 74, should be followed. (*Cf. Mullaney v. Woods*, *supra*, 97 Cal. App. 3d at p. 718.)

It is suggested that a "compelling indication" to the contrary is found in 45 Code of Federal Regulations, part 74, subpart A, section 74.3 which provides in part that:

> "'Grantee' means the government, nonprofit corporation, or other legal entity to which a grant is awarded and which is accountable to the Federal Government for the use of the funds provided. The grantee it the entire legal entity even if only a particular component of the entity is designated in the award document . . . ."

The underscored language, it is contended, indicates that since it is really the State of California that is the grantee when federal funds are received by the state Department of Aging, state funds available to other state agencies must be considered for "matching" purposes because such other state agencies constitute components of the "entire legal entity," i.e., the State of California. The underscored language, however, does not serve to expand the definition of the grantee for purposes of determining whether the cost-sharing requirement has been satisfied. That language operates to ensure that the state remains accountable to the federal government for funds it has received even though it designates a particular state agency to manage the program. This meaning is made clear when one considers the additional language contained in section 74.3, subpart A of part 74, 45 Code of Federal Regulations, *supra*, wherein it is stated that:

> "For example, a grant award document may name as the grantee an agency of a State, or one school or campus of a university. In these cases, the granting agency usually intends, or actually requires, that the named

> component assume primary or sole responsibility for administering the grant-assisted project or program. Nevertheless, the naming of a component of a legal entity as the grantee in a grant award document shall not be construed as relieving the whole legal entity from accountability to the Federal Government for the use of the funds provided. (This definition is not intended to affect the eligibility provisions of grant programs in which eligibility is limited to organizations, such as State welfare departments, which may be only components of a legal entity.) The term 'grantee' does not include any secondary recipients such as subgrantees, contractors, etc., who may receive funds from a grantee pursuant to a grant."

Thus, section 74.3, subpart A of part 74, 45 Code of Federal Regulations, *supra*, does not constitute a "compelling indication" that the federal interpretation is erroneous. Accordingly, it is concluded that state funds appropriated for aging programs qualify as matching funds under the Older Americans Act of 1965, as amended, to the extent that such state funds are administered and controlled by the grantee of the federal funds, in this case, the state Department of Aging.

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