1983 WL 181783 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
March 7, 1983

***1** Honorable B. L. Hendricks, Jr.
Chairman, Medical, Military, Public and Municipal Affairs Committee
South Carolina House of Representatives
Blatt Building
Columbia, South Carolina 29201

Dear Representative Hendricks:
You have requested an opinion as to whether the General Assembly has the power to limit the Governor's distribution of community services block grant funds exclusively to community action agencies. The above action is proposed in Bill H.2456.

The federal funds in question were authorized by the Community Services Block Grant Act, P.L. 97-35, § 671 et seq.

It should be pointed out at the outset that this proposal, in no way involves a separation of powers question under state law of the sort held unconstitutional in State ex rel. McLeod v. McInnis, 278 S.C. 307, 295 S.E.2d 633 (1982). In that case, the problem was that a twelve-legislator committee had been delegated the power 'to control expenditures by administration rather than by legislation.' 295 S.E.2d at 638. Since the present proposal involves only legislation, no question of improper delegation of the type held unconstitutional in the above case is presented.

Moreover, while the Community Services Block Grant Act, supra, requires the Governor to make certain certifications, it is silent on the question as to which state officer or body shall exercise the discretionary power given to the States to determine where the funds shall go. Section 675(c) provides only that 'the State' shall agree to use the funds in certain ways and that the chief executive officer shall certify that the State has so agreed. The question is thus one of state law. (As already shown, no separation of powers question would be presented by the enactment of H.2456.) This conclusion is consistent with a joint statement by the three federal agencies responsible for administering block grants that '[a] 'State' is whatever each State defines it to be. Federal neutrality is the controlling doctrine . . ..'

The principal question as to which an opinion has been requested is whether Section 4 of the bill is consistent with Federal law. That section provides that only 'community-based organizations, 'structured in accordance with Sections 5, 6 and 8 of the bill, may use the Block Grant funds to provide services. Section 675(c) of P.L. 97-35 requires that the Governor shall certify that the State agrees to use the funds in accordance with certain conditions, one of which is that the State agrees to:
use, for fiscal year 1982 and for each subsequent fiscal year, not less than 90 percent of the funds allotted to the State under section 674 to make grants to political subdivisions of the State for the political subdivisions to use for the purposes described in clause (1) directly or to non-profit private community organizations which have a board which meets the requirements of clause (3) or to migrant and seasonal farm worker organizations; and
***2** P.L. 97-35, § 675(c)(2)(A)(ii) (emphasis added)

Assuming that other conditions of the Act are met, it is the opinion of this Office that the General Assembly, by designating only one of the three possible entities described in the above section, would not contravene the Congressional intent. The use by Congress of the disjunctive term 'or' clearly implies that the State has alternatives to choose from. In choosing only one, the State would not violate any expressed intention of Congress, because Congress has not required that funds be made available to all three types of entity.

This result, moreover, is consistent with Congressional intent as expressed in a Senate Committee Report accompanying P.L. 97-35, wherein the Committee stated:

. . . the Committee intends that States be provided with the broadest possible latitude in the use of block grant funds and be free from all but the most minimal and necessary federal administrative and regulatory direction.

1981 U.S. Code Cong & Admin. News, Vol. 2, P. 933.

For the foregoing reasons, it is the opinion of this Office that H.2456 would violate neither the separation of powers doctrine under state law, nor the provisions of the federal statute which authorizes the distribution of the funds to the States.

Sincerely yours,

Kenneth P. Woodington
Senior Assistant Attorney General

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