

1983 WL 182050 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 7, 1983

*1 The Honorable Richard W. Riley
Governor of South Carolina
State House
Post Office Box 11450
Columbia, South Carolina 29211

Dear Governor Riley:

You have asked our advice as to the following situation.

JTPA [Job Training Partnership Act Division of the Governor's Office] has an agreement with three individual counties to receive funds for the operation of a program in their county. These counties [Union, Cherokee and Spartanburg] have formed a consortium to jointly operate the program and have requested that the funds be paid directly to the Employment Security Commission in their area since they have designated ES as their administrative unit.

A Subgrantee Agreement was signed with the State (Governor's Office) with the counties specifically stating that they would be responsible for the 'receipt and proper management' of the funds.

It is our understanding that you wish to know what entity is the appropriate recipient of JTPA funds to be paid by the Governor's Office pursuant to this agreement in light of a June 29, 1979 opinion issued by our office. Upon examination of the various agreements involved and the relevant federal and State laws, it would appear that the Employment Security Commission, designated in the agreement as the administrative entity for the service area in question, would be the appropriate recipient of these funds. The Job Training Partnership Act was enacted in 1982 as Public Law 97-300 ' . . . to establish programs to prepare youth and unskilled adults for entry into the labor force and to afford job training to . . . economically disadvantaged individuals . . . '. § 101(a)(1) authorizes the Governor to designate service delivery areas. Section 102 establishes a private industry council for each service delivery area and § 103 provides for the functions of such councils. Generally, these councils are to make policy decisions for the service area in partnership with local government. Significantly, pursuant to § 103(b)(1)(B) the private industry council, together with the appropriate chief elected official(s) in the service delivery area, must select a grant recipient and an ' . . . entity to administer the job training plan . . . '. Section 141(i) makes the administrative entity responsible for the allocation of funds. See also, §§ 162(e) and 165(c).

Turning now to the various agreements authorized and required pursuant to the Job Training Partnership Act, we note the following: an agreement has been executed between the counties of Cherokee, Spartanburg and Union for 'the purpose of forming a Consortium to implement and carry out the provisions of Public Law 97-300 . . . as a sub-grantee of the Governor, or his designee.' Moreover, 'All funds allocated by the Governor's Office' to any of these three counties are expressly required under this agreement to be paid into a common fund. Furthermore, pursuant to § 103(b)(1)(B), the Consortium and the Private Industry Council have agreed that the JTPA funds will be 'channeled from . . . [the Governor's Office] directly to the Planning and Administrative Entity for the purposes outlined in the Subgrant Area Job Training Plan . . . '. Thus, the administrative entity has been designated the 'grant recipient' pursuant to federal law. In addition, a subgrant agreement has been executed between the Consortium and the State of South Carolina (through the Governor). That agreement makes the subgrantee, defined as the Consortium consisting of Cherokee, Spartanburg and Union Counties, 'completely and totally responsible for the receipt of funds . . . '. Finally, we are advised that the parties wish to designate the South Carolina Employment Security Commission as the Administrative Entity for the service area pursuant to § 103(b)(1)(B) of the Act.

*2 We are not aware of any provision of law which would prohibit such designation. In fact, § 103(b)(1)(B) specifically authorizes and requires the following:

The council, in accordance with an agreement or agreements with the appropriate chief elected official or officials specified in subsection (c), shall—. . . (B) select as a grant recipient and entity to administer the job training plan . . . (iv) any other agreed upon entity or entities.

Accordingly, since the Employment Security Commission has been designated by the above parties as the grant recipient and administrative entity, this selection appears valid.

Nor can we perceive of any reason why this conclusion would conflict with our June 29, 1979 opinion. That opinion simply concluded that ‘The offices of the State Treasurer and the Comptroller General should disburse funds appropriated to Richland County to the County Treasurer and not to the County Finance Department.’ (emphasis added). In this instance, as we understand it, the funds involved would not be funds appropriated to a particular county, but would instead be funds placed in a ‘common fund’ after having been subgranted to the Consortium. These funds would be administered by the South Carolina Employment Security Commission on behalf of the Consortium and its participants in the service area, not solely for a particular county. Based upon these factors, it would thus appear that the June 29, 1979 opinion would probably not come into play under the facts as presented to us.

To the extent the June 29, 1979 opinion may be applicable, however, it would appear that the Job Training Partnership Act requires forwarding the funds in question to the Consortium, through the designated grant recipient and administrative entity, the Employment Security Commission, see § 103(b)(1)(B); this requirement would, for purposes of receipt of federal funds under the Act, be controlling. If, however, there is any question about the requisite federal requirements or whether all such requirements have been met, we would suggest consultation with and advice from the Department of Labor, the federal agency charged with administering the program.

If we can be of further assistance, please do not hesitate to let us know.

Sincerely,

Robert D. Cook
Executive Assistant for Opinions

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