1977 S.C. Op. Atty. Gen. 245 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-316, 1977 WL 24655

Office of the Attorney General

State of South Carolina
Opinion No. 77-316
October 7, 1977

***1** Federal regulations governing job training and employment programs, which mandate certain limits and impose requirements on the states for the provision of compensation to program participants, do not invalidate State law prohibiting the use of State appropriated funds to provide salary increases to employees paid from federal funds derived from the job training programs.

TO: L. Roger Kirk, Jr.
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QUESTION PRESENTED:

Do federal regulations governing job training and employment programs, which mandate certain limits and impose certain requirements on the states for the provision of compensation to program participants, invalidate a State law which prohibits the use of State appropriated funds to provide salary increases to its employees paid from federal funds derived from the job training programs?

STATUTES, CASES, ETC.

1977 S.C. Acts & Joint Resolutions, Act No. 219, Part I, Section 13, Further Provisions, paragraph 10, Sections B and G (May 31, 1977);

29 U.S.C.A. §§ 801 et seq. (1973)

29 CFR § 96, 34(b) (July 1, 1976)

81A C.J.S., States §§ 22, 24, 25 (1977)

Paac v. Rizzo, 502 F.2d 306 (3rd Cir. 1974)

DISCUSSION OF ISSUES:

On June 30, 1977, this office issued an opinion that 'State funds may not be used to pay either (1) across the board salary increase or (2) merit increase when an employee is paid out of Comprehensive Employment and Training Act (CETA) funds.' This opinion was based squarely upon the expressed intent of the General Assembly as found in the Appropriations Act of 1977, under the section dealing with the State Budget and Control Board, which stated:
No appropriated funds may be used to increase that portion of any salary paid from other than appropriated funds. 1977 S.C. Acts & Joint Resolutions, Act No. 219, Part I, Section 13, 'Further Provisions', paragraph 10, Section G (May 31, 1977).

As noted by the June 30, 1977, opinion, CETA funds are not 'appropriated' by the State of South Carolina, but are federal funds. Under the plain and unambiguous language of the State law, as cited above, no across-the-board salary increase or merit increases for employees whose salaries are derived from CETA funds could be paid from State appropriated funds. However, State law does not prohibit the granting of salary increases (across-the-board, or merit increases) from CETA funds themselves.

Under these circumstances, there is no difficulty in understanding and applying the clear intent of the General Assembly with regard to State appropriated funds. However, the Comprehensive Employment and Training Act (29 U.S.C.A. §§ 801 et seq. [1973]) requires the United States Department of Labor to promulgate regulations for carrying out the purposes of CETA. The Department of Labor has issued a complex set of regulations, which includes the following:
(b) Limitations on Participant's Salary
***2** (1) Compensation to any participant from Title II federal funds is limited to a maximum full-time rate of $10,000.00 per year, plus the cost of fringe benefits to the extent they do not exceed those paid to workers earning $10,000.00 a year. This limitation shall also be applicable for participants in public service employment funded under other Titles of the Act.

(2) When a participant is eligible for a promotion or general salary increase that would mean a salary in excess of $10,000.00, the participant is entitled to it if other employees similarly employed would be promoted. The employer must pay the amount above $10,000.00 from his own funds as well as a pro rated share of the increased fringe benefits. Funds from other Titles of the Act shall not be used to supplement the maximum salary limitation for participants.

29 CFR § 96.34(b) (July 1, 1976).
It appears that there are approximately 55, or more, State employees, whose salaries are funded through the CETA program, who are at the $10,000.00 wage ceiling. Therefore, CETA funds will not provide for any salary increases in excess of the $10,000.00 ceiling, and will not provide for the average, across-the-board, 5% increase for all State employees which was mandated by the General Assembly in the 1977 Appropriations Act. See 1977 S.C. Acts & Joint Resolutions, Act No. 219, Part I, Section 13, 'Further Provisions', paragraph 10, Section B. Neither, however, will the State, out of its appropriated funds, pay for merit or across-the-board salary increases for these employees at the $10,000.00 ceiling level because of the provision previously discussed, which prohibits the utilization of State appropriated funds to increase any portion of an employee's salary 'paid from other than appropriated funds'. This appears to conflict with the CETA regulation, supra, which states that a 'participant' is entitled to a general salary increase, although it would mean a salary in excess of $10,000.00, but the 'employer' (in this case, the State of South Carolina) must pay the amount above $10,000.00 from non-CETA funds. This presents the question of whether the Department of Labor regulations, issued under the Comprehensive Employment and Training Act, limit or annul State fiscal policy as embodied in a law passed by the General Assembly.

As a general matter, individual states may not impair, qualify, or disturb the enjoyment of federal constitutional or statutory rights, by means of a State constitutional provision, by legislation, or by decisions of its courts. See 81A C.J.S., States § 22 (1977). However, it is equally clear that under the Tenth Amendment to the United States Constitution, the Federal Government has no power to control the authority of the states except as such power may have been expressly granted, or is necessary to maintain the acknowledged powers of the Federal Government.
So long as a State government does not run afoul of a federally protected right, it has vast leeway in the management of its internal affairs. Generally, the matter of control over the officers and agents of the state is exclusively within the province of the state, free from interference by the United States; and the Federal Government cannot grant power to an agency of the state which the state itself has not seen fit to grant. 81A C.J.S., States § 25 (1977).

***3** To determine whether a federal statute, or regulation enacted thereunder, supersedes a State law, the entire scheme of the federal statute must be considered.

[T]he nature of the power exerted by Congress, the object sought to be attained, and the character of the obligation imposed by the law are important in determining whether supreme federal enactments preclude the enforcement of State laws on the same subject. 81A C.J.S., States § 24 (1977).

An examination of the provisions of the Comprehensive Employment and Training Act reveals that it is not obligatory in nature, nor does it create or enforce a constitutional or statutory right. Instead, the expressed purpose of CETA is to provide job training and employment 'opportunities' through a cooperative effort and pooling of State and federal power for the establishment 'a flexible and decentralized system of federal, State, and local programs.' See U.S.C.A. § 801 (1973).

In Paac v. Rizzo, 502 F.2d 306 (3rd Cir. 1974), the United States Court of Appeals for the Third Circuit dealt with a similar issue arising under the Economic Opportunity Act of 1964. One of the programs established under the EOA was the Community Action Program which encouraged the development of local agencies to provide multiple services to impoverished communities. This was an optional program which various State jurisdictions might, or might not, desire to participate in. For those participating, however, the federal statute prescribed certain guidelines establishing the structure of the local agencies. The mayor of Philadelphia removed the executive director of the local agency established under the Community Action Program, and suit was brought alleging that the mayor violated federal law which was alleged to require local governments to establish agencies administered by certain governing boards whose federally-imposed autonomy could not be undermined by local law. The Third Circuit disagreed with the plaintiffs' contention and upheld the right of the mayor of Philadelphia to remove the executive director of the local agency. The Federal Circuit Court stated:
[I]t is a matter for local governments to decide whether they will create poverty agencies that satisfy federal guidelines. Contrary to the assumptions made by the District Court and by the appellants, there is nothing in the Economic Opportunity Act (or in the regulations promulgated in furtherance thereof) which requires localities to establish Community Action agencies. An agency which fails to comport with the Act's guidelines is neither illegal nor in contravention of the Supremacy Clause. Rather, it is merely an agency that may be forced to forego federal funding. In short, the Act does not establish powers in local agencies, but rather merely describes the powers that are prerequisites to federal funding. 502 F.2d at 314–315.

Similarly, the Comprehensive Employment and Training Act does not mandate that the State operate in accordance with the terms and conditions set forth in the rules and regulations attached to the grant of federal funds. However, as discussed in the Paac case, if the State jurisdiction cannot comply with the applicable guidelines, either because of State law or some other reason, it may be required to forego some portion of its federal funding. Appropriate actions to remedy any defects in the administration of the CETA program, should such remedial action be available, would have to be discussed in full with appropriate federal authorities, who, in turn, cannot cut off federal funding under the CETA Act unless they comply with their own regulations concerning notice and hearing prior to termination of funds to any employer.

CONCLUSION:

***4** Because CETA is a cooperative program between federal and State governments designed to improve employment opportunities, and is not creating or enforcing federal rights, a State may choose not to comply with federal regulations promulgated under the CETA program, although it may be required to forego some or all of the federal funding. In this case, although CETA regulations require that the State-employer pay salary increases for all employees federally funded through CETA whose salary is in excess of $10,000.00, the General Assembly has prohibited the use of State funds to increase 'that portion of any salary paid from other than appropriated funds'. CETA funds are not 'appropriated' by the State and therefore no salary increases can be paid to CETA employees for that portion of their salary paid from federal funds. This conflict between the CETA program requirements and State law must be resolved by attaining waivers from appropriate federal authorities or taking remedial action recommended by them, if any is available; or by changing State law.

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