



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

Curt T. Schneider
Attorney General

April 12, 1978

ATTORNEY GENERAL OPINION NO. 78 151

Dr. James McCain
Secretary of Human Resources
401 Topeka Avenue
Topeka, Kansas 66603

Re: Competitive Bidding--Conflict--Federal Law

Synopsis: A conflict exists between the provisions of Title III of the Comprehensive Employment and Training Act (29 U.S.C. § 871 et seq) which authorize the Summer Program for Economically Disadvantaged Youth, the Youth Community Conservation and Improvement Program, and the Youth Training Program, and the State competitive bidding procedures (K.S.A. 75-3739 et seq) as both statutes apply to the selection of delivery agents for programs operated by the Department of Human Resources pursuant to Title III of the Comprehensive Employment and Training Act, and as a result of said conflict, the provisions of K.S.A. 75-3739 et seq, are inapplicable to the selection process for such delivery agents.

Dear Dr. McCain:

You inquire whether a conflict exists between the provisions of Title III of the Comprehensive Employment and Training Act (29 U.S.C. § 871 et seq) [hereinafter CETA] and the competitive bidding requirements of K.S.A. 75-3739 et seq, as both statutes apply to the selection of delivery agents for the operation of the Summer Program for Economically

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Disadvantaged Youth, the Youth Community Conservation and Improvement Program, and the Youth Training Programs under the Youth Employment and Demonstration Act of 1977.

The Summer Program for Economically Disadvantaged Youth is authorized by 29 U.S.C. § 874, which provides in pertinent part as follows:

"(a) The Secretary may provide financial assistance in urban and rural areas, including areas having large concentrations or proportions of low-income, unemployed persons, and rural areas having substantial outmigration to urban areas, for comprehensive work and training programs, and necessary supportive and follow-up services, including the following:...

(3) jobs, including those in recreation and related programs, for economically disadvantaged youths during the summer months;...

(b) To the maximum extent feasible, programs or components of programs conducted under this section shall be linked to comprehensive work and training programs conducted by prime sponsors under subchapter I of this chapter,... (emphasis added)

In our opinion, the statutory requirement that "to the maximum extent feasible, programs or components of programs... shall be linked to comprehensive work and training programs conducted by prime sponsors..." is incompatible with the competitive bidding procedures mandatory by state law. Congress intended that the summer youth programs operated pursuant to this section be related, in every way feasible, to Title I programs so that benefits available under Title I could be available to Title III participants in a proper case and so that activities in both programs could be coordinated. With respect to the Summer Youth Program, a desirable objective under this provision is that the same local delivery agent operate both the Title III Summer Youth Programs and the Title I programs operated for the benefit of in-school youth during the winter months. In this way, disadvantaged youth could be transferred from the winter Title I program to the summer Title III program with a minimum of delay and confusion.

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In our view, this is precisely what Congress intended by the requirement that Title I and Title III youth programs be "linked".

Application of K.S.A. 75-3739 et seq competitive bidding requirements to Title III summer youth program would frustrate this Congressional objective. Conceivably, delivery agents other than the delivery agents for Title I programs could be selected for the summer youth programs and, as a practical matter, under the bidding procedure, the "feasibility" of "linking" the programs as intended by Congress would diminish as a result.

The Youth Community Conservation and Improvement Projects Program is authorized by 29 U.S.C. § 893. 29 U.S.C. § 893 (f) provides as follows:

- "(a) The secretary may approve or deny on an individual basis any of the project applications submitted with any proposed agreement.
- (b) No funds shall be made available to any eligible applicant except pursuant to an agreement entered into between the Secretary and the eligible applicant which provides assurances satisfactory to the Secretary that--
 - (1) the standards set forth in subpart 4 of this part will be satisfied;
 - (2) projects will be conducted in such manner as to permit eligible youths employed in the project who are in school to coordinate their jobs with classroom instruction and, to the extent feasible, to permit such eligible youths to receive credit from the appropriate educational agency, postsecondary institution, or particular school involved; and
 - (3) meet such other assurances, arrangements, and conditions as the Secretary deems appropriate to carry out the purposes of this subpart." (Emphasis supplied)

Pursuant to the authority granted in 29 U.S.C. § 893(f), the Secretary of Labor has promulgated regulations establishing "other assurances, arrangements and conditions" with respect to this program. 29 C.F.R. 97.613 provides as follows:

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- "(d) The project approval process shall assure that project applications from neighborhood and community based organizations of demonstrated local effectiveness in providing employment and training services to youth will be considered before applications from other project applicants are considered. Where it can be documented that the neighborhood or community based organization does not have the administrative capability to run the project, or its project application does not meet the criteria established by the prime sponsor, then project applications from other than neighborhood and community-based organizations may be considered, provided the same criteria are used."

Clearly, preference must be given to "community-based organizations of demonstrated effectiveness" under this regulation. The application of the competitive bidding requirements of K.S.A. 75-3739 et seq to the selective process for projects under the Youth Community Conservation Program would eliminate this preference.

Youth Employment and Training Programs are authorized pursuant to 29 U.S.C. § 894. 29 U.S.C. § 894(b) in pertinent part provides as follows:

"Programs receiving assistance under paragraph (1) of subsection (a) of this section shall give special consideration in carrying out programs authorized under section 894a of this title, to community-based organizations which have demonstrated effectiveness in the delivery of employment and training services, such as the Opportunities Industrialization Centers, the National Urban League, SER-Jobs for Progress, Mainstream, Community Action Agencies, union-related organizations, employer-related non-profit organizations, and other similar organizations."

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Under this provision Congress clearly intended that community-based organizations be given preference in "carrying out" the Youth Employment and Training Program. Clearly, such preference would be eliminated by application of competitive bidding procedures required by K.S.A. 75-3739 et seq to the selection of local delivery agents for this program.

In view of the foregoing, we conclude that a conflict exists between the competitive bidding procedures of K.S.A. 75-3739 et seq and the provisions of federal statutes and regulations which authorize the Summer Program for Economically Disadvantaged Youth, the Youth Community Conservation and Improvement Program and Youth Training Program.

Having established that a conflict exists between federal and state law with regard to these programs, we reach the issue whether in light of such conflict, a conflicting Kansas State Statute is invalid under the Supremacy Clause of the United States Constitution when the State of Kansas voluntarily participates and receives funds under CETA.

This issue was foreclosed in the case of Carleson v. Remillard 406 U.S. 598, (1972). Here the United States Supreme Court held that under the AFDC provisions of the Social Security Act (42 U.S.C. 601 et seq), a state eligibility standard which excludes persons eligible for assistance under federal AFDC standards was invalid under the Supremacy Clause. In reaching this result the Court said:

"Section 402(a)(10) of the Social Security Act, 42 USC § 602(a)(10), places on each State participating in the AFDC program the requirement that 'aid to families with dependent children shall be furnished with reasonable promptness to all eligible individuals.' 'Eligibility,' so defined, must be measured by federal standards. King v Smith, 392 US 309, 20 L Ed 2d 1118, 88 S Ct 2128. There, we were faced with an Alabama regulation which defined a mother's paramour as a 'parent' for § 606(a)(1) purposes, thus permitting the State to deny AFDC benefits to needy dependent children on the theory that there was no parent who was continually absent from the home. We held that Congress had defined 'parent' as a breadwinner who was legally obligated to support his children, and that Alabama was precluded from altering that federal standard. The importance of our holding was stressed in Townsend v Swank, 404 US 282, 286, 30 L Ed 2d 448, 453, 92 S Ct 502: 'King v Smith establishes that, at least in the absence of congressional authorization for the exclusion clearly

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evidenced from the Social Security Act or its legislative history, a state eligibility standard that excludes persons eligible for assistance under federal AFDC standards violates the Social Security Act and is therefore invalid under the Supremacy Clause." (Emphasis supplied.)

State participation in the AFDC program is voluntary. Recognizing this fact, the First Circuit, United States Court of Appeals, in Bourgeois v Stevens, 532 F. 2nd (1976) echoed the rule in Carleson, supra. The Court said:

"To place the complex issues presented by this case into perspective, it will be helpful briefly to describe the structure of the AFDC program and the place § 402(a) (23) occupies in it. The AFDC program is based upon a scheme of 'cooperative federalism.' See New York Dept of Social Services v Dublino, 413 U.S. 405, 413 93 S.Ct. 2507, 2512, 37 L.Ed.2d 688, 694 (1973); Dandridge v Williams, 397 U.S. 471, 478, 90 S.Ct. 1153, 1158, 25 L.Ed.2d 491, 498 (1970); King v Smith, 392 U.S. 309, 316, 88 S.Ct. 2128, 2132, 20 L.Ed.2d 1118, 1126 (1967). It is administered by the states but is largely funded by the federal government on a matching funds basis. Although participation in the program is voluntary on the part of the states, those which participate must, under the Supremacy Clause, comply with the terms of the applicable federal legislation and regulations. See King v Smith, supra at 333 n. 34, 88 S.Ct. at 2141, 20 L.Ed.2d at 1134." (Emphasis supplied.)

In our view, these cases clearly indicate that under the Supremacy Clause of the United States Constitution, where state laws conflict with federal laws and regulations as both apply to a state's operation of a federal program, such state laws are invalid notwithstanding the voluntariness of state participation.

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Therefore, although participation by the State of Kansas is voluntary with respect to programs operated pursuant to CETA, as it is with AFDC, State laws which conflict with CETA and regulations issued pursuant thereto, cannot apply to the extent of such conflict, Thus, we conclude that the competitive bidding procedures of K.S.A. 75-3739 et seq cannot be applied to the selection of local delivery agents for the CETA programs discussed herein.

Very truly yours,



CURT T. SCHNEIDER
Attorney General

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