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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

*Interagency
funding*

GENERAL COUNSEL

February 17, 1981

Your Ref. No.: B-196841

Honorable Milton J. Socolar
General Counsel
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Socolar:

This responds to your letter of December 18, 1980, concerning the funding of the Radiation Policy Council and the Interagency Radiation Research Committee. Our response is belated because of the pressures on OMB and other agencies generated by the Presidential transition. I apologize for the delay.

You also sent letters of inquiry to the Radiation Policy Council and the Interagency Research Committee. At my request, their responses were sent to OMB and are attached to this letter at Tabs A and B.

Before addressing the subject matter of your request, it is appropriate to surface one preliminary issue. Your letter states that, while "H.R. 7583 has not yet been enacted, the section 608 prohibition is still viable by virtue of subsection 101(a) of the joint resolution making continuing appropriations for the fiscal year 1981, Pub.L. No. 96-369 ..." We are not prepared to concede that subsection 101(a) of the continuing resolution has this effect: by its terms, it would apply the section 608 prohibition only to the funds provided in the two appropriation bills listed in subsection 101(a)(1) of the joint resolution.

However, the basic question you raise transcends the peculiarities of the current continuing resolution. Section 608 of the Treasury appropriation bill, or its equivalent, has concededly been applicable to all appropriations in recent fiscal years and will no doubt be made applicable in the future unless the Congress perceives the need for a change.

Since its first appearance in the Treasury appropriation bill in 1971, OMB has consistently interpreted section 608 as prohibiting the joint funding of interagency boards, commissions, committees, etc. That interpretation was succinctly set forth

in an internal OMB memorandum signed by General Counsel Stanley Ebner in June 1973 (enclosure 1). The legal rationale for that conclusion is set out in the paragraphs which follow.

Our analysis of the effects of the two provisions quoted in your letter (31 U.S.C. 691 and Section 608 of the Treasury Appropriation Act) begins with a third statute, the so-called Russell Amendment (31 U.S.C. 696). Although the Russell Amendment is not directly applicable to the question you raise, its enactment led to the adoption of 31 U.S.C. 691 and shaped the scope of that section.

The Russell Amendment, enacted in 1944, provides that no funds may be used to pay the expenses of any "agency or instrumentality" if that entity has been in existence for more than one year unless Congress has appropriated funds for it or authorized the expenditure of funds by it. Although it is reasonably clear from the legislative history of the Russell Amendment that it was intended to apply only to "action agencies," i.e., those discharging governmental functions affecting the public, the Bureau of the Budget urged the adoption of language to insure that the Amendment did not apply to "committees made up of representatives of various departments who meet and discuss problems of common interest to those departments" (Hearings before the Subcommittee of the House Appropriations Committee on the First Supplemental Appropriation, 1945, p. 43).

§ 41 - The result of the Bureau of the Budget presentation was the enactment of 31 U.S.C. 691, first as Section 401 of the First Supplemental Appropriation Bill of 1945 (Pub.L. 78-529), then as Section 214 of the Independent Offices Appropriation Act of 1946. The overriding significance of this legislative development is that neither BOB nor Congress was seeking to provide new authority for funding interagency groups. They were seeking merely to preserve the existing practices with respect to such groups from incursion by the Russell Amendment.

The language of Section 691 is very broad, however, and agencies began to use its authority for the joint funding of boards, commissions and committees. Typically, this practice involved the assignment of agency personnel and the transfer of agency funds and property to the interagency group. (See 26 Comp. Gen. 354). Such funding practices avoided the normal Congressional appropriation and oversight controls, and the predictable Congressional reaction began with Section 508 of the Agriculture and Related Agencies Appropriation Act, 1969 (Pub.L. 90-463, 82 Stat. 639). That section was the precursor of Section 608 of the Treasury, Postal Service and General Government Appropriation Acts, which first appeared in 1971.

The House Report on the 1969 Agriculture Appropriation Act stated that:

"The authority cited by the executive branch for this practice [the practice of transferring funds appropriated for one purpose to finance a portion of the cost of special boards] is Section 214 of the Independent Offices Appropriation Act of 1946. There is nothing to indicate this provision was to have general application. Thus we have provided a restriction on further use of such authority.

* * * *

§608 "In order to make certain that the executive branch follows the congressional directives on this matter, the 1969 Agriculture appropriation bill carries language to prohibit unauthorized diversions of funds provided by Congress for specific projects and programs." H. Rept. No. 1335, 90th Cong., 2nd Sess. at 30. (Emphasis supplied.)

It seems clear from the above language that Congress had no intent to require legislative approval of all interagency committee funding, it merely wanted to reassert Congressional control over the practice of joint funding which had grown up "under section 214 of the Independent Offices Appropriation Act, 1946 (31 U.S.C. 691)." The quoted words are a limitation on the prohibition of Section 608 and they have appeared in each version of the section since it was first enacted.

There are a number of instances in which interagency groups are the most effective and efficient means for information exchange and policy coordination among agencies. Such groups are frequently established by Presidents, as in the case of the Radiation Policy Council and the Interagency Radiation Research Committee, in order to assist them in the exercise of their Constitutional authorities and responsibilities.

It is our view that interagency councils and committees may be funded by a single agency consistent with the provisions of Section 608 of the Treasury Appropriation Acts so long as the interagency activity is otherwise appropriate for obligations of funds by the lead agency and there is sufficient commonality of interest to warrant participation by representatives of the other agency members.

Sincerely,

(Signed) William M. Nichols

William M. Nichols
General Counsel

Enclosures
bcc (w/encls): ✓ Mr. McOmber, Mr. Crabill, Mr. Won

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

June 8, 1973

MEMORANDUM FOR ASSOCIATE/ASSISTANT DIRECTORS

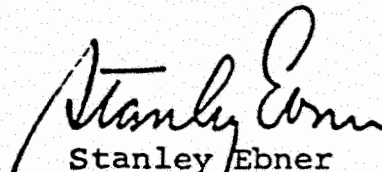
Subject: Interagency Funding of Committees

The continual pressure upon the Executive Branch to reshape itself produces a number of boards, commissions, committees, etc., with varying life expectancies. Since the funding of these entities is a recurring problem, and because of OMB's inevitable involvement with their creation or administration, it would be useful to bear in mind the provisions of law discussed below.

Section 609 of Public Law 92-351, the Treasury, Postal Service, and Executive Office Appropriations Act, 1973, operates in conjunction with section 214 of the Independent Offices Appropriations Act of 1946 (31 U.S.C. 691) to effectively bar the use of any appropriated funds to jointly fund interdepartmental boards, commissions, councils, committees, or similar groups. In simple terms, this means that a committee may not have its expenses financed by more than one federal agency through a "pass-the-hat" type operation.

In addition, the so-called Russell Rider (31 U.S.C. 696) bars the funding of any agency or instrumentality, including those established by Executive Order, after such agency or instrumentality has been in existence for more than one year, unless the Congress shall have specifically provided funds for it.

These restrictions are, within my experience, often overlooked. You may therefore want to keep this memo handy as a reminder.


Stanley Ebner
General Counsel

cc:
Director
Deputy Director
Assistants for: Administration, Congressional Relations, and
Public Affairs



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

JUN 2 1980

Honorable Tom Steed
Chairman, Subcommittee on
Treasury, Postal Service,
and General Government
U.S. House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

I am responding to your inquiry regarding the President's Commission for a National Agenda for the 1980's.

On October 24, 1979, President Carter signed Executive Order 12168 establishing an independent nonpartisan forum to recommend a National Agenda for the 1980's. The Presidential Commission was a direct outgrowth of the President's extensive discussions at Camp David earlier that year when he decided to organize a longer term review of issues of primary importance to this country in the decade ahead. A copy of the Executive Order outlining the Commission's mission is enclosed.

The Commission is expected to have access to the broadest possible spectrum of our national views and thinking. President Carter designated Mr. William McGill, President of Columbia University to chair the Commission. Enclosed also is a list of the fifty distinguished private citizens appointed by the President to assist in this effort. Consultative groups from Congress and from state and local officials also have been asked to exchange ideas regularly with the Commission. The Commission is expected to complete its work and issue a report to the President and to the Congress by December 31, 1980.

You asked about the relationship between Section 608 of the General Provisions in Public Law 96-74 and the establishment and funding for this Commission. The limitations of section 608 are substantially similar to limitations in prior appropriations Acts beginning at least as early as 1969. Those limitations as well as others pertaining to the establishment and funding of advisory committees and the expenditure of appropriated funds generally were considered at the time the President's Commission for a National Agenda for the 1980's was formulated, and before Executive Order 12168 was signed by the President on October 24, 1979. No formal legal opinions were written. However, the legal

authority for the creation and funding of the Commission was carefully developed and reviewed by representatives of our General Counsel's Office, in conjunction with the White House Counsel's Office and the Department of Justice.

We did not, and we do not now believe that the Commission is in violation of section 608 of Public Law 96-74. That section precludes the use of appropriated funds "...to finance interdepartmental boards, commissions, councils, committees, or similar groups..." under 31 U.S.C. 691 "...which do not have prior and specific congressional approval of such method of financial support." Since the Commission is composed "...of fifty members appointed by the President from among private citizens of the United States," the Commission is not an "interdepartmental board or commission or similar group" and therefore does not fall within the scope of section 608 (see, for example, Comptroller General Decision B-182398 dated January 13, 1977).

Further, the Commission is not funded pursuant to the provisions of 31 U.S.C. 691, and therefore section 608 does not apply. The method of funding under 31 U.S.C. 691 for which section 608 requires congressional approval is the funding of interagency groups by the pooling of agency funds. The Commission if funded by one agency, OMB, and additional funds are made available from the Unanticipated Needs Account of the President, which funds may be expended "...without regard to any provision of law... regulating expenditures of government funds..." To date \$250,000 has been allocated by the President from his Unanticipated Needs Account to the Commission. An additional \$150,000 has been provided by OMB from its FY 1980 appropriation, to pay the salaries and related expenses of the six temporary personnel who staff the Commission.

Within the framework of its mandate and pursuant to the Executive Order, the Commission has identified nine specific issues for appropriate examination and designated panels for indepth review and discussion of these subjects. While seven Federal agencies have entered into arrangements to have subgroups of the Commission do work for the agencies, which the agencies were authorized by law to do or to contract to have done, there has been no pooling of funds for an interagency or interdepartmental entity to which section 608 would apply. (See, for example, Comptroller General Decision B-174571 dated January 5, 1972.) The exact amount of expenditures that will be incurred by each agency will differ. However, we estimate an average of cost of \$275,000 to support the work of each panel for the duration of the Commission.

I would point out that, generally, we direct agency activities like this, through the normal authorization and appropriation process. Nonetheless, the procedures we have used for the Commission are available for exceptional circumstances and we and the President believe that the important and short-term effort of the distinguished citizens who serve on the Commission warranted the use of these exceptional procedures.

I or members of my staff would be pleased to discuss this further with you.

Sincerely,

(Signed) Jim McIntyre, Jr.

James T. McIntyre, Jr.
Director

Enclosures

cc: Official File - ADA
DO Records
Mr. McIntyre
Dr. White
Mr. Wellford
✓ Mr. Bedell
Mr. Cramer
Ms. Smith
Mr. Harris
Mr. Gordon
Mr. McOmber
Mr. Mullinex
Chron

LSmith:mBlack:5/30/80