Subject	Date
Repeated Recess Appointments to the Same Person	23 SEP 1982

To
FILES

From
NAME: Herman Marcuse
OFFICE SYMBOL: OLC

STATEMENT:

Between September 15th and 17th, 1982, Deputy Assistant Attorney General Simms and I had several telephone conversations with Deputy Counsel to the President Hauser concerning the Directors of the Legal Services Corporation. These Directors were given recess appointments during the recess between the first and second sessions of the 97th Congress. After the grant of the recess appointments, the President nominated them for those positions. The pertinent committee reported favorably on the nominations; confirmation, however, is held up in the Senate as the result of objections to one of the nominees. Mr. Hauser inquired whether, in the event that the second session of the 97th Congress should adjourn sine die without confirming the Directors, the President could give them new recess appointments and whether they could be paid in those circumstances.

According to Article II, § 2, cl. 3 of the Constitution recess appointments expire at the end of the "next session" of the Senate, i.e., at the end of the session following the recess appointment. The recess appointments given to the Directors of the Legal Services Corporation will expire upon the final adjournment of the current session of the Senate.

We advised Mr. Hauser that there were no constitutional or statutory prohibitions against the grant of new recess apointments to the incumbent Directors, but there was a question whether the payment of their compensation prior to confirmation was precluded by 5 U.S.C. § 5503. That section provides:

§ 5503. Recess appointments

(a) Payment for services may not be made from the Treasury of the United States to an individual appointed during a recess of the Senate to fill a vacancy in an existing office, if the vacancy existed while the Senate was in session and was by law required to be filled by and with the advice and consent of the Senate, until the appointee has been confirmed by the Senate. This subsection does not apply --

(1) if the vacancy arose within 30 days before the end of the session of the Senate;

(2) if, at the end of the session, a nomination for the office, other than the nomination of an individual appointed during the preceding recess of the Senate, was pending before the Senate for its advice and consent; or

(3) if a nomination for the office was rejected by the Senate within 30 days before the end of the session and an individual other than the one whose nomination was rejected thereafter receives a recess appointment.

(b) A nomination to fill a vacancy referred to by paragraph (1), (2), or (3) of subsection (a) of this section shall be submitted to the Senate not later than 40 days after the beginning of the next session of the Senate.

The section thus prohibits payments for services "from the Treasury" to recess appointees if the vacancy existed, as it did here, while the Senate was in session, unless one of the three enumerated exceptions applies; none is applicable here. Indeed, 5 U.S.C. § 5503, and especially its second exception, is directed at repeated recess appointments to the same person.

The situation at hand raises a threshhold problem. The language of 5 U.S.C. § 5503 prohibits payments for services "from the Treasury." This raises, first, the factual question whether the Directors receive payment for their services directly from the Treasury or by checks drawn on the Corporation.

We have received information from the Legal Services Corporation that for many purposes its funds are considered to be the funds of a private corporation and not public funds. There are also indications that the funds appropriated to the Corporation are not kept in the Treasury but that they are transferred to the Corporation's checking account soon after appropriation. Hence, it is not likely that the Directors are paid by checks drawn on the Treasury of the United States.

Second, even if the funds of the Corporation are not public funds, the question still arises whether § 5503 is to be read literally as being limited to payments from the Treasury or whether it generally applies to the payment of compensation to recess appointees, whether or not paid from the Treasury, especially where, as here, a larger portion of the funds originated in the Treasury. The fact that the President has the power to make recess appointments to the Board of Directors of the Legal Services Corporation although the Corporation is not considered to be a department, agency, or instrumentality of the Federal government (42 U.S.C. § 2996e(1) */ suggests that the statutes governing recess appointments might be applicable to the Corporation, at least by way of analogy. In this connection, we drew to Mr. Hauser's attention a memorandum of this Office prepared in 1980 relating to the Synthetic Fuel Corporations in which this Office had "recommended" to the Office of the Counsel to the President that § 5503 not be construed literally so as to limit it to payments directly made by the Treasury. See the attached file memorandum of August 6, 1980. A Juris Search has not disclosed any pertinent OLC memoranda. DAAG Simms, however, feels this problem deserves more intensive research into the legislative history of 5 U.S.C. § 5503 and its antecedents and indicated that he would assign it to an attorney in this Office.

Finally, I mentioned to Mr. Hauser that should the President not withdraw the current nominations but give recess appointments to persons other than the incumbents, the literal language of the second exception to § 5503 would seem to prohibit the payment of compensation to them. An opinion of the Comptroller General, however, has interpreted that second exception as being directed only at successive recess appointments to the same person. Hence, even if the President should not withdraw the pending nominations prior to the end of the session, but give new recess appointments to persons other than the incumbents, the new recess appointees could be paid prior to their confirmation. 36 Comp. Gen. 444 (1956).

*/ It should be remembered that the incumbent Directors are serving under recess appointments.

Gen. Counsel

LEGAL SERVICES CORPORATION
733 Fifteenth Street, N.W., Washington, D.C. 20005

Writer's Direct Telephone
(202)272-4010

September 20, 1982

Office of Legal Counsel
Department of Justice
Room 5224
10th and Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Attn: Larry Simms, Esq.

Dear Larry:

Enclosed in accordance with our conversation are the following:

1. Advance Copy of a memorandum from the Commissioner on Aging, Department of Health and Human Services, concluding that the funds from the Legal Services Corporation may be used as the non-federal share to match Title III funds under the Older Americans Act.

2. Letter dated August 29, 1977, from the Chief Counsel to the Comptroller of the Currency, concluding that the deposits of the Legal Services Corporation are not "public money" for purposes of 12 U.S.C. §90.

3. Opinion of Comptroller General dated October 23, 1981, concluding that GAO lacks jurisdiction to review the award of a contract under a grant by the Legal Services Corporation since the Corporation is not an agency of the Government subject to GAO's accounts settlement authority.

4. Opinion of the General Counsel of the Legal Services Corporation dated July 30, 1980, with attached memorandum.

5. Copy of a Memorandum of Understanding Between the Legal Services Corporation and the Department of Treasury.

In our view, the name rationale supporting the various opinions enclosed and our Memorandum of Understanding support the position that 5 U.S.C. §5503 does not prohibit payment

legal services file

LEGAL SERVICES CORPORATION
733 Fifteenth Street, N.W., Washington, D.C. 20005

Writer's Direct Telephone
(202) 272-4010

December 21, 1982

John Roberts, Esq.
Associate Counsel to the President
The White House
Washington, D.C.

Dear Mr. Roberts:

In accordance with our conversation of December 20, 1982 I am enclosing a copy of our letter of September 20, 1982, to Mr. Simms of the Department of Justice concerning the question of whether Legal Services Corporation funds are federal funds.

It is our opinion based on the attached documents that the payment to our Board of Directors are not payments "from the Treasury of the United States".

Yours truly,

Mary F. Wieseman
Acting General Counsel

MFW/sh

LEGAL SERVICES CORPORATION

to the Board of Directors of the Legal Services Corporation because the payment is not being made "from the Treasury of the United States."

If you need any additional information, please let me know.

Yours truly,

Mary F. Wieseman
Acting General Counsel

cc: Gerald M. Caplan
Clinton Lyons

Enclosures

bdh

DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF HUMAN DEVELOPMENT SERVICES
Administration on Aging
WASHINGTON, D. C. 20201

ADVANCE COPY

POLICY ANNOUNCEMENT
AoA-PA-III-80-
September , 1980

RE: Section 1321.151
Section 1321.199
Section 1321.201

OLICY SECTION #151 Legal Services
#199 Federal Financial Participation
#201 Non-Federal Share Requirements

UBJECT: Use of Legal Services Corporation Funds as Non-Federal Share

ACKGROUND: The Administration on Aging has been asked to clarify whether the funds a Legal Services Corporation grantee receives from the Legal Services Corporation may be used as the non-Federal share pursuant to Section 1321.201 to match Title III funds for legal services. In as much as a State Agency allotment for social and nutrition services may only be used to pay a percentage of the cost of these activities (not more than 90% in FY '79 and '80 and 85% in FY '81), a non-Federal share is required. (Section 1321.199) Whether funds received from the Legal Services Corporation may be used to meet these requirements does not appear in these regulations. This announcement provides clarification on this matter.

LICY: Legal Services Corporation funds expended for allowable costs pursuant to 45 CFR 74.52 are acceptable as non-Federal share.

SCUSSION: The Legal Services Corporation Act, Section 1005(e)(1) provides that except as specifically provided by statute, the Legal Services Corporation "shall not be considered a department, agency, or instrumentality of the Federal Government." In an opinion dated July 30, 1980, the General Counsel of the Legal Services Corporation interpreted this section, reviewed the history, structure and financing of the Legal Services Corporation, and stated that the Legal Services Corporation should be regarded as a non-Federal source and that its grants were non-Federal grants for purposes of matching requirements of

the Older Americans Act. In light of the Comptroller General's principle of placing "great reliance on the statutory interpretations of agencies responsible for administering a statute," the Legal Services Corporation's opinion has been accepted by the Administration on Aging.

Robert Benedict
Commissioner on Aging

Comptroller of the Currency
Administrator of National Banks

Washington, D.C. 20219

AUG 29 1977

Mr. Samuel L. Foggie
President
United National Bank of Washington
3940 Minnesota Avenue, N.E.
Washington, D.C. 20019

Dear Mr. Foggie:

This is in response to your letter of May 19, 1977, asking whether the deposits of the Legal Services Corporation constitute "public money" under 12 U.S.C. §90 (1970), and whether that corporation may require a national bank to give satisfactory security for the funds deposited.

The Legal Services Corporation was created by the Legal Services Corporation Act of 1974, Pub. L. No. 93-355, 88 Stat. 378, as a private, non-membership, nonprofit corporation to provide financial support for legal assistance to the poor in noncriminal matters. The law provides that the eleven members of the Board of Directors are to be appointed by the President and confirmed by the Senate, and that neither the members of the Board, nor the corporation's officers and employees shall be deemed employees of the United States. In addition, the corporation "shall not be considered a department, agency or instrumentality of the Federal Government, except as otherwise specifically provided."

The corporation is prohibited from issuing stock or paying dividends and is considered neither wholly nor partially government owned. 31 U.S.C. §§846, 856. No part of its income or assets can innure to any director, officer, or employee, except as compensation for services or expenses.

The Legal Services Corporation is empowered to own property and equipment and to submit annual budget requests directly to Congress. The law provides, however, that nothing within it should be construed to prevent the Office of Management and Budget from reviewing and commenting on the proposed budget. The funds authorized by Congress are presently paid in annual installments; any non-federal funds received by the corporation are to be accounted for and reported as funds separate and distinct from the federal funds.

An annual audit must be conducted, and a copy of that audit should be filed with the General Accounting Office. In years in which federal funds have been granted, the General Accounting Office may conduct an audit itself, which shall then be made available by the Comptroller General to the President and Congress. In all years, copies of annual audits of each beneficiary of the corporation's funds shall be maintained on file at the offices of the corporation and also with the Comptroller General. In addition, the corporation shall publish an annual report to be filed with the President and Congress.

The primary authority which permits national banks to give security for deposits is 12 U.S.C. §90. It provides that:

> All national banking institutions . . . shall be depositaries of public money, under such regulations as may be prescribed by the Secretary. . . . The Secretary of the Treasury shall require the association thus designated to give satisfactory security by the deposit of United States bonds and otherwise, for the safekeeping and prompt payment of the public money deposited with them, ...

There is no provision within the statute which authorizes national banks to pledge security in order to secure private deposits. It has been held in situations such as this that the measure of the powers of the national banks is their statutory grant and that powers not expressly conferred are denied. For that reason, national banking associations may not pledge any part of their assets as a means to secure private deposits. Texas & Pac. Ry. Co. v. Pottorf, 291 U.S. 245 (1934).

A determination of the power to collateralize the deposits of the Legal Services Corporation rests on whether the funds are public money. In this case, several common indicia of public money are absent. First, neither the corporation nor its equipment and property is owned by the government. Second, under its chartering statute, the corporation is specifically not considered a government department, agency or instrumentality. Third, there is no direct governmental control or regulation of the funds after payment to the corporation. Parenthetically, the congressional appropriations are paid by the Treasury to the corporation in an annual sum rather than by advances and reimbursements for specific obligations. Its budget requests may be reviewed by the Office of Management and Budget, but that office has no power to revise requests nor to control the manner of expenditure. The General Accounting Office may conduct an audit in years in which federal funds are received, but the records need not adhere to General Accounting Office standards.

For the above reasons, it is my opinion that the appropriated funds become private money for the purposes of 12 U.S.C. 90 upon receipt by the Legal Services Corporation.

Accordingly, United National Bank of Washington, or any other national bank, is precluded from pledging any part of its assets to secure the deposits of the Legal Services Corporation.

I trust this has been responsive to your inquiry.

Very truly yours,

/s/

John E. Shockey
Chief Counsel

cc: Ms. Alice Daniel, General Counsel
Legal Services Corporation

DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

OCT 23 1981

FILE: B-204886 DATE: October 21, 1981

MATTER OF: Tann, Brown & Company, Ltd.

DIGEST:

GAO lacks jurisdiction to review the award of a contract under a grant by the Legal Services Corporation, since the Corporation is not an agency or establishment of the Government subject to GAO's accounts settlement authority.

Tann, Brown & Company, Ltd. (Tann) objects to the award of a contract by the East Mississippi Legal Services Corporation (EMLS) to audit EMLS's fiscal year 1981 accounts. EMLS receives substantial grant funds from the Legal Services Corporation pursuant to the Legal Services Corporation Act of 1974, 42 U.S.C. §§ 2996-2996l (1976). The audit apparently is needed to satisfy the annual financial audit requirement of 42 U.S.C. § 2996h (c)(1). Tann contends that it submitted the best proposal under EMLS's solicitation for the audit services.

We will not consider the matter.

Our Office's review of complaints by prospective contractors against contract awards by grantees is based on our statutory obligation and authority under 31 U.S.C. § 53 to investigate the receipt, disbursement, and application of Federal funds. See The Montana Energy and MHD Research and Development Institute, Inc., B-199604, August 12, 1980, 80-2 CPD 110. A necessary requirement to our review is that the grantor be a Federal agency whose accounts are subject to settlement by our Office under 31 U.S.C. §§ 71 and 74.

The statute creating the Legal Services Corporation provides, however, that "Except as otherwise specifically provided * * *, the Corporation shall not be considered a department, agency or instrumentality of the Federal Government." 42 U.S.C. § 2996d(e)(1). Thus, the Legal Services Corporation is not subject to our accounts settlement authority. See B-202116, May 1, 1981, 60 Comp. Gen. __. Accordingly, it would serve no useful purpose

for our Office to review complaints against the awards of contracts under grants by the Legal Services Corporation.

The matter is dismissed.

Harry R. Van Cleve

Harry R. Van Cleve
Acting General Counsel

LEGAL SERVICES CORPORATION
733 Fifteenth Street, N.W., Washington, D.C. 20005

Dan J. Bradley
President

Writer's Direct Telephone
(202) 272-4010

July 30, 1980

Mr. Joseph A. Dailing
Prairie State Legal Services, Inc.
802 Rockford Trust Building
206 W. State Street
Rockford, Illinois 61101

Dear Mr. Dailing:

This letter responds to your letter of inquiry which was received by this office on April 28, 1980.

You asked whether funds of grantees of the Legal Services Corporation may properly be used to satisfy the "non-Federal share" required by the Older Americans Act. 42 U.S.C. §3024(d)(1)(B). In our view, they may be so used. I understand that you have also requested the opinion of the Commissioner on Aging on this question and I am hopeful that the Agency on Aging will concur with our opinion in its final ruling.

The Older Americans Act requires that grants made pursuant to it for social services, including legal services, must be matched by the grantee with a "non-Federal share" to be contributed by "non-Federal sources." 42 U.S.C. §3024(d)(1)(B). The regulations of the Department of Health and Human Services provide,

> [A] . . . matching requirement may be satisfied by either or both of the following:
>
> a. Allowable costs incurred by the grantee . . . This includes allowable costs borne by non-Federal grants or by other costs donations from non-Federal third parties.
>
> b. The value of third-party in-kind contributions applicable to the period to which the cost-sharing or matching requirement applies. 45 C.F.R. 74.52 (emphasis added).

LEGAL SERVICES CORPORATION

The regulations further state, "a cost-sharing or matching requirement may not be met by costs borne by another Federal grant." 45 C.F.R. §74.53 (emphasis added).

The Legal Services Corporation is established as a private, non-profit District of Columbia Corporation. 42 U.S.C. §2996e(a). And the Legal Services Corporation Act provides that the Corporation and its employees are not part of the federal government:

> Except as otherwise specifically provided in this subchapter, officers and employees of the Corporation shall not be considered officers or employees, and the Corporation shall not be considered a department, agency, or instrumentality, of the Federal government. 42 U.S.C. §2996d(e)(1).*

The history, structure, and financing of the Corporation all indicate that it is separate and apart from the federal government. (See, enclosed memorandum.) Accordingly, it is our opinion that the Corporation should be regarded as a "non-federal source" and the Corporation grants should be regarded as "non-Federal grants" for purposes of the matching requirement of the Older Americans Act. This conclusion is consistent with the opinion of the Comptroller of the Currency, to which you have referred, which concludes that Legal Services Corporation funds do not constitute "public money" for purposes of 12 U.S.C. §90.

Moreover, it seems to us that to allow Corporation funds to be used to satisfy the non-Federal share requirement is consistent with the Older Americans Act. The Act specifically states that recipients of Legal Services Corporation funds are proper grantees of funds to provide legal services to older individuals. 42 U.S.C. §3027(a)(15). A ruling that Corporation funds may be used to

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* The only exception provides that Corporation employees shall be considered to be federal employees for purposes of certain federal benefit programs. 42 U.S.C. §2996d(b). The Corporation is also subject to the Freedom of Information Act. 42 U.S.C. §2996d(g).

LEGAL SERVICES CORPORATION

satisfy the "non-Federal share" requirement will mean that many legal services programs, which would otherwise be ineligible, will be able to act as grantees of funds under the Older Americans Act.

I hope this answers your questions. If it does not, or if you have further questions, please let me know.

Sincerely,

Mario Lewis
General Counsel

cc: Commissioner on Aging

bdh

I. The Legal Services Corporation is not a federal agency.

Background

The Legal Services Corporation is a private nonprofit District of Columbia corporation created by Congress pursuant to the Legal Services Corporation Act, 42 U.S.C. §2996 et seq., ("LSCA"). The Corporation was created "for the purpose of providing financial support for legal assistance in noncriminal proceedings or matters to persons financially unable to afford legal assistance." 42 U.S.C. §2996b(a). This function had been previously performed by the Community Services Administration ("CSA"), and before it, by the Office of Economic Opportunity ("OEO"), pursuant to Section 222(a)(3) of the Economic Opportunity Act of 1964.

As the legal services program expanded, from 1966, when it was first funded by OEO, to mid-1975, when it was transferred by CSA to the Legal Services Corporation, it increasingly became subject to political interference and pressures. Accordingly, when the President submitted the first version of the Legal Services Corporation Act, he stated that the Corporation was necessary to insure the continuation of the legal services program "free and independent of political pressures." S. Rep. No. 93-495, 93d Cong., 1st Sess. 4 (1973). This purpose was ultimately accomplished by removing the legal services program from the Executive Branch and transferring it to an independent, nonprofit corporation. The Senate Committee on Labor and Public Welfare indicated that, for all those involved, this was the universally accepted solution:

> Recognizing the need to insulate the Legal Services program from outside pressures, and at the same time to maintain a responsible program accountable both to the public and to the client community, the Administration, Members of Congress, and others have called for the transfer of the Legal Services program to an independent corporation. S. Rep. No. 93-495, 93d Cong., 1st Sess. 3 (1973).

The Committee also stated:

> This Committee concluded after months of consideration, and after reviewing the legislative history of previous corporation bills, that in order to remain effective, in order to provide equal rights under the law to all people, and in order to provide continued faith in our system of laws, the Legal Services program should and must be placed in an independent corporation free from any outside interference, political or otherwise, and under a charter designed to insure that the program is responsibly conducted. Id. at 5-6.1/

Accordingly, the LSCA declares that one of its purposes is to insure that the legal services program be "kept free from the influence of or use by it of political pressures." 42 U.S.C. §2996(5). As the President had requested, the Corporation is "structured and financed so that it will be assured of independence." H.R. Rep. No. 93-247, 93rd Cong., 1st Sess. 2 (1973).

In several important respects, the Legal Services Corporation Act structures the Corporation to ensure its maximum independence. First, the Corporation is created as a purely private institution

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1/ See, also, H.R. Rep. No. 93-247, 93d Cong., 1st Sess. 3 (1973).

separate and apart from the federal government. Second, it is given an independent Board of Directors with complete policy control over the legal services program. And finally, its finances are handled differently from those of federal agencies.

1. The Corporation is a Private Institution

In order to maximize the program's insulation from political pressure, Congress removed it entirely from the federal government and transferred it to a completely private corporation. The LSCA establishes the Legal Services Corporation as a District of Columbia "private nonmembership nonprofit corporation." 42 U.S.C. §2996b(a). The Corporation is given "the powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act." 42 U.S.C. §2996e(a). The private nature of the Corporation was emphasized by the Senate Committee on Labor and Public Welfare:

> The Corporation shall be considered a private nonprofit entity for all statutory purposes, including those concerning labor relations, except as provided elsewhere in the Act. S. Rep. No. 93-495, 93rd Cong., 1st Sess. 12 (1973).

Moreover, the LSCA grants the Legal Services Corporation certain powers which are uniquely characteristic of private corporations in general and nonprofit corporations in particular. For example, the LSCA provides that the Corporation shall maintain in the District of Columbia a "designated agent to accept service of process for the Corporation." 42 U.S.C. §2996b(b). The Corporation is also eligible "to be treated as an organization described in Section 170(c)(2)(B) of the Internal Revenue Code

of 1954 and as an organization described in Section 501(c)(3) of Internal Revenue Code of 1954 which is exempt from taxation under Section 501(a) of such Code." 42 U.S.C. §2996b(c). Pursuant to this authorization, the Corporation applied for and has received recognition as a tax-exempt organization. The Corporation is also given the power to "accept in the name of the Corporation, and employ or dispose of in furtherance of the purposes of this title, any money or property, real, personal, or mixed, tangible or intangible, received by gift, devise, bequest, or otherwise." 42 U.S.C. §2996e(a)(2).

An examination of the Nonprofit Corporation Act of the District of Columbia further indicates the breadth of powers given the Corporation which are not normally associated with government agencies. For example, it has the power "to sue and be sued, complain and defend, in its corporate name." 29 D.C. Code §1005(b). The Corporation also has the power to "sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets." 29 D.C. Code §1005(e).

In addition to establishing the Corporation as a private institution governed by an independent Board, the LSCA provides that the Corporation and its employees are not part of the federal governmen

> Except as otherwise specifically provided in this title, officers and employees of the Corporation shall not be considered officers and employees, and the Corporation shall not be considered a department, agency, or instrumentality, of the Federal Government. 42 U.S.C. §2996d(e)(1).2/

2/ That the Corporation is not part of the Federal government is further indicated by Section 3(a) of the transition provisions of the LSCA which provides that ninety days after the Board holds its

Footnote continued on next page.

And the LSCA states that "[t]he members of the Board shall not, by reason of such membership, be deemed officers or employees of the United States." 42 U.S.C. §2996c(c).

Congress intended these provisions to be interpreted broadly. The Senate Committee on Labor and Public Welfare emphasized that neither the Corporation nor its employees were to be considered "part of the Federal Government." S. Rep. No. 93-495, 93d Cong., 1st Sess. 24 (1973). The Conference Report added that they are not to be considered part of "the Federal Government for purposes of any federal law or Executive order." Conference Rept. 93-845, 93d Cong., 2d Sess. 19 (1974).[3/]

2. The Corporation Has an Independent Board of Directors

An equally important feature of the Corporation's independence is the transfer of all policy authority with regard to legal services to an independent Board of Directors. The LSCA vests control of the Corporation in an eleven-member Board of Directors "appointed by the President, by and with the advice and consent of the Senate." 42 U.S.C. §2996c(a). Once appointed, however, the LSCA contains several provisions designed to prevent any further exercise of presidential control over the Board. For example, the President has no authority to remove Board members; once appointed, they can

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2/ Continued from previous page.

first meeting, "the Legal Services Corporation shall succeed to all rights of the Federal Government to capital equipment in the possession of legal services programs or activities assisted pursuant to Section 222(a)(3), 230, 232, or any other provisions of the Economic Opportunity Act of 1964." 42 U.S.C. §2996b note.

3/ The only exceptions contained in the LSCA give the Corporation's employees the benefits of federal programs relating to compensation for work injuries, civil service retirement, and health and life insurance. 42 U.S.C. §2996d(f). The Corporation is also subject to the Freedom of Information Act. 42 U.S.C. §2996d(g).

only be removed by a vote of seven members of the Board of Directors, and even then only "for malfeasance in office or for persistent neglect of or inability to discharge duties, or for offenses involving moral turpitude, and for no other cause." 42 U.S.C. §2996c(e). Although the President is empowered to designate the first Chairman of the Board to serve for three years, "[t]hereafter the Board shall annually elect a chairman from among its voting members." 42 U.S.C. §2996c(d).[4/] Also, the Board of Directors, and not the President of the United States, appoints the president of the Corporation, who in turn "may appoint and remove such employees of the Corporation as he determines necessary to carry out the purposes of the Corporation." 42 U.S.C. §§2996d(a), 2996d(b)(1).[5/]

The Board is given the power to enforce the LSCA and the Corporation's by-laws provide that "[t]he property, affairs, and business of the Corporation shall be under the direction of the Board." 42 U.S.C. §2996e(b)(1)(A), 45 C.F.R. 1601.7. Finally, in an amendment to the Economic Opportunity Act of 1964 entitled "Independence of [the] Legal Services Corporation," it is provided:

> Nothing in this chapter, except subchapter X [the Legal Services Corporation Act], and no reference to this chapter unless such

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4/ In the case of independent regulatory commissions, the President is empowered to designate one of the members to serve as chairman. See, e.g., 47 U.S.C. §155(a)(Federal Communications Commission).

5/ By comparison, heads of federal agencies serve at the will of the President. For example, the head of the Community Services Administration, which had previous responsibility for legal services, is appointed by the President with the advice and consent of the Senate. 42 U.S.C. §2941(a). Federal officers appointed under such circumstances serve at the pleasure of the President. Myers v. United States, 272 U.S. 52 (1926).

reference refers to subchapter X of this chapter, shall be construed to affect the powers and activities of the Legal Services Corporation. 42 U.S.C. §2971e.

3. Finances

As explained in the attached opinion of the Comptroller of the Currency, the Corporation's funds are handled differently from those of federal agencies.

Conclusion

For the foregoing reasons, it is plain that Congress intended to make real the statement that the Corporation "shall not be considered a department, agency, or instrumentality" of the Federal government." 42 U.S.C. §2996d(e)(1).

DEPARTMENT OF THE TREASURY APPROPRIATION WARRANT

Warrant No. 559-82-20-150-12

Accounting Date December 15, 1981

The Congress having, by the Acts hereon stated, made the appropriations hereunder specified, the amounts thereof are directed to be established in the general and detailed appropriation accounts, totaling in all $ 69,890,000.00 and for so doing this shall be the warrant.

The Secretary of the Treasury

By /s/ David L. Black

JAN 5 1982
(Date Signed)

Comptroller General of the United States

By _____

_____
(Date Countersigned)

Department of the Treasury - Bureau of Government Financial Operations

APPROPRIATION SYMBOL	TITLE	AMOUNT
	JOINT RESOLUTION	
	Making further continuing appropriations for the fiscal year 1982, and for other purposes.	
Public Law 97-92, 97th Congress	Approved December 15, 1981	
2020501	Payment to the Legal Services Corporation, Legal Services Corporation, Treasury, 1982	$69,890,000.

See Letter from the Division of Finance and Analysis Branch, dated December 28, 1981.

STANDARD FORM 1193
MAY 1973
6 TREASURY FRM 2000

ISSUING AGENCY	LETTER OF CREDIT	LETTER OF CREDIT NUMBER
Bureau of Govt Financial Operations Room 324, Annex #1 Washington, DC 20226	Auth: TREASURY DEPARTMENT CIRCULAR No. 1075, Revised	20-18-0003 AMENDMENT NUMBER 8
AGENCY STATION SYMBOL 20-18-9701	(FOR AGENCY USE)	EFFECTIVE DATE JAN 2 3 1990
TO: The Federal Reserve Bank, Richmond		BRANCH BANK AT

In accordance with the authorization of the Fiscal Assistant Secretary, Treasury Department, there is hereby authorized for the account and responsibility of the issuing agency a letter of credit:

IN FAVOR OF	FOR DEPOSIT ONLY TO
Legal Services Corp 733 15th Street, N.W. Washington, DC 20005	See Reverse ACCOUNT

AMOUNT AUTHORIZED		PRIOR AUTHORIZATION	THIS CHANGE
$1,215,800,000.00	☐ EACH MONTH ☐ EACH QUARTER ☒ WITHOUT TIME LIMIT ☐ _____	$ 1,146,910,000.00	Increase $69,890,000.00 Decrease $

This letter of credit is irrevocable and the unpaid balance will remain available until drawn in full.

Drawdowns in excess of $5 million are authorized.

The amount of this letter of credit is hereby certified to be drawn against, upon presentation to you of Form TUS 5401, Payment Voucher on Letter of Credit, by the official(s) of the recipient organization whose signature(s) appear(s) on the Standard Form 1194, Authorized Signature Card for Payment Vouchers on Letter of Credit, attached hereto or previously or subsequently furnished you through the Treasury Department.

The amount of each payment voucher paid by a Federal Reserve Bank or branch to a designated commercial bank for credit to the account of the recipient organization shall constitute payment to the recipient organization by the United States.

I certify to the Treasury Department that the payments authorized herein are correct and proper for payment from the appropriations or funds legally committed and available for the purpose, when paid in accordance with the terms and conditions cited above.

DATE CERTIFIED _____

AUTHORIZED CERTIFYING OFFICER
Walter L. Jordan
Assistant Comptroller for Finance
TYPED NAME AND TITLE

1193-10

☆ GPO 1981—315 019

MEMORANDUM OF UNDERSTANDING

BETWEEN THE LEGAL SERVICES CORPORATION

AND THE DEPARTMENT OF THE TREASURY

This agreement is based on the understanding of the Corporation and the Treasury that the Legal Services Corporation Act authorizes the Corporation to withdraw its entire appropriation at the beginning of the fiscal year, and that a principal purpose of the Congress in providing that authorization is to insure the independence of the Corporation from Executive Branch control. See 42 U.S.C. §2996i, S.R. 95-285 (95th Cong., 1st Sess.) pp. 54-55; S.R. 95-172 (95th Cong., 1st Sess.) p. 3; H.R. 95-310 (95th Cong., 1st Sess.) p. 6.

To achieve that purpose in a manner consistent with desirable cash management policies, the Corporation and the Treasury agree to the following arrangement for disbursement of such amounts as may be specified in Acts of Congress making appropriations to the Corporation.

On October 1, 1980, and at the beginning of each succeeding fiscal year, or as soon thereafter in each fiscal year as there may be an Act of Congress making an appropriation to the Corporation, the Department of the Treasury will issue

an irrevocable letter of credit under the federal reserve system to the Corporation in the full amount appropriated by the Congress for that fiscal year.

The appropriation to the Corporation will be shown as fully obligated on Treasury accounts when the letter of credit is issued.

The funds will continue to be available to the Corporation until expended, even if not fully expended at the end of the fiscal year, as is authorized under 42 U.S.C. §2996i.

The Corporation will draw down funds on an as-needed basis. Funds will be wire-transferred to a bank in which the Corporation maintains a checking account whenever a request for transfer is made by the Corporation. No justification or explanation will be required for any request.

The rules, regulations, and reporting requirements governing the usual letters of credit issued by federal agencies for other programs shall be inapplicable to the letter of credit issued to the Corporation.

The Treasury will promptly notify the Corporation if, at any time, the Office of Management and Budget or any other Executive Branch authority requests deobligation of Corporation

funds, or seeks to amend the apportionment schedule making the funds fully available at the beginning of the fiscal year.

Either the Corporation or the Treasury may terminate this agreement by giving written notice to the other of its intention to do so. Upon the giving of such notice this agreement shall be deemed terminated. However, termination shall have no effect on the validity of the then outstanding letter of credit or the Corporation's ability to withdraw funds authorized thereunder. Further, termination of this disbursement arrangement shall not be construed to affect the right of the Corporation to withdraw its entire appropriation at the beginning of the Fiscal Year nor shall it be presumed that such right is premised on the existence of this or any other agreement between the parties.

Paul Taylor
Fiscal Assistant Secretary
U.S. Department of the Treasury

Dan J. Bradley
President
Legal Services Corporation

Date: DEC 12 1980

Library References

United States ⇐82(1). C.J.S. United States § 122.

Notes of Decisions

1. Construction

Where the words of a statute fixing the compensation of a public officer are loose and obscure and admit of two meanings, they should be construed in favor of the officer. Moore v. U. S., 1868, 4 Ct.Cl. 140.

2. Contracts or agreements

When an office with a fixed salary has been created by a statute, and a person duly appointed to it has qualified and entered upon his duties, he is entitled, during incumbency, to be paid the salary prescribed by the statute; and effect will not be given to any attempt to deprive him thereof, whether by unauthorized agreement, by condition, or otherwise. MacMath v. U. S., Ct.Cl.1918, 39 S.Ct. 31, 248 U.S. 151, 63 L.Ed. 177.

There can be no implied contract by which an appointee undertakes to perform less than the whole duty, and to receive less than the full pay enacted by Congress. Stocksdale v. U. S., D.C.Md. 1889, 39 F. 62.

3. De facto offices

There may be a de facto officer, but never a de facto office. 1889, 19 Op.Atty. Gen. 443, 449.

4. Increase or reduction of salary

A salary established by statute can neither be increased nor disminished by executive officers. Dyer v. U. S., 1885, 20 Ct.Cl. 166. See, also, Andrews v. U. S., 1911, 47 Ct.Cl. 51.

5. Prerequisites to compensation—Generally

The legal right of an officer to the salary of an office depends upon his being de jure an officer holding or entitled to hold the office. Belcher v. U. S., 1899, 34 Ct.Cl. 400. See, also, Jackson v. U. S., 1906, 42 Ct.Cl. 39; Morey v. U. S., 1900, 35 Ct.Cl. 603.

6. —— Legality of appointment

It is immaterial, so far as compensation is concerned, whether an employment constitutes an office as defined in the Constitution, provided the appointment was made lawfully. Saunders v. U. S., 1886, 21 Ct.Cl. 408, affirmed 7 S.Ct. 467, 120 U.S. 126, 30 L.Ed. 594.

If an appointment be contrary to law, the party cannot recover for services rendered. Weeks v. U. S., 1886, 21 Ct.Cl. 124.

7. —— Rendition of services

One who is employed at a Navy yard at a per diem compensation is not entitled to compensation except for the time during which he actually renders services; and the fact that, after being suspended by the commandant, he holds himself ready to perform such services, gives him no claim against the Government. Murphy v. U. S., C.C.A.Cal.1897, 79 F. 255.

Where one claiming to be an officer rendered no service and held no official relation with the government, money paid him for salary may be recovered back. Miller v. U. S., 1884, 19 Ct.Cl. 338.

§ 5503. Recess appointments

(a) Payment for services may not be made from the Treasury of the United States to an individual appointed during a recess of the Senate to fill a vacancy in an existing office, if the vacancy existed while the Senate was in session and was by law required to be filled by and with the advice and consent of the Senate, until the appoint-

ee has been confirmed by the Senate. This subsection does not apply—

(1) if the vacancy arose within 30 days before the end of the session of the Senate;

(2) if, at the end of the session, a nomination for the office, other than the nomination of an individual appointed during the preceding recess of the Senate, was pending before the Senate for its advice and consent; or

(3) if a nomination for the office was rejected by the Senate within 30 days before the end of the session and an individual other than the one whose nomination was rejected thereafter receives a recess appointment.

(b) A nomination to fill a vacancy referred to by paragraph (1), (2), or (3) of subsection (a) of this section shall be submitted to the Senate not later than 40 days after the beginning of the next session of the Senate.

Pub.L. 89–554, Sept. 6, 1966, 80 Stat. 475.

Historical and Revision Notes

Derivation:	United States Code	Revised Statutes and Statutes at Large
	5 U.S.C. 56	R.S. § 1761. July 11, 1940, ch. 580, 54 Stat. 751.

Explanatory Notes

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

Library References

United States ⇐39(1). C.J.S. United States §§ 17, 44.

Notes of Decisions

1. Vacancies within section

A vacancy caused by death or resignation or by the creation of a new office is within this section. 1907, 26 Op.Atty.Gen. 234.

2. Power of President

The President is authorized to make recess appointments to fill vacancies which occurred while the Senate is in session. 1960, 41 Op.Atty.Gen., July 14.

Former section 56 of this title [now this section] in assuming to act upon the salary of officers appointed during the recess of the Senate, when the vacancies actually existed while the Senate was in session, had to be deemed a recognition by Congress of the invariable construction given by the Presidents to the power of appointment conferred upon them by the Constitution, and in postponing the payment of the salary of the appointee until the Senate had given its assent to the appointment, it conceded the right of the President to appoint, although it undoubtedly embarrassed the exercise of that right by subjecting the appointee to conditions which were somewhat onerous. 1880, 16 Op.Atty.Gen. 522. See, also, 1883, 17 Op.Atty.Gen. 521.

3. - Existence of vacancy whil was in session

Where vacancies on the Inters merce Commission and the Unit Tariff Commission [now Unit International Trade Commissio existed while the Senate was i were filled after adjournment of ate by the issuance of recess sions, the appointees could not their respective salaries under s appointments. 1920, 32 Op.Atty

4. Holdovers

The general rule is that, wh gress has not authorized the hold over, his incumbency deemed to cease at the end of though no appointment of a may then be made. 1882, 17 Op 448.

5. Nominations pending at en sion

The adjournment of the Senat 3, 1960, constituted the "termi the session of the Senate" w meaning of former section 56 of [now this section], so that pere nominations were pending b

§ 5504. Biweekly

(a) The pay period fo workweeks. For the purp

(1) an employee in

(2) an employee i the Capitol, the Bota for whom a basic adm section 6101(a)(5) o

(3) an individual e of Columbia;

but does not include—

(A) an employee o the Panama Canal C

(B) an employee of employee in secti ployee or individual tle.

(b) For pay computati nual rate of basic pay e payment for employment of 40 hours. When it is

8. Existence of vacancy while Senate was in session

Where vacancies on the Interstate Commerce Commission and the United States Tariff Commission [now United States International Trade Commission], which existed while the Senate was in session, were filled after adjournment of the Senate by the issuance of recess commissions, the appointees could not be paid their respective salaries under such recess appointments. 1920, 32 Op.Atty.Gen. 271.

4. Holdovers

The general rule is that, where Congress has not authorized the officer to hold over, his incumbency must be deemed to cease at the end of his term, though no appointment of a successor may then be made. 1882, 17 Op.Atty.Gen. 448.

5. Nominations pending at end of session

The adjournment of the Senate on July 3, 1960, constituted the "termination of the session of the Senate" within the meaning of former section 56 of this title [now this section], so that persons whose nominations were pending before the Senate on that day and who received recess appointments during the period of adjournment were entitled to the salaries attached to their offices, provided that the other conditions of former section 56 of this title [now this section] were met; and this right would not be terminated by any temporary or final adjournment of the second session of the 86th Congress. 1960, 41 Op.Atty.Gen., July 14.

Recess appointment to a position for which another name had been submitted to Senate but not acted upon before adjournment falls within the exception in subsec. (a)(2) of this section so that such recess appointee is entitled to compensation. 1955, 35 Comp.Gen. 135.

6. Submission of nominations after beginning of next session

The terminal proviso of former section 56 of this title [now this section] might have required that the President submit to the Senate not later than forty days after it reconvened on Aug. 8, 1960, the nominations of those officers who, during the recess of the Senate, received appointments to fill vacancies which existed while the Senate was in session. 1960, 41 Op.Atty.Gen., July 14.

§ 5504. Biweekly pay periods; computation of pay

(a) The pay period for an employee covers two administrative workweeks. For the purpose of this subsection, "employee" means—

(1) an employee in or under an Executive agency;

(2) an employee in or under the Office of the Architect of the Capitol, the Botanic Garden, and the Library of Congress, for whom a basic administrative workweek is established under section 6101(a)(5) of this title; and

(3) an individual employed by the government of the District of Columbia;

but does not include—

(A) an employee on the Isthmus of Panama in the service of the Panama Canal Commission; or

(B) an employee or individual excluded from the definition of employee in section 5541(2) of this title other than an employee or individual excluded by section 5541(2)(xvi) of this title.

(b) For pay computation purposes affecting an employee, the annual rate of basic pay established by or under statute is deemed payment for employment during 52 basic administrative workweeks of 40 hours. When it is necessary for computation of pay under