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M. Wampler
COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

B-201928

March 5, 1981

The Honorable William C. Wampler
House of Representatives

Do not write on this to avoid routing

Dear Mr. Wampler:

We refer to your recent letter requesting this Office to investigate an incident of alleged intervention by the New Hampshire Legal Assistance group into the implementation of a food stamp workfare pilot project in Nashua, New Hampshire and to determine whether such action constituted an illegal expenditure of Federal funds.

Under provisions of 7 U.S.C. 2026(b)(2), the City of Nashua filed an application dated September 15, 1980, with the Department of Agriculture to participate in a food stamp workfare demonstration project. The Mayor also introduced a resolution for consideration by the Board of Aldermen that would authorize the city to implement and expend funds for the project. The Aldermen referred the resolution to the Aldermanic Finance Committee for its review. While the resolution was under consideration, the New Hampshire Legal Assistance group, a Legal Services Corporation (LSC) grantee, wrote a letter to each member of the Committee noting potential problems with the workfare project and requesting that they defeat the resolution. The letter reads in part as follows:

"After studying the rules and regulations which govern such projects, we are convinced that the administrative burden and local costs associated with the operation of this ill-conceived and poorly designed 'Workfare experiment,' as well as the adverse impact it would have on Food Stamp participants, far outweigh any projected benefits to project sponsors. We believe there are several serious problems connected with the operation of a Workfare Demonstration Project by the City of Nashua. We would like to take this opportunity to alert you to these problems before you determine whether or not to implement the project. It is our hope that, after you have read and considered our comments, you will refuse to implement this project."

Statutory restrictions most applicable to the action of the New Hampshire Legal Assistance group are: (1) the restriction on the use of Federal funds to interfere with the implementation of the provisions

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of the Food Stamp Act, contained in section 134 of the Food Stamp Act Amendments of 1980, Public Law 96-249, May 26, 1980, 94 Stat. 357 (7 U.S.C. 2027) and (2) the restriction on the use of LSC grant funds by recipients to undertake to influence the passage or defeat of legislation by the Congress of the United States, or by any State or local legislative bodies contained in 42 U.S.C. 2996f(a)(5). Our investigation of this matter indicates that the group did not violate the restriction on the use of Federal funds to interfere with the implementation of Food Stamp Act provisions but did violate the restriction on the use of funds to influence legislation. The rationale for our determination is set forth below.

Interference with Food Stamp Act Provisions

Section 134 of the Food Stamp Act Amendments of 1980, Public Law 96-249, supra, prohibited the use of Federal funds to interfere with or impede the implementation of the provisions of the Food Stamp Act of 1977, as amended, including the provision contained in 7 U.S.C. 2026, authorizing workfare demonstration projects. Section 134 provides in part as follows:

"(2) No funds authorized to be appropriated under this Act or any other Act of Congress shall be used by any person, firm, corporation, group, or organization at any time, directly or indirectly, to interfere with or impede the implementation of any provision of this Act or any rule, regulation, or project thereunder, except that this limitation shall not apply to the provision of legal and related assistance in connection with any proceeding or action before any State or Federal agency or court. The President shall ensure that this paragraph is complied with by such order or other means as the President deems appropriate."

The stated congressional intent of the above quoted statutory provision is set forth in H. Report No. 96-788, 96th Cong., 2d Sess. 143-4, which accompanied the Food Stamp Act Amendments of 1980, (S.1309). That report reads in part as follows:

"This Committee has no quarrel at all--and could not under the First Amendment--with any organization's right, with the aid of Federal funds, to monitor the food stamp program through oversight activities, to represent participants as clients in court or before an administrative agency or department, be it Federal or State or local, or to advise recipients of their rights or obligations under the Act and consult with them

prior to any legal proceedings or action, or to seek to involve recipients in any decision-making process affecting their status. The Committee does not, however, want Federal funds employed to finance illegal non-First Amendment-covered activities that intentionally seek to prevent or block or impede the implementation of legislation sponsored by this Committee or of rules and regulations promulgated by the Department pursuant to this Act or projects called for by this Act. A suit to enjoin workfare or comments filed with the Department vigorously voicing opposition to workfare regulations are within and, indeed, the very genius of our democratic system. But counselling recipients to hassle or harass State and local officials with a view to changing illegally what legal means have failed to change cannot be countenanced. There can be no federally funded resort to counselled violence or intimidation or similar tactics in confronting problems that recipients and their organizations may have with this program. Legal authorities can deal with the resulting violations of law, but this Committee will assure the cut-off of Federal funds utilized to finance and foment those violations." (Emphasis supplied.)

The above report is instructive concerning congressional intent as to the meaning of the words "interfere with or impede." Congress was seeking to insure that Federal funds would not be used to support illegal activities designed to make implementation of projects such as workfare more difficult. Prohibited activities would include but not be limited to violence, threats of violence, intimidation of public officials or mass demonstrations against such projects. On the other hand, the legislative history suggests that Congress did not intend with the enactment of this provision to preclude organizations, with the use of Federal funds, from exercising their first amendment rights and making their views known to legislative bodies considering the possible implementation of Food Stamp Act provisions including workfare. Accordingly, we are of the opinion that the use of Federal funds by the New Hampshire Legal Assistance group to express its opinion in a letter to the Nashua Board of Aldermen that problems and disadvantages connected with the project would far outweigh any projected benefits should not be interpreted as interfering with or impeding the implementation of the project by the Board of Aldermen.

Restriction on Influencing Legislation

- The Legal Services Corporation Act of 1974, as amended, 42 U.S.C. 2996 et. seq., provides the Corporation with broad authority to fund legal assistance programs that furnish legal assistance to eligible

clients. Primarily, the Corporation does this by making grants to organizations such as the New Hampshire Legal Assistance group. The provisions of 42 U.S.C. 2996f establish certain criteria and restrictions the Corporation must observe in making such grants. Of particular interest is the restriction contained in 42 U.S.C. 2996f(a)(5) which requires the Corporation to insure that funds made available to grantees are not used either directly or indirectly to influence the passage or defeat of legislation by the Congress of the United States or by State or local legislative bodies. That provision reads as follows:

"§ 2996f. Grants and contracts--Requisites

"(a) With respect to grants or contracts in connection with the provision of legal assistance to eligible clients under this subchapter, the Corporation shall--

* * * * *

"(5) insure that no funds made available to recipients by the Corporation shall be used at any time, directly or indirectly, to influence the issuance, amendment, or revocation of any executive order or similar promulgation by any Federal, State, or local agency, or to undertake to influence the passage or defeat of any legislation by the Congress of the United States, or by any State or local legislative bodies, or State proposals by initiative petition, except where--

"(A) representation by an employee of a recipient for any eligible client is necessary to the provision of legal advice and representation with respect to such client's legal rights and responsibilities (which shall not be construed to permit an attorney or a recipient employee to solicit a client, in violation of professional responsibilities, for the purpose of making such representation possible); or

"(B) a governmental agency, legislative body, a committee, or a member thereof--

"(i) requests personnel of the recipient to testify, draft, or review measures or to make representations to such agency, body, committee, or member, or

"(ii) is considering a measure directly affecting the activities under this title of the recipient or the Corporation."

The Legal Services Corporation has advised us that the letter written by the New Hampshire Legal Assistance group to the Nashua Mayor and Aldermen constituted a violation of the above quoted statutory provision. We agree with that conclusion. Apparently a relatively new staff attorney utilizing Federal funds wrote the letter in an effort to dissuade the Aldermen from approving a resolution that would allow Nashua to participate in the demonstration project. The attorney did not write the letter on behalf of a specific client or group of clients that had sought representation, which would have served as an exception to the statutory restriction. Rather, the attorney wrote the letter for some of her clients who, she thought, would be adversely affected by the project, but had not requested her representation on this matter. Since the comments were not requested by the Board of Aldermen and did not concern a matter "directly affecting the activities * * * of the recipient or the Corporation," the other exception to the restriction similarly did not come into play. Consequently, Federal funds were expended illegally for the preparation and distribution of the letter.

The Legal Services Corporation informed us that the Director of the New Hampshire Legal Assistance group has taken appropriate remedial and disciplinary action as warranted by the violation. The group has also taken steps to assure that no attorney makes the same error again. We are satisfied with the resolution of this matter.

We hope this information is responsive to your request. If we can be of further assistance, please call on us.

Sincerely yours,



Acting Comptroller General
of the United States