



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Department Justice - Bureau of Justice Assistance -
Project Authorized by Appropriation Act.

File: B-230162

Date: May 6, 1988

DIGEST

The Bureau of Justice Assistance is required to make certain specified grant awards under earmark provisions contained in its fiscal year 1988 appropriation act. Should the Bureau not award these grants, it would constitute an impoundment and trigger the reporting requirements of the Impoundment Control Act.

DECISION

We have been asked by the General Counsel of the Office of Justice Programs, Department of Justice for our opinion on whether that office is required or permitted to make awards to Owensboro, Kentucky, and Alderson, West Virginia, under provisions contained in its fiscal year 1988 appropriation act. For the reasons explained more fully below, we conclude that the two awards for which funds were specifically earmarked within the appropriation for otherwise discretionary grants are mandatory. If Justice fails to comply with these statutory directives it must justify its position under the Impoundment Control Act.

Background

In the Justice Department appropriation act for fiscal year 1988, Pub. L. No. 100-202, Congress provided:

" . . . \$5,000,000 is provided for programs authorized under Part E of the Justice Assistance Act of 1984, notwithstanding the provisions of section 407 of such Act, including \$1,000,000 for a grant to assist in the construction of a consolidated judicial center in Owensboro, Kentucky, and including \$1,025,000 for a grant to the town of Alderson, West Virginia, to assist in the expansion of the municipal water treatment system serving the Federal Correctional Institution of Alderson, West Virginia . . . "

The General Counsel questions the authority of the Bureau of Justice Assistance of his office to make the awards

described in the appropriation act because he believes the awards would be outside the scope of Part E, which authorizes Office of Justice Programs to carryout a discretionary grant program. According to his view, the specified purposes of Part E do not cover construction projects of the kind earmarked in the appropriation act. Moreover, he says one category of grant purposes expressly prohibits construction projects.

Basically, we think that the provisions contained in the appropriation act earmarking the special programs overcome the problems noted by the General Counsel. It is true that in the absence of the earmarking provisions in question, it would be difficult to find that a construction project fits the program objectives contained in section 501 of Part E (42 U.S.C. § 3761). These objectives include those grant purposes stated in the Block Grant provisions of Part D, section 403 (42 U.S.C. § 3743(a)), which are incorporated into section 501 by reference. However, the appropriation language provides its own expanded authorization for these programs. Cf. B-202992, May 15, 1981. Moreover, the prohibition against assisting construction projects contained in section 406(c) (42 U.S.C. § 3746(c)) of Part D applies by its terms to awards under that Part. It is not applicable to Part E awards.

This conclusion is reinforced by the conference committee report on the appropriation act. That report, H. Rep. No. 498, 100th Cong. 1st Sess. at 491 (1987), indicates a clear congressional intent that these projects be funded as Justice Assistance programs. Accordingly, we conclude that in view of the appropriation language quoted above, which earmarks specified amounts for two specified awards, the Bureau of Justice Assistance is required to reserve funds for the two grants in question before it commits the balance of the appropriation for discretionary grants.

We recognize some of the practical problems imposed on the Bureau of Justice Assistance by being made responsible for grants of a kind that are not typical of those it administers. We do not express an opinion as to how these grants should be administered, except that the provisions of Part E should be applied so far as possible under the limitation created by the earmark language. The general principles of grant administration contained in departmental regulations and elsewhere also should be applied. The

earmarked funds are not available for any other purpose. Should the Bureau decide not to award the grants covered by the earmarking language, it must report that decision under the Impoundment Control Act, 2 U.S.C. § 683 (1982).

A handwritten signature in cursive script, reading "Milton J. Fowler".

Acting Comptroller General
of the United States