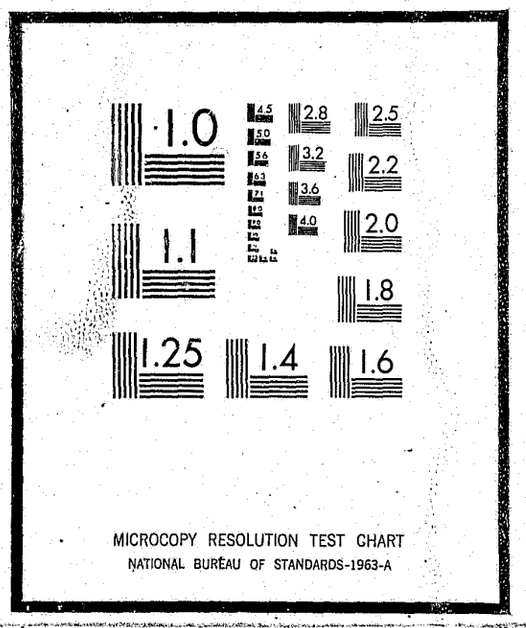

LEGAL OPINIONS

OF THE

OFFICE OF GENERAL COUNSEL

OF THE

LAW ENFORCEMENT ASSISTANCE ADMINISTRATION
UNITED STATES DEPARTMENT OF JUSTICE

ADMINISTRATOR

RICHARD W. VELDE

GENERAL COUNSEL

THOMAS J. MADDEN

WASHINGTON: 1975

Published by

The Office of General Counsel

Law Enforcement Assistance Administration

United States Department of Justice

633 Indiana Avenue, N.W.

Washington, D.C. 20531

202/376-3691

Editor

Nina Graybill

Associate Editor

DuPre Jones

NOTE TO READER

The Legal Opinions printed in this volume have been selected from among the hundreds of opinions issued by the Office of General Counsel during the time period covered by this volume. These opinions are of general interest and applicability and are provided for the benefit of the public and the law enforcement and criminal justice community. The printing of these opinions conforms not only with the letter of the Freedom of Information Act, which requires that in certain instances opinions affecting governmental agency actions be made available to the public, but also with the spirit of that law which calls for a more open government and greater access of the public to information affecting actions of Government agencies.

A Legal Opinion of the Office of General Counsel is generated by a request from within the Law Enforcement Assistance Administration (LEAA) central office, an LEAA Regional Office, a State Criminal Justice Planning Agency, or some other appropriate source. No Legal Opinions are generated by the Office of General Counsel acting on its own initiative. Each of these Legal Opinions, therefore, responds to a request from a particular party and is based upon a particular and unique set of facts.

Opinions which have been wholly superseded by amendment to the LEAA authorizing legislation have not been included in this volume. Although the principles and conclusions enunciated in these Legal Opinions, unless otherwise stated, are based on legislation in effect at the time that the Legal Opinion was issued, some of the opinions may have been in part superseded by legislative amendment. The reader is advised to cross-check the date of a particular Legal Opinion with the language of the legislation that was in effect on that date. Legal Opinions issued before January 2, 1971, are based on the Omnibus Crime Control and Safe Streets Act of 1968 (Public Law 90-351). Legal Opinions issued between January 2, 1971, and August 6, 1973, are based on the Omnibus Crime Control Act of 1970 (Public Law 91-644 amending Public Law 90-351).

The reader is also advised that these Legal Opinions are based on LEAA guidelines that were in effect at the time that the Legal Opinion was issued.

The Legal Opinions contained in this volume have been edited for format, for syntax, and for clarity, but otherwise appear in all respects as they did when promulgated by the Office of General Counsel.

Any person intending to rely in any way on a position adopted or an interpretation expressed in these Legal Opinions is advised to take into consideration the conditions and qualifications presented in this Note to Reader. If there is a question about a particular Legal Opinion or any other point, the person should communicate with the nearest LEAA Regional Office or with the Office of General Counsel, LEAA, Room 1268, 633 Indiana Avenue, N.W., Washington, D.C. 20531.

Legal Opinions in This Publication

Legislation Establishing LEAA Cited in This Volume

Note on Sectional Changes

1. The Omnibus Crime Control and Safe Streets Act of 1968 (Public Law 90-351) was the original legislation that established LEAA.
2. The 1970 amendments to that act were contained in the Omnibus Crime Control Act of 1970 (Public Law 91-644). The amendments redesignated Parts E and F of the 1968 act as Parts F and G and added a new Part E, entitled "Grants for Correctional Institutions and Facilities."

Omnibus Crime Control and Safe Streets Act of 1968

Omnibus Crime Control Act of 1970

Acts of Congress Cited in This Volume

United States Code Cited in This Volume

Page

Office of Management and Budget Circulars Cited in This Volume

Number

Decisions of the Comptroller General of the United States Cited in This Volume

LEGAL OPINIONS

OF THE

OFFICE OF GENERAL COUNSEL

OF THE

LAW ENFORCEMENT ASSISTANCE ADMINISTRATION
UNITED STATES DEPARTMENT OF JUSTICE

JANUARY 1 TO DECEMBER 31, 1969

ADMINISTRATOR

CHARLES H. ROGOVIN

ASSOCIATE ADMINISTRATOR

RICHARD W. VELDE

ASSOCIATE ADMINISTRATOR

CLARENCE M. COSTER

GENERAL COUNSEL

PAUL L. WOODARD

Legal Opinion No. 69-1—Law Enforcement Education Program (LEEP) Grants and Loans—August 14, 1969

TO: Acting Chief Academic Assistance, LEAA

This is in response to your memorandum of July 9, 1969, requesting an opinion on the following questions arising under Section 406 of the Omnibus Crime Control and Safe Streets Act of 1968 (Public Law 90-351):

1. May an institution participating in the LEEP program take a lump sum of $40 from its LEEP grant to cover the payment of a $2.50 registration fee for each of 16 police officers, without taking a separate note and requiring a 2-year service commitment from each officer?

2. May loan cancellation and grant forgiveness be permitted for full-time teaching of law enforcement at a university in lieu of employment with a law enforcement agency?

Registration Fees

There seems to be no way to avoid strict application of the act's requirements that an applicant may not receive any assistance under the LEEP grant program unless he signs a commitment to remain with his employing agency for 2 years following completion of the funded course or to repay the full amount of assistance granted, even where the assistance is only $2.50. The act (Section 406(c)) provides that:

> *Assistance under this subsection* may be granted only on behalf of an applicant who enters into an agreement . . . [to work 2 years or repay]. (Emphasis added.)

The only "assistance" permitted by the subsection is payment of "tuition and fees," which certainly includes registration fees. (See LEEP Manual, p. VII-15, definition of "Tuition and Fees.") Apparently, not even administrative expenses may be paid (LEEP Manual, p. II-9). Thus, payment of the fees must constitute "assistance under this subsection" and may be permitted only if the required notes and agreements are signed by the police officers. This result may be unfortunate, but seems inescapable.

Loan Cancellation and Grant Forgiveness

Section 406 can be read to permit the acceptance of full-time teaching of law enforcement as the basis for the cancellation of loans but not for the forgiveness of grants. This opinion is based strictly on a reading of the statutory language since there is no legislative history to assist in interpreting the academic assistance provisions.

Subsection (b) of Section 406 provides that loan indebtedness:

> . . . shall be cancelled for service as a full-time officer or employee of a law enforcement agency at the rate of 25 per centum of the total amount . . . for each complete year of such service *or its equivalent of such service*, as determined under regulations of the Administration. (Emphasis added.)

The most apparent intent of the italicized language is to permit some flexibility in computing the amount of time necessary to constitute a full year of service—for example, to permit nonconsecutive periods of service totaling 12 months to be counted as a year, or to permit overtime duty or certain types of intensive or accelerated duty to be counted at more than its calendar value. This is the most logical interpretation of the language and the one apparently recommended by the National Advisory Committee to LEEP. (LEEP Manual, Ch. 7—Definitions; see definitions of "Complete Year of Service," p. VII-5, "Equivalent of Such Service," p. VII-6, "Full-Time Employment," p. VII-8, and "Loan Forgiveness," p. VII-9.) However, it is not illogical to read the term "equivalent of such service" to mean also a year of service that is equivalent in kind as well as time to a year's full-time employment with a law enforcement agency. Thus, a year of teaching in the field of law enforcement could be determined by LEAA to be the equivalent of a year of employment with a law enforcement agency. This is not inconsistent with anything in the letter of Section 406 or the rest of Title I of the act, and it is certainly consistent with the spirit of both. In fact, Section 406(a) authorizes a program of "academic educational assistance to improve and strengthen law enforcement," and "law enforcement" is defined by the act (Section 601(a)) in broad enough terms to include teaching activities.

This would entail revisions in the LEEP Manual and promulgation of regulations by LEAA as well, since Section 406(b) indicates that what constitutes "equivalent" service is to be "determined under regulations of the [LEAA] Administration." This would involve compliance with the consultation requirement of Section 501.

Section 406(c) requires that a grant assistance recipient enter into an agreement to remain for 2 years following course completion "in the service of the law enforcement agency employing such applicant . . .," and, in the event such service is not completed, "to repay the full amount of such payments on such terms and in such manner as the [LEAA] Administration may prescribe."

The literal interpretation of this language is that in order to earn forgiveness, a grant recipient must stay for 2 years with the law enforcement agency employing him at the time the grant funds were advanced, and that if he does not stay the full 2 years with that same agency, he must repay all grant funds on whatever payment schedule LEAA prescribes, with no provision for cancellation. This is the interpretation stated in the LEEP Manual. On page II-7 it is stated that the 2-year service obligation must be performed for "the employing agency at the time of application." On page III-7 it is explained that transfers only within that agency are permitted. And, finally, on page III-8 it is stated that:

> When a student does not satisfy the 2-year employment requirement, repayments must begin immediately upon leaving his employer with no benefit of a grace period. The grant which converts to a loan has no forgiveness provision.

Of course, these are only guidelines and can be changed if LEAA wishes to adopt a different policy, so long as the new policy is consistent with the letter and spirit of the statutory language. The interpretation adopted in the present Manual is correct, however, and should not be changed unless the act is amended.

It is possible to argue that the phrase in Section 406(c) permitting LEAA to prescribe the terms and manner of repayment in case of default in the 2-year service obligation can be stretched to permit LEAA to forgive repayment under stated circumstances, which could include teaching in the law enforcement field. But this interpretation seems forced in view of the fact that the defaulting applicant incurs an obligation to "repay the full amount of such payments," which clearly contemplates repayment in money, not services. It is also inconsistent with the apparent purposes of subsection (c) to encourage law enforcement agencies to permit their personnel to go to school with the assurance that they will remain with the agency after completion of funded courses, and to encourage the upgrading of the educational level of all police forces by discouraging LEEP grant recipients from transferring to other agencies after completion of funded study, which would result in an exodus of personnel from small agencies to larger, better paying agencies. In other words, the obvious intent is to upgrade law enforcement agencies throughout the country by enabling law enforcement personnel to increase their educational level in return for an obligation to remain on the job. This intent would be partially frustrated if LEAA were to permit grant recipients to earn forgiveness for grants converted to loans by leaving their employing law enforcement agencies and going into teaching.

Conclusions

In summary, there seems to be no problem with interpreting subsection 406(b) to permit loan cancellation for law enforcement teaching, since such an interpretation is permissible from the language of the subsection and not inconsistent with any policy inherent in the subsection or the rest of Title I of the act. However, it does not appear that subsection 406(c) can be interpreted to permit grant forgiveness for law enforcement teaching, since such a result is very difficult to square with the language of the subsection and flies in the face of the apparent purpose of the requirement that a 2-year service obligation be fulfilled with the agency employing the grant recipient at the time he successfully applies for grant assistance. If this change in the LEEP program is considered desirable, it should be accomplished by amendment of the act.

Legal Opinion No. 69-2—Grant Funds for Compensation of Personnel—September 23, 1969

TO: Fraternal Order of Police
Muncie, Ind., Police Department

This is in response to your request for an opinion setting forth LEAA's interpretation of Section 301(d) of Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (Public Law 90-351), which governs utilization of grant funds for the compensation of personnel. Section 301(d) provides:

> Not more than one-third of any grant made under this part may be expended for the compensation of personnel. The amount of any such grant expended for the compensation of personnel shall not exceed the amount of State or local funds made available to increase such compensation. The limitations contained in this subsection shall not apply to the compensation of personnel for time engaged in conducting or undergoing training programs.

Pursuant to this provision, not more than one-third of any block grant made by LEAA to a State planning agency for law enforcement improvement programs may be expended for compensation of personnel exclusive of compensation for time engaged in conducting or undergoing training programs. This limitation applies to the total grant to the State, not individually to subgrants made by the State planning agency to units of local government or to individual programs funded by the State planning agency. Thus, subgrant projects may individually provide for expenditures of more than one-third of allocated Federal funds for personnel compensation so long as the combined personnel compensation expenditures for all programs and projects funded by the State planning agency action grant do not exceed the one-third limit.

In addition to this one-third ceiling, each dollar of Federal grant money expended for personnel compensation must be matched by a dollar contributed out of State or local funds to increase personnel compensation. This "matching" requirement applies on an individual program basis rather than a statewide basis. Thus, if a State planning agency awards a subgrant to a city within the State for a project in a particular law enforcement agency, the city must make local funds available to increase the total personnel compensation outlays by the agency during the subgrant period by at least as much as the personnel compensation charged to Federal funds under this subgrant.

These restrictions do not apply to personnel compensation under planning grants made by LEAA to States for the purpose of establishing and maintaining State planning agencies, nor, as noted above, do they apply to the compensation of personnel conducting or undergoing training programs. Thus, Federal funds may be used to reimburse grantees or subgrantees for compensation of personnel undergoing or conducting training programs, and such expenditures need not be matched by State or local expenditures for salary increases, and do not count toward the one-third limitation on expenditure of Federal funds for personnel compensation.

A hypothetical example may clarify the way in which the above limitations would apply in practice. Suppose State A receives an LEAA action grant for fiscal year 1970 of $3 million. The State's comprehensive plan for the grant period may provide for the utilization of some of the grant funds to increase the compensation of State and local law enforcement personnel. The State planning agency may fund some programs directly and fund others by means of subgrants to cities or other local governmental units. The portion of such grants and subgrants that may be used for salaries may vary. City A may use all of its subgrant funds to raise police salaries or employ more policemen. City B may use one-third for that purpose. Other cities may use no Federal funds for personnel compensation. However, the total amount of Federal funds used for personnel compensation under all of the programs combined may not exceed $1 million, one-third of the State's action grant. In addition, each subgrantee utilizing grant funds for salaries must increase its outlay for salaries from local

funds at least equal to the amount of Federal funds used for personnel compensation.

Thus, if City A conducts a subgrant project in a particular police agency involving a personnel compensation outlay of $20,000 from grant funds, the city must show that an additional $20,000 was made available from local funds to increase total personnel compensation outlays by the agency. Since training time is excluded for purposes of the statutory limitation, however, the police agency may hire additional policemen and use Federal funds to compensate them for the time they spend undergoing training; such funds do not count toward the one-third limitation and need not be matched by local funds.

[Note: Section 301(d) was modified in 1971 to read as follows:

> (d) Not more than one-third of any grant made under this section may be expended for the compensation of police and other regular law enforcement and criminal justice personnel. The amount of any such grant expended for the compensation of such personnel shall not exceed the amount of State or local funds made available to increase such compensation. The limitations contained in this subsection shall not apply to the compensation of personnel for time engaged in conducting or undergoing training programs or to the compensation of personnel engaged in research, development, demonstration or other short-term programs.]

LEGAL OPINIONS

OF THE

OFFICE OF GENERAL COUNSEL

OF THE

LAW ENFORCEMENT ASSISTANCE ADMINISTRATION
UNITED STATES DEPARTMENT OF JUSTICE

JANUARY 1 TO DECEMBER 31, 1970

ADMINISTRATOR

CHARLES H. ROGOVIN (RESIGNED JUNE 1, 1970)

ASSOCIATE ADMINISTRATOR

RICHARD W. VELDE

ASSOCIATE ADMINISTRATOR

CLARENCE M. COSTER

GENERAL COUNSEL

PAUL L. WOODARD

Legal Opinion No. 70-1—Federal Grants to State Legislatures—January 19, 1970

TO: Associate Administrators, LEAA

This is in response to a question concerning the recently issued memorandum from the Bureau of the Budget setting forth government policy on the making of Federal grants-in-aid to State legislatures or to such State legislative agencies as legislative reference or research bureaus. The memorandum advised that such agencies "are eligible to apply for Federal grants-in-aid unless a Federal statute specifically excludes their eligibility." You asked whether the Omnibus Crime Control and Safe Streets Act of 1968 (Public Law 90-351) specifically excludes their eligibility.

In the opinion of this Office, State legislatures and State legislative agencies are eligible for direct grants and other forms of assistance from LEAA under the act's Part D (the National Institute of Law Enforcement and Criminal Justice) and Part E (technical assistance) but not under Parts B and C (planning and action grants).

Under Section 402, the Institute is expressly authorized to make grants to any "public agency," which is defined by Section 601(1) to include any department, agency, or instrumentality of a State. Clearly this would include State legislatures and related agencies. Section 515 authorizes LEAA to conduct evaluation studies, collect and disseminate statistics, and render technical assistance to States, local units, or public or private agencies, organizations, or institutions. The activities authorized by Section 515 could be carried out by grant or contract and there is in effect no restriction on the permissible range of grantees or contractors that LEAA could utilize for such activities. State legislatures and State legislative agencies would be eligible.[1]

Parts B and C, however, expressly limit the range of permissible grantees in such a way as to exclude State legislatures and State legislative agencies from eligibility for direct LEAA grants. Part B permits LEAA to make planning grants only to States (Section 202) or, in case a State fails to apply, to units of general local government within that State (Sections 204, 305). Part C permits action grants only to States (Sections 301, 303) or to units of general local government (Section 305—where the State fails to apply; Section 306—discretionary grants). "Unit of general local government" is defined (Section 601(d)) as "any city, county, township, town, borough, parish, village, or other general purpose political subdivision of a State...." A State legislature or State legislative agency would not qualify as a unit of general local government under this definition. Hence, such bodies could not receive direct planning or action grants from LEAA. They could, of course, receive subgrants or contracts from

[1]Editor's Note: However, such grants to State legislatures and legislative agencies are subject to the cost allowance regulations of the Office of Management and Budget (Executive Office of the President, Office of Management and Budget, Circular No. A-87 (June 17, 1970)) including Attachment B, Part D, No. 8, which makes salaries and expenses of the State legislature or similar local governmental bodies unallowable as costs of the grant.

State Criminal Justice Planning Agencies or units of general local government.

Legal Opinion No. 70-2—Creation and Supervision of State Planning Agencies—February 24, 1970

TO: Confidential Aide to the Attorney General
State of New Jersey

This is in response to your letter of February 5, 1970, requesting confirmation of your understanding of LEAA's interpretation of Section 203(a) of the Omnibus Crime Control and Safe Streets Act of 1968 (Public Law 90-351). You wish to know if it is consistent with that provision of the act for the Legislature of New Jersey to establish a State Criminal Justice Planning Agency (SPA) within the Department of Law and Public Safety. You state that the Department of Law and Public Safety is, by State law, under the supervision of the Governor and is headed by the State Attorney General, who is appointed by the Governor.

LEAA has interpreted Section 203(a) as requiring that SPA's be created or designated by the Governor of a State and subject to his supervision. A Governor may create the agency by executive order if he has that power under State law, or, where he lacks such power, he may designate an existing or newly created State agency within the executive branch to be the SPA for purposes of Title I. LEAA's policy has been to defer to the State Governor on the issues of whether a SPA is subject to his jurisdiction and supervision and is to be designated as the planning agency for Title I purposes.

The arrangement proposed in New Jersey appears to be consistent with the above interpretation. The SPA created by the New Jersey Legislature would be within the executive branch of government and subject to the jurisdiction and supervision of the Governor of New Jersey. Assuming that the Governor will designate the agency as the SPA for purposes of Title I, this office believes the requirements of Section 203(a) will have been satisfied.

Legal Opinion No. 70-3—Definition of Unit of General Local Government—March 12, 1970

TO: Office of Academic Assistance, LEAA

This is in response to your request for an opinion as to whether a "Junior College District" is a "unit of general local government" for purposes of action grants under Part C of Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (Public Law 90-351).

Section 601(d) defines "unit of general local government" as a "city, county, township, town, borough, parish, village, or other general purpose political subdivision of a State, or an Indian tribe which performs law

enforcement functions . . .." It is clear from the examples given in the definition and the phrase "other general purpose political subdivision" that the only local governmental units that qualify are those with general political jurisdiction—that is, those that possess the variety of jurisdictional powers (e.g., taxing power, lawmaking power, law enforcement authority) usually possessed by a city, town, county, or similar unit. Some general law enforcement authority would be particularly requisite.

Although it is not entirely clear what a "junior college district" is, it can be described as an area defined strictly for educational purposes. Surely, it has no general law enforcement authority. Consequently, it would not qualify as a "unit of general local government" for action grant purposes. It would be eligible for Law Enforcement Education Program (LEEP) awards, National Institute for Law Enforcement and Criminal Justice grants, technical assistance funds (possibly), or National Criminal Justice Information and Statistics Service funds (possibly). It would not be eligible for direct action grants from LEAA, nor for subgrants from State Criminal Justice Planning Agencies (SPA) out of 75 percent local availability funds. It would, however, be eligible for awards out of 25 percent SPA action funds.

Legal Opinion No. 70-4—Eligibility for Funding of Proposals Relating to the District of Columbia Fire Department—April 9, 1970

TO: LEAA Regional Administrator
Philadelphia

This is in response to a request for an opinion as to the eligibility under Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (Public Law 90-351) of the funding of two action programs submitted by the D.C. Criminal Justice Coordinating Board having to do with the District of Columbia Fire Department. The first program would provide for the installation of protective apparatus on fire department vehicles to shield firefighters during riots and civil disorders. The second program would provide "sensitivity" training for fire department "public safety" personnel.

In the opinion of this Office, the first proposal is within the scope of Title I, and the second proposal is not.

Discussion

The proposal to install protective devices on fire department vehicles relates directly, and perhaps solely, to the control of riots and civil disorders. There is no question that control of fires during riots and civil disorders is a key part of efforts to control such outbreaks. The primary purpose of the protective devices would be to shield firemen engaged in fighting riot fires from the danger and harassment usually accompanying such disorders. The devices would have practically no utility except in such situations. Therefore, this

program is authorized under paragraph (1) and paragraph (6) of Section 301 of the act. Paragraph (1) authorizes the funding of programs for "public protection," including the development and implementation of new methods and equipment designed to strengthen law enforcement and to reduce crime. Paragraph (6) authorizes the funding of programs for the "prevention, detection, and control of riots and other violent civil disorders . . .." Although paragraph (6) is phrased in terms of the recruitment, organization, and training of law enforcement personnel in riot control tactics, Congress clearly intended Title I to authorize a wider range of riot control programs. The Senate report on Public Law 90-351 stated that funds appropriated for Title I would be used for projects or programs designed to "prevent or control riots." (Senate Report No. 1097, 90th Cong., 2d Sess. 35 (1968).)

A program such as this, which has a direct and substantial relation to the control of riots, qualifies for funding under Title I.

However, the proposal to provide "sensitivity" training to fire department "public safety" personnel is too vaguely and remotely related to law enforcement to qualify for funding under Title I. The proposal is essentially a fire department training and reorganization program. The basic function of a fire department is not "law enforcement" as that term is defined by the act, although some activities of fire departments are related to law enforcement, principally in the area of riots and civil disorders. Title I funding for fire department programs should be restricted, therefore, to those programs which relate directly and solely, or at least principally, to some aspect of law enforcement. It should not be extended to programs which relate principally to the firefighting functions of fire departments and which only incidentally or remotely affect law enforcement.

Legal Opinion No. 70-5—Matching Contributions by Indian Tribes—March 25, 1970

TO: Director
Office of Law Enforcement Programs, LEAA

This is in response to your memorandum requesting an opinion as to whether the value of goods and services acquired by Indian tribes with funds received from the Department of the Interior (Bureau of Indian Affairs) under contracts entered into pursuant to 25 U.S.C. 47 may be applied as matching contributions to projects funded under Part C of the Omnibus Crime Control and Safe Streets Act of 1968 (Public Law 90-351).

For the reasons discussed below, it is the opinion of this Office that the application of such charges are permissible as matching contributions.

Discussion

The Indian contracts in question are entered into by the Interior Department under a provision of a 1910 law, now codified as 25 U.S.C. 47, which provides as follows:

> So far as may be practicable Indian labor shall be employed and purchases of the products of Indian industry may be made in open market in the discretion of the Secretary of the Interior.

Public Law 90-351 does not expressly prohibit the use of funds received under other Federal grants to pay the costs of Title I programs. Section 301(c) merely limits the amount of LEAA action grant funds that may be applied toward the costs of programs undertaken with such funds. A strict interpretation of this language would permit the balance of program costs to be paid from any source other than the LEAA grant, including other Federal sources, presuming adequate authority existed in the non-LEAA Federal fund source. However, the legislative history of Title I makes it clear that Congress intended the non-LEAA portion of program costs to be paid from State or local funds—in order to assure a substantial State and local commitment to the programs and to reduce the likelihood of overdependence on Federal funds when Federal assistance eventually is withdrawn. This congressional intent is reflected in LEAA guidelines, which prohibit the use of funds received under other Federal programs to provide the matching shares for Title I funds (with the exception of funds received under the Model Cities Act (42 U.S.C. 3301), which expressly permits such funds to be used to provide the match for certain other Federal grants). There also is a series of opinions of the Comptroller General to the effect that funds received under one Federal grant may not be used to match funds under another Federal grant. (32 Comp. Gen. 141; 32 Comp. Gen. 561; 47 Comp. Gen. 81.)

The rationale of these opinions and guidelines does not apply to funds received by Indian tribes under contracts pursuant to 25 U.S.C. 74. These funds are received in return for services or products. Thus, they are unlike grant funds, which are given to the grantee as outright assistance. The contract funds lose their identity as Federal funds and may be treated as belonging to the Indian tribe in the same way the contracted-for services or products belonged to the tribe. The funds, therefore, may be used as local match for LEAA programs.

Legal Opinion No. 70-6—Eligibility of Residents of the Trust Territory of the Pacific for LEEP Funds—May 18, 1970

TO: Office of Academic Assistance, LEAA

This is in response to your memorandum concerning the application of the Omnibus Crime Control and Safe Streets Act of 1968 (Public Law 90-351) to residents of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the

Trust Territory of the Pacific Islands. Your memorandum was addressed in particular to a letter from the University of Guam questioning the eligibility of students from the Trust Territory for LEEP grants and loans under Section 406 of the act.

Discussion

The "Declaration and Purpose" provision of the act states that it is "...the declared policy of the Congress to *assist State* and local governments in strengthening and improving law enforcement at every level by national assistance." [Emphasis added.] The clear import of this statement is that all programs funded by LEAA must in some manner assist State and local governments. This sentiment is also expressed in the legislative history of the act. Accordingly, in answering your question, the first issue that must be resolved is whether Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands are "States" within the meaning of the act.

"State" is defined in Section 601(c) of the act to mean "any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico and any territory or possession of the United States." Puerto Rico is expressly included in the definition and is therefore covered by the act. The Virgin Islands, Guam, and American Samoa are all defined by other provisions of Federal law as territories or possessions of the United States (48 U.S.C. Sections 1405, 1421(a), 1661) and therefore are also included in the definition and covered by the act. The Trust Territory of the Pacific Islands, however, presents a problem in this context.

The Trust Territory of the Pacific Islands is held in trust by the United States under an agreement with the United Nations. This agreement was approved by a Joint Resolution of Congress on July 18, 1947, and is noted at 48 U.S.C.A. Section 1681. Under the trusteeship agreement and the laws enacted pursuant to it, the United States administers the Trust Territory in much the same manner as it does its other territories. The Trust Territory is governed by a High Commissioner appointed by the President and receives an annual appropriation from Congress. However, under the agreement with the United Nations, ultimate authority over the Trust Territory resides with the Security and Trusteeship Council of the United Nations and not with the United States. The United States does not exercise sovereignty over the Trust Territory but instead is required by the trusteeship agreement to "promote the development of the inhabitants of the Trust Territory towards self-government or independence." Citizens of the Trust Territory are neither citizens of the United States nor nationals.

Conclusion

Because the United States does not exercise sovereignty over the Trust Territory of the Pacific Islands, the Trust Territory should not be considered a "territory or possession of the United States" nor a "State" within the meaning of Public Law 90-351. This interpretation is clearly supported by the

considerable volume of case law which evolved during the last century and the early part of this century when the United States was growing and acquiring many new territories. For example, in a case involving the Utah territory, the Supreme Court held in 1896 that "territories of the United States" are lands over which Congress has "the entire dominion and sovereignty, national and municipal, Federal and State" (*United States* v. *McMillan,* 165 U.S. 504, 510). Similar statements are found in *Dorr* v. *United States* (195 U.S. 138 (1904)), involving the Philippine Islands, and *Murphy* v. *Ramsey* (114 U.S. 15 (1885)), also dealing with the Utah territory. This opinion is in agreement with an earlier LEAA legal opinion which considered the definition of "State" in Section 601(c) and concluded by implication that trusteeships (such as the Trust Territory of the Pacific Islands) are not included in this definition.

Since the Trust Territory of the Pacific Islands is not a State, the area is not eligible for block grants or other forms of assistance available to States under Title I. Colleges and universities in the area (if there are any) are not eligible for LEEP awards, and citizens or residents of the Trust Territory are not eligible for any form of assistance under Title I by virtue of their citizenship or residence in the Trust Territory. However, students from the Trust Territory may be eligible for LEEP loans or grants through schools located in Puerto Rico, the Virgin Islands, Guam, or American Samoa, which are "States" and are eligible for Title I awards. Section 406, when read in the broad context of the rest of the act, does not restrict qualifying schools to awarding loans and grants to persons who are citizens or nationals of a State as that term is defined by the act.

The test is whether the loan or grant in question would have the purpose of improving and strengthening law enforcement in State and local governments. The test would be met if the loan or grant recipient, though not a citizen or national of an included State, were or intended to become a permanent resident of a State, were eligible for post-study employment in a State in a field related to law enforcement, and otherwise satisfied the requirements of the LEEP Guidelines. Thus, for example, a citizen of the Trust Territory of the Pacific who permanently resides in Guam or intends (and is eligible) to become a permanent resident of Guam and intends (and is eligible) to pursue a law enforcement career in Guam or some other "State" would be eligible for a LEEP loan through the University of Guam, assuming he otherwise qualified under the LEEP Guidelines.

The LEEP manual provides (Chapter III-A-1) that, as a condition of eligibility for LEEP funds:

> The applicant must be a citizen or national of the United States or a person who is in the United States for other than a temporary purpose and intends to become a permanent resident thereof.

In order to cover situations such as that presented here, and in keeping with this opinion, it is recommended that this section be rewritten as follows (the italics indicate new language):

> The applicant must be a citizen or national of the United States or a person who is in the United States, *its possessions or its territories,* for other than a temporary purpose and *is or* intends to become a permanent resident thereof.

Specific questions as to residency of citizens of the Trust Territory living in Guam should be referred to the Guam Office of the United States Bureau of Immigration and Naturalization.

Legal Opinion No. 70-7—Action Funds Not Required by Local Units—March 3, 1970

TO: Director
Office of Law Enforcement Programs, LEAA

This is in response to your request for LEAA's views concerning the provision in Section 303 of the Omnibus Crime Control and Safe Streets Act of 1968 (Public Law 90-351) which authorizes LEAA to fix dates on which 75 percent "local availability" funds not required by local units within a State may be spent by the State Criminal Justice Planning Agency (SPA). One conclusion is that LEAA must fix dates within the Federal fiscal year in which the State block grant is approved, and that therefore, June 30 is the latest date in a given fiscal year that may be designated, even though this may leave a very short period for local participation when grants are approved late in the fiscal year.

This Office does not believe, however, that LEAA is confined to fixing dates within the Federal fiscal year in which the State block grant is approved; the dates may be fixed with reference to a reasonable length of time after the date of approval of individual State grants, even if the date in some cases falls after the end of the Federal fiscal year in which the grant is approved.

Paragraph (2) of Section 303 provides that an SPA must make available to local units at least 75 percent of all Federal funds granted to it "for any fiscal year." The final sentence of the section then provides that any portion of such 75 percent funds made available to local units "in any fiscal year" which are not required by such units may be spent by the SPA on dates fixed by LEAA "during that year." Although the term "any fiscal year" seems on first reading to refer to the Federal fiscal year, this interpretation is not upheld by a reading of the section in the context of all of Part C. Nothing in Part C requires that a grant year be made to correspond with the Federal fiscal year, and, in fact, LEAA has administratively fixed a different grant year for plan revision and action fund application purposes. In view of this, the Section 303(2) phrase "funds granted to the . . . [SPA] . . . for any fiscal year" and the phrase "in any fiscal year" in the last sentence of Section 303 could refer logically to a grant fiscal year which is different from the Federal fiscal year. Pursuant to this interpretation, LEAA could fix dates for SPA expenditure of unused local funds by reference to a reasonable period of time after the beginning of the grant year and period of allowable expenditure, even though such dates might fall after the end of the Federal fiscal year during which the grant is made.

The legislative history of Part C suggests that Congress intended the provision and the virtually identical provision in Part B applicable to planning funds (Section 203(c)) to be implemented in this way, i.e., by permitting local units a reasonable period of time after funds are granted to the SPA to make

known their intention to use the local funds. The section-by-section analysis of the Dirksen block grant amendment inserted in the Record by Senator Roman L. Hruska on May 16, 1968, and by Senator Everett M. Dirksen on May 24 (the day after the bill passed the Senate) explains Section 203(c) as follows:

> It is intended that this provision be implemented in such a way that a reasonable time be fixed for units of local government to participate, to make their intentions known to the State agency. As to the requirement for available funds, if Federal grant assistance becomes available on the first of the fiscal year, the Law Enforcement Assistance Administration might reasonably require that the State agency accept applications for a minimum of 3 months from local governments and normally not longer than 6 months. If there is not sufficient interest by the local governments, then the State agency would have use of the uncalled-for funds during a significant portion of the remaining fiscal year.

This detail is not repeated in the part of the analysis dealing with Section 303; it is merely stated that local action funds shall revert to the SPA's if not claimed within the times fixed by LEAA. It seems safe to conclude, however, that both sections were intended to be implemented in the same way.

The controlling language in the analysis is the opening statement that local units should be afforded a "reasonable time" to make known to the SPA's their intention to participate in the grant program. The example given of how the provisions might be implemented seems to refer to the Federal fiscal year, but it explicitly assumes that the block grant will be approved on the first of such fiscal year, in which case local units can be given up to 6 months to pick up on the local availability funds and still have 6 months left for SPA use of unclaimed funds. In fact, however, LEAA appropriations have been approved midway in the fiscal year, and State grants have been approved 3 or 4 months later, leaving only 2 or 3 months at most remaining in the Federal fiscal year. Interpreting Section 303 to require revision dates to be fixed before the end of the fiscal year would frustrate, at least in Part C, the intent of Congress. Either the local units would be afforded less than a reasonable period of time to make their decisions, or no reversion dates would be fixed by LEAA, and the SPA's could not spend funds not eventually claimed by local units. In such circumstances, it more nearly accords with the way Congress intended Section 303 to be implemented to use the grant year as the relevant reference period and fix the date for reversion of unused local funds to the SPA at a reasonable period (6 months, for example) after grant approval, even though the date may fall after the end of the Federal fiscal year.

Guidelines should be revised to provide that SPA's may spend 75 percent local funds not claimed within "X" months after approval of the State grant, *provided adequate notice and opportunity to apply*, etc., have been afforded to local units, and LEAA has been advised beforehand of the amount of such unclaimed funds and the method of determination and has approved.

Legal Opinion No. 70-8—Direct SPA Subgrants of 75 Percent "Local" Funds to Entities Other Than Local Governmental Units—April 10, 1970

TO: Director
Office of Law Enforcement Program, LEAA

This is in response to your memorandum of April 9 requesting LEAA's views as to whether a State Criminal Justice Planning Agency (SPA) may grant or contract 75 percent local action funds directly to entities other than units of general local government "if the local units agree to let the product of such contracts or grants stand in lieu of a direct distribution of funds to them."

It is the opinion of this Office that such grants and contracts are proper, assuming consent and acceptance by the units of local government.

Paragraph 2 of Section 303 of the Omnibus Crime Control and Safe Streets Act of 1968 (Public Law 90-351) provides that at least 75 percent of each State's action grant "will be available" to local units or combinations of such units. This provision is interpreted to mean that the funds normally should be "made available in the form of subgrants or other fund transfers from the SPA to local units or combinations of local units." (1970 Grant Guide, p. 54.) However, LEAA expressly permits the costs of services provided by the States to be charged as funds made available to local units if the local units agree. (1970 Grant Guide, p. 55.) There is no reason why the same rule should not apply where local units agree to accept the product of grants or contracts with other entities in lieu of the direct receipt of funds from the SPA. This would be true especially in the hypothetical situation described in your memorandum, where the local unit cosponsors the application by the other entity and expressly authorizes the distribution of funds to the other entity in case the application is approved. The end result is no different in effect from a direct grant to the local unit followed by a subgrant or contract to the other entity.

The range of grantees or contractors who may receive and utilize 75 percent action funds for the benefit of local units is unlimited. Included would be public and private educational institutions, public agencies, or private profitmaking or nonprofit corporations. For example, a local unit or a combination of local units may agree to have its share of 75 percent funds granted directly to a State agency which will use the funds to provide training for local law enforcement officers or to a private organization which will use the funds to support a juvenile delinquency control program that will benefit the local units. Similarly, all of the local units in a State may agree to have a share for a given year used by the SPA for grants or contracts to nonlocal entities to renovate and update the State correctional system.

LEAA and its Regional Offices should carefully scrutinize all such arrangements, however, to be sure the local units are fully advised of their right to receive and utilize the funds directly, if they prefer, and to assure that the local units receive products or services of direct and sufficient benefit. Also, transfers of funds to profitmaking organizations must be by contract instead of by grant.

Legal Opinion No. 70-9—Eligibility of American Samoa and the Trust Territory of the Pacific for LEAA Funds—May 28, 1970

TO: Assistant Director, Pacific Division
Office of Territories, U.S. Department of the Interior

This is in response to your letter concerning the eligibility of American Samoa and the Trust Territory of the Pacific Islands for assistance under the various programs of LEAA.

LEAA was created by Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (Public Law 90-351) to "assist State and local governments in strengthening and improving law enforcement." "State" is defined in Section 601(c) of the act to mean "any State of the United States, the District of Columbia, Puerto Rico and any territory or possession of the United States." LEAA, as noted in your letter, has five basic programs under which it makes funds available to assist these States and their units of local government.

Pursuant to Parts B and C of the act, LEAA makes planning and action grants to each State for planning and implementing action programs to improve law enforcement. Funds appropriated for these programs are distributed to the States on a population basis. These grants are made to State Criminal Justice Planning Agencies (SPA's) established in each State under the jurisdiction of the State's chief executive. LEAA also makes discretionary grants under Part C to States and units of local government. "Discretionary grants," as the name might indicate, are not made on a population basis but are distributed at the discretion of LEAA to States and units of local government. Under Part D of the act, LEAA's National Institute of Law Enforcement and Criminal Justice makes grants and contracts with public agencies, institutions of higher learning, and private organizations for research and development to improve and strengthen law enforcement in the States. LEAA also has an academic assistance program under which it makes grants under Part D to institutions of higher education in the States. These insititutions in turn make grants and loans to students employed in law enforcement or preparing for law enforcement careers.

Conclusions

American Samoa is a territory of the United States and is therefore a State within the meaning of the act. Accordingly, American Samoa is eligible on the same terms as the other States for funds under all five programs and is in fact presently receiving financial assistance from LEAA. American Samoa has established an SPA which has received a planning grant of $23,000 from the fiscal year 1970 budget. In addition, the SPA in American Samoa recently received action and discretionary grants of $50,000 in fiscal year 1970 funds.

The Trust Territory of the Pacific Islands presents a different problem because the United States does not exercise sovereignty over the Trust Territory. The Supreme Court in numerous cases has held that an area is a

"territory of the United States" if the United States exercises sovereignty over it. Consequently, the Trust Territory is not a "territory of the United States" in the legal sense and is not a State for the purpose of Title I of the Safe Streets Act.

Since as noted, planning, action, and discretionary grants are made only to States as defined by the act, the Trust Territory is not eligible for these funds. However, a few Institute grants have been given to organizations not located within the States where it was clearly shown that the project could not be performed by organizations located within the States and where the project had a direct bearing on improved law enforcement in the States. Organizations in the Trust Territory with research and development capabilities are eligible to submit proposals to the Institute for programs that meet these criteria. It should be noted that Institute grants or contracts are made on a selective basis for projects which meet the priorities established in the Institute's annual program and project plan, and are awarded, where feasible, on a competitive basis.

Finally, the act does not limit eligibility for Academic Assistance loans and grants to citizens of the States. Accordingly, citizens of the Trust Territory who are, or intend to become, permanent residents of any State of the United States—including territories which qualify as States under the act, such as Guam—who are eligible and intend to pursue post-study employment in a field related to law enforcement, and who otherwise satisfy the requirements set forth in LEAA's Law Enforcement Education Program Manual are eligible for grants and loans from institutions of higher education, such as the University of Guam, that are located in a State and are receiving Academic Assistance grants from LEAA.

Legal Opinion No. 70-10—Use of Model Cities Grant Funds to Match LEAA Grant Funds—June 10, 1970

TO: Associate Administrator, LEAA

This responds to your request for an opinion on the question of whether Model Cities funds may be used to supply the non-Federal contribution to the cost of projects funded under LEAA grants.

Section 105 of the Demonstration Cities and Metropolitan Development Act of 1966 (Public Law 89-754, 80 Stat. 1255) authorizes grants for the purpose of paying up to 80 percent of the *aggregate* amount of non-Federal contributions to projects and activities assisted under other Federal grant-in-aid programs which are "carried out in connection with" Model Cities demonstration programs. A program is deemed to be carried out in connection with a Model Cities demonstration program if it is "closely related to the physical and social problems in the area of the city covered by the program" and "can reasonably be expected to have a noticeable effect upon such problems." LEAA programs and projects qualify under these criteria, and if they are included within the applicant city's "comprehensive city demonstration program," the non-Federal share of the costs of such programs and projects may be paid from Model Cities grant funds.

This conclusion is reflected in LEAA's current Financial Guide, which states (p. 39) that the general prohibition against using Federal funds from other grants to pay the match for LEAA programs and projects does not preclude the use of Model Cities funds to match Title I planning and action grants of the Omnibus Crime Control and Safe Streets Act of 1968 (Public Law 90-351).

Legal Opinion No. 70-11—Definition of "Publicly Funded Law Enforcement Agency"—June 11, 1970

TO: Director
Office of Academic Assistance, LEAA

This responds to your memorandum dated June 3, 1970, requesting an opinion as to whether or not the term "publicly funded law enforcement agency" in Section 406(c) of the Omnibus Crime Control and Safe Streets Act of 1968 (Public Law 90-351) can be construed to include privately chartered or incorporated rehabilitation agencies (such as Lincoln Hall in New York State, described in the material you forwarded with your memorandum) which obtain a large part of their operating funds from State or local agencies as compensation for the treatment of persons assigned to them by State or local courts.

It is the opinion of this Office that such agencies are not "publicly funded law enforcement agencies" within the meaning of Section 406. Even outside of the context of the act, the term "publicly funded law enforcement agency" most logically means an agency or instrumentality of the Federal Government or of a State or local government which is fully funded by that government and fully subject to its jurisdiction and control. Considered in the context of the act, that implication is even stronger. The act distinguishes between public and private agencies and organizations in a number of places (Section 402(b), for example) and clarifies the distinction by defining "public agency" (Section 601(i)) to include:

> . . . any State, unit of local government, combinations of such States or units, or any department, agency, or instrumentality of any of the foregoing.

It is clear that the term "publicly funded agency" means "public agency" as defined in Section 601(i), and that private agencies such as Lincoln Hall are not included in that definition.

Legal Opinion No. 70-12—Use of Action Funds to Purchase National Guard Equipment—July 21, 1970

TO: Director
Office of Law Enforcement Programs, LEAA

This is in response to your request for an opinion concerning the eligibility of the National Guard for funding under Section 301 of the Omnibus Crime Control and Safe Streets Act of 1968 (Public Law 90-351).

Specifically, you were concerned with provisions in the Maryland, Louisiana, and Ohio comprehensive plans for the purchase of riot control equipment for their State National Guard units.

LEAA was organized under Title I of the Safe Streets Act "to assist State and local governments in improving and strengthening law enforcement." The primary thrust of the act is directed toward assisting the police, corrections, and court functions of law enforcement, and there is no indication that Congress intended that the act would authorize the purchase of equipment for the National Guard.

National Guard units are organized under the authority of Article I, Section 8 of the United States Constitution as implemented by Title 32 of the United States Code; Congress, pursuant to this authority, annually appropriates funds to be used in the purchase of equipment by the National Guard. The Department of the Army, National Guard Bureau, was contacted in this regard and they stated that over 95 percent of the costs of the National Guard units in the States are paid for with Federal funds and that these funds have been used in the past to purchase riot control equipment. The National Guard Bureau also indicated that tear gas guns, face masks, shields, command and control vehicles, radios, and the like are provided by the Army to the State National Guard units for riot control purposes. The Bureau did state, however, that in the past some of this equipment has not been available when needed by a particular unit of the Guard.

It can be argued that the Safe Streets Act would authorize States to purchase equipment which is to be used directly and in substantial part when the National Guard is engaged in the prevention and control of civil disorders. The use of this equipment in this manner would have a direct effect on "improving and strengthening law enforcement." However, the fact that Congress provides separate funds for the National Guard to use in the purchase of riot control equipment would appear to weaken this argument.

Accordingly, action funds should not be used to purchase riot control equipment for the State National Guard. There should be no objection, however, to a State or unit of local government purchasing such equipment and making it available to the National Guard on an "as needed" basis for riot control when it can be shown that the equipment is not available from the Army. It should be noted that LEAA since its inception has held consistently that its funds are not available directly to the National Guard for the purchase of equipment.

Legal Opinion No. 70-13—Interpretation of Section 406 in Regard to Grant Eligibility—July 31, 1970

TO: Director
Office of Academic Assistance, LEAA

This is in response to your memorandum requesting an opinion as to whether LEEP grant recipients must be matriculated in degree programs or

may merely be enrolled and taking courses that could be credited toward a degree.

Section 406 of the Omnibus Crime Control and Safe Streets Act of 1968 (Public Law 90-351) authorizes LEAA to carry out programs of academic educational assistance to improve and strengthen law enforcement. This is done, in part, by providing grant assistance to "officers of any publicly funded law enforcement agency enrolled on a full-time or part-time basis in courses included in an undergraduate or graduate program which is approved by the Administration and which leads to a degree or certificate. . . ." (Section 406(b) and (c).)

Your question in regard to grant eligibility under this section has two parts. First, must a grant recipient be formally enrolled in an institution of higher education to be eligible for assistance? The problem arises where colleges do not require that a student taking night or summer school courses be accepted for enrollment. Consequently, a police officer could receive grants over a period of time to take such courses, decide that he would like to receive a degree, and be rejected by the institution when he applied for admission. The second part of the question is whether a grant recipient, otherwise enrolled, has to be matriculated in a degree program, or merely may be undertaking courses which can be credited toward a degree if he should later decide to seek one.

Unfortunately, there is little legislative history to aid in interpreting Section 406. It was not in the bill originally passed by the House of Representatives (August 8, 1967, House Report 6037), but was added by amendment in the Senate Judiciary Committee. However, in the committee report accompanying the amended bill there are a few paragraphs directly addressed to Section 406. They indicate that in formulating the provision the Judiciary Committee relied almost exclusively on the report and recommendations of the President's Commission on Law Enforcement. (Senate Report 1097, 90th Cong., 2d Sess. 38 (1968).)

The Commission Report emphasizes the need for higher educational standards for police personnel and concludes that the quality of police service will not significantly improve until such standards are established. In a recommendation specifically endorsed by the Judiciary Committee, the ultimate educational goal of police departments was set at a baccalaureate degree for all personnel with general law enforcement powers. (President's Commission on Law Enforcement and the Administration of Justice, Task Force Report: The Police, pp. 126-128 (1967).) This emphasis on upgrading educational levels is not to be confused with vocational training: "Although there is a need for vocational training, it is not and cannot be a substitute for a liberal arts education. . . ." (Commission Report, p. 127.) The act itself embodies this distinction; training functions are dealt with in a number of sections, whereas education is expressly covered only in Section 406.

This strongly suggests that the purpose of Section 406 is to upgrade the educational levels of law enforcement personnel by encouraging academic work that leads to a college degree. The phrase "leads to a degree or certificate" needs to be emphasized because it indicates the type of education that Congress intended to encourage—a study of the liberal arts (though restricted to an area related to law enforcement). (See Commission Report, pp. 127-128.)

Consequently, vocational training courses or nondegree academic work are outside the coverage of the provision. Such an interpretation conforms easily with the language of the section requiring that a grant recipient be enrolled in courses that are included in an undergraduate or graduate program, and that the courses lead to a degree or certificate. These conditions would be inexplicable if they were not intended to channel recipients toward liberal arts degrees.

Accordingly, it is the opinion of this Office that a student not enrolled in an educational institution, even though he may be taking courses there, is not eligible for assistance. Essentially, such a student is auditing courses—a stiuation outside the provisions of Section 406. The lack of admission requirements and academic credit may indicate that the courses are primarily vocational in nature and/or inferior in quality compared to regular courses within the institution. In addition, the students themselves may lack the ability to perform college level studies successfully. While it is recognized that this may not always be the case, the provisions of Section 406 must nevertheless be observed. Students must be enrolled in courses included in a regular academic program in the college in order to qualify for assistance.

However, the phrase "leads to a degree or certificate" should not be construed to mean that all recipients are required to matriculate in a degree program. The phrase should be interpreted to include those students who, while not working toward a degree, are taking courses which can be credited toward a degree. It is the type of course undertaken that is determinative in an individual case, not the program pursued. If the course is part of a regular academic program and can be credited toward a degree, it is sufficiently "nonvocational" to qualify for assistance. (See LEAA, Law Enforcement Education Program Manual, Ch. IV, I (1969).) To construe Section 406 otherwise would unnecessarily limit its coverage and thereby frustrate the intent of Congress.

To summarize, both the language and the legislative history of Section 406 lead to the conclusion that it is intended to upgrade the educational levels of law enforcement personnel by enabling them to obtain college degrees. It must be emphasized that it is education, not vocational training, that is the object of the provision. To insure that that object is carried out, Section 406 requires that grant recipients be enrolled in courses within an undergraduate or graduate program leading to a degree or certificate. These requirements must be observed if the program is to comply with the intent of Congress. However, the degree requirement is satisfied if the course can be credited toward a degree; it is not necessary for the student actually to be working toward a specific degree or to have matriculated in a degree program.

Legal Opinion No. 70-14—Block Grant Concept: Litigation Report—October 16, 1970

TO: Assistant Attorney General
Land and Natural Resources Division, U.S. Department of Justice

LEAA was established under Title I of the Omnibus Crime Control and Safe Streets Act of 1968, (Public Law 90-351, 82 Stat. 197, 42 U.S.C. 3701 *et seq.*) "to assist State and local governments in improving and strengthening law enforcement." Pursuant to Parts B and C of the act, LEAA makes annual matching "block" grants to each of the States for planning and implementing programs to improve law enforcement.

The situation in question concerns LEAA's fiscal year 1970 block action grant to the State of Virginia. This grant was made pursuant to Virginia's comprehensive plan for the improvement of law enforcement, which was approved by LEAA. In its plan, Virginia set aside a portion of its block grant funds for the construction of prison facilities, including a reception and medical center. The comprehensive plan did not disclose the proposed location of any of the prison facilities, although the complaint alleges that the reception and medical center will be built in the Green Springs area of Louisa County, Virginia. The complaint asks for a permanent injunction to prevent the Associate Administrators of LEAA from delivering any amount of Federal funds to Virginia to build the Green Springs facility.

Subsequent to the filing of the complaint, LEAA attempted, at the request of the U.S. Department of Justice, to determine if there were any avenues of compromise open in this case. LEAA was particularly interested in determining whether Virginia was irrevocably committed to building the prison facility at Green Springs. Discussions were held with personnel of the Virginia Department of Institutions and Corrections; they stated that Virginia conducted extensive studies and found that the Green Springs site was the best possible location in Virginia for the facility in question. The Institutions and Corrections Department also stated that if adequate water were found on the Green Springs site, immediate steps would be taken to initiate construction of the facility. The Green Springs site subsequently was found to contain adequate water. The Assistant Attorney General of Virginia then contacted LEAA and stated that Virginia wanted to move ahead with the building of the prison facility as soon as possible. He asked if LEAA would object to an expedited hearing. The matter was then referred to the Justice Department's Land and Natural Resources Division.

Legal Considerations

Congress, in the preamble to the LEAA legislation, stated that "Crime is essentially a State and local problem that must be dealt with by State and local governments if it is to be controlled effectively." (82 Stat. 197, 42 U.S.C. 3701.) Pursuant to this philosophy, the act established a matching grant-in-aid program under which LEAA makes annual block planning and action grants to the States. The grants are called "block" grants because the grant funds are

required by the act to be allocated in lump sums among the States on the basis of population for distribution and expenditure by the States and cities according to criteria and priorities determined by the States and cities themselves. (82 Stat. 197, 202, 42 U.S.C. 3736.) LEAA also makes "discretionary" action grants which may be distributed at LEAA's discretion to States or directly to units of local government for categorical purposes.

Block planning grants are utilized by the States to establish and maintain State Criminal Justice Planning Agencies (SPA's). The SPA is created or designated by the chief executive of the State and is subject to his jurisdiction (82 Stat. 199, 42 U.S.C. 3723). Each SPA determines needs and priorities for the improvement of law enforcement throughout the entire State. The SPA then defines, develops, and correlates programs to improve and strengthen law enforcement for its State and all the units of local government within the State. All of this material and information is incorporated into a comprehensive statewide plan for the improvement of law enforcement which is annually submitted to LEAA for review and approval. (82 Stat. 199, 42 U.S.C. 3723.)

When a State's plan has been reviewed and approved, the State is eligible to receive its allocated block action grant for that fiscal year. It should be noted that LEAA is required by statute to make block action grants if the SPA has an approved comprehensive plan that conforms with the purposes and requirements of the Safe Streets Act (82 Stat. 201, 42 U.S.C. 3733) and with rules, regulations, and procedures established by LEAA consistent with the Safe Streets Act (82 Stat. 205, 42 U.S.C. 3751). Under the block grant program, the States order their own priorities through the comprehensive plan, and LEAA cannot dictate to State and local governments how to run their criminal justice systems so long as the plan is consistent with the act. LEAA does does not approve or disapprove specific projects in the comprehensive plan unless they are inconsistent with the provisions of the Safe Streets Act.

The block grant approach was written into the Safe Streets Act on the floor of the Senate by an amendment offered by Senator Everett M. Dirksen. (114 Cong. Rec. 14753 (daily ed. May 23, 1968).) In explaining the amendment, Senator Dirksen contrasted block grants with the categorical grant system under which most other Federal grant programs operated at that time. Under categorical grant programs, the Federal Government sets the purpose and terms for the use of grant funds by the States and units of local government. Senator Dirksen stated in criticizing these programs:

> Of course, when this money is granted, a little of the flexibility and the liberty of the State is taken away because it has to comply with the conditions of the grant. (114 Cong. Rec. 14753 (daily ed. May 23, 1968).)

Later in the debate the Senator stated:

> So the [criminal justice] system is outmoded, and to dump $500 million into the system with its fragmentation and its weaknesses is going to be a waste of the people's money. This is the reason for the so-called block grant amendment. We still have some flexibility, namely 15 percent [as discretionary action grants], but the emphasis and focus is upon the State, where it ought to be. . . .(114 Cong. Rec. 14754 (daily ed. May 23, 1968).)

Senator Edmund S. Muskie, speaking against the block grant amendment, criticized it as follows:

> By contrast, under the block grant amendment, all Federal grants would be made solely to the States, under a strict allocation formula, and the States alone would be responsible for distributing the funds to local governments. (114 Cong. Rec. 14754 (daily ed. May 23, 1968).)

Senator J. Strom Thurmond, in supporting the block grant amendment, gave five reasons why it should be accepted by the Senate, the most pertinent of which follows:

> Fourth, the block-grant amendment would lessen the likelihood of Federal domination of programs administered under this bill. The power to grant or to withhold Federal funds is most persuasive. If this power is concentrated in an agency in Washington, the opportunity for stifling and dictatorial control from the Federal Government is clearly present. In an area as important and sensitive as law enforcement, the prospect of imposition of Federal standards not required by statute is disturbing. This Federal domination and control is as likely to occur through the normal bureaucratic procedures involved in approving grant applications from thousands of local applications and thousands of local jurisdictions as it is through design. In either case, Federal control is undemocratic, removed from the people, and less likely to consider local problems and conditions.
>
> The block-grant approach would provide for overall approval of statewide comprehensive plans at the Federal level, but the actual devising and implementing of plans and programs at the State and local level. (114 Cong. Rec. 14759 (daily ed. May 23, 1968).)

In a similar vein, Senator Roman L. Hruska stated:

> Mr. President, because block grants would leave the responsibility of law enforcement and the control of the funds with the State governments, the program would also contain the coordination and flexibility required. State planning agencies would be able to establish coordinated, comprehensive State plans and establish priorities governing law enforcement agencies and the systems of courts and correctional, as well as penal, institutions. This is best accomplished at the State level. State plans would be designed and created by persons with an expertise in all aspects of law enforcement in their State and municipalities. They would have firsthand, at-home understanding, information, know-how, and "feel" for conditions, needs, and priorities. (114 Cong. Rec. 12824 (daily ed. May 10, 1968).)

It should be noted that a pure block grant is defined normally as one made to a State or a unit of local government for a broad functional area with the decision as to its exact application left to the recipient. The LEAA program, as noted by Senator Hruska, who was a cosponsor with Senator Dirksen of the block grant amendment, is not a pure block grant program within this definition. (114 Cong. Rec. 12824 (daily ed. May 10, 1968).) The Safe Streets Act, while leaving the selection and implementation of law enforcement programs with the States, imposes certain conditions for the approval of grants with which the SPA's must comply. Thus, LEAA must see that the plans submitted by the SPA's are truly comprehensive and clearly outline the

projects for which funds are requested. Furthermore, Section 501 of Title I of the Safe Streets Act (82 Stat. 205, 42 U.S.C. 3751) provides that:

> The Administration [LEAA] is authorized, after appropriate consultation with representatives of States, and units of general local government, to establish such rules, regulations, and procedures as are necessary to the exercise of its functions, and are consistent with the stated purpose of this title.

Under this authority, LEAA has established procedural guidelines for the preparation and submission of comprehensive plans, and fiscal guidelines for the expenditure of funds. In addition, LEAA has established certain conditions with which the SPA's must comply. The purpose of these guidelines and conditions is to assure that the SPA's follow sound administrative and fiscal management policies in the utilization of the block planning and action grants. The imposition of these guidelines and conditions is consistent with the Safe Streets Act, which specifies that each comprehensive plan shall "provide for such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of and accounting of funds received under this title" (82 Stat. 201, 42 U.S.C. 3733(11)) and shall "provide for the submission of such reports in such form and containing such information as the Administration may reasonably require" (82 Stat. 201, 42 U.S.C. 3733(12)). This imposition is also consistent with Section 521 of Title I of the Safe Streets Act (82 Stat. 208, 42 U.S.C. 3769), which provides:

> (a) Each recipient of assistance under this Act shall keep such records as the Administration shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.
>
> (b) The Administration and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for purpose of audit and examinations to any books, documents, papers, and records of the recipients that are pertinent to the grants received under this title.

LEAA has also established grant conditions with respect to copyrights and patents, which are designed to assure that the benefits of one State's efforts with block grant funds may be freely utilized by other States or units of local government without the imposition of royalties. Similarly, LEAA imposes a condition requiring that the States and units of local government receiving block grants comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d (1-6)(1971).) The application of Title VI was specifically discussed during hearings on the Safe Streets legislation before the Senate Judiciary Committee's Subcommittee on Criminal Laws and Procedures. The Attorney General stated at that time that Title VI of the 1964 Civil Rights Act would apply to all grant programs.

None of the conditions or guidelines imposed by LEAA is in conflict with the basic principles of the Safe Streets Act block grant concept under which the States and not the Federal Government have the right to determine the law enforcement programs to be funded with block action grants.

Plaintiff's Contentions

The plaintiffs contend that under 16 U.S.C. 470, LEAA in making its block action grant to Virginia was required to take into account the effect of the proposed prison facility on Boswell's Tavern, which is in the Green Springs area and which is included in the National Register maintained by the National Trust for Historic Preservation in the United States. Plaintiffs further contend that 16 U.S.C. 470 requires the Associate Administrators of LEAA to give the Advisory Council on Historic Preservation and opportunity to comment on the proposed undertaking.

The imposition of such requirements on LEAA is contrary to the legislative mandate of Congress in writing the block grant structure into the Safe Streets Act. Under the act, LEAA has no authority to dictate to the State of Virginia how its block action grant funds shall be utilized. The States have the right to order their own law enforcement priorities, and LEAA has no authority to approve or disapprove specific law enforcement programs proposed by the States in their comprehensive plans, so long as those programs are within the scope of the act.

Virginia, in fiscal year 1970, included $225,000 for the Green Springs project in the comprehensive plan approved by LEAA. The Green Springs project is authorized under Section 301 of the Safe Streets Act (82 Stat. 199, 42 U.S.C. 3731(b)), which provides in pertinent part that:

> (b) The Administration is authorized to make grants to States having comprehensive State plans approved by it under this part, for–
>
> (1) Public protection, including the development, demonstration, evaluation, implementation, and purchase of methods, devices, facilities, and equipment designed to improve and strengthen law enforcement and reduce crime in public and private places.
>
> * * * * *
>
> (4) Construction of buildings or other physical facilities which would fulfill or implement the purposes of this section.

Virginia's fiscal year 1970 comprehensive plan met all of the requirements established for comprehensive plans by the Safe Streets Act and the guidelines established by LEAA. Accordingly, LEAA was required under the terms of Section 303 to award Virginia its allocated share of the fiscal year 1970 block action grant funds appropriated by Congress. LEAA was without authority to take any other action.

The Associate Administrators of LEAA have not acted in violation of any Federal statute. The unique nature of a block grant as provided by the Safe Streets Act removes from the Administrators any discretion over the ultimate use to which approved funds are put, so long as that use is consistent with LEAA's guidelines and the plan originally approved. Insofar as their discretion has already been exercised in the approval of the plan for fiscal year 1970, the Court should not upset an administrative decision unless it can be shown that the discretion of the Administrators has been abused. It cannot be said that the Administrators have abused their discretion by granting funds for the Green Springs site, since no specific site was proposed in the 1970 plan, nor was any

specific site required to be proposed by Virginia under the block grant concept. Even if the Administrators were required to seek the advice of the Advisory Council on Historic Preservation, they still could not have required Virginia to follow the advice of the Council.

The complaint is premature insofar as it concerns the 1971 fiscal year appropriation, since Virginia has not yet submitted its 1971 comprehensive plan. The appropriate course of action which should be followed by the plaintiffs would be to present their complaint to the Virginia SPA in an effort to influence the exercise of their discretion when the plans for fiscal year 1971 are submitted.

The plaintiffs also contend that LEAA's block grant to Virginia violates the National Environmental Policy Act (42 U.S.C. 4321 *et seq.* (1971)) because the proposed prison facility will result in irreparable environmental degradation and destruction of the historical, architectural, and aesthetic value of the Green Springs area.

This is clearly not the case. The National Environmental Policy Act states that:

> It is the continuing responsibility of the Federal Government to use all practicable means, *consistent with other essential considerations of national policy,* to improve and coordinate Federal plans, functions, programs and resources to the end that the Nation may ... (4) Preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice, and (5) Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities .... (Emphasis added.)

If this act could be read as requiring a Federal agency to withhold grant funds–and it is not clear that this is the case–the act still would not apply to LEAA's block action grants. The declarations and purpose provision of the Omnibus Crime Control and Safe Streets Act ot 1968 (82 Stat. 197, 42 U.S.C. 3701) states that:

> Congress finds that the high incidence of crime in the United States threatens the peace, security, and general welfare of the Nation and its citizens. To prevent crime and to insure the greater safety of the people, law enforcement efforts must be better coordinated, intensified, and made more effective at all levels of government.
>
> Congress finds further that crime is essentially a local problem that must be dealt with by State and local governments if it is to be controlled effectively.
>
> It is therefore the declared policy of the Congress to assist State and local governments in strengthening and improving law enforcement at every level by national assistance. It is the purpose of this title to (1) encourage States and units of general local government to prepare and adopt comprehensive plans based upon their evaluation of State and local problems of law enforcement; (2) authorize grants to States and units of local government in order to improve and strengthen law enforcement; and (3) encourage research and development directed toward the improvement of law enforcement and the development of new methods for the prevention and reduction of crime and the detection and apprehension of criminals.

This is a clear statement of a "national policy" that crime must be dealt with at the State and local level. Under the block grant approach set out in the Safe Streets Act, the States and local governments have the right to choose their own law enforcement programs. To apply the National Environmental Policy

Act to require LEAA to withhold block grant funds would be inconsistent with at least equally compelling "essential considerations of national policy" embodied in the Safe Streets Act.

Legal Opinion No. 70-15—Title I Eligibility of Personnel of Massachusetts Registry of Motor Vehicles and the Division of Law Enforcement of the Massachusetts Department of Natural Resources—December 7, 1970

TO: LEAA Regional Administrator
Boston

This is in response to your request for an opinion as to the eligibility for Title I assistance of personnel of the Massachusetts Registry of Motor Vehicles. You have been advised that personnel of that agency are not eligible for Law Enforcement Education Programs (LEEP) assistance. You wish to know whether the agency is eligible for assistance under Part C. You also question the eligibility of the Division of Law Enforcement of the Massachusetts Department of Natural Resources.

In the opinion of this Office, the advice concerning the eligibility for LEEP assistance of personnel of the Massachusetts Registry of Motor Vehicles is correct and applies as well to personnel of the Department of Natural Resources.

Section 406 of the Omnibus Crime Control and Safe Streets Act of 1968 (Public Law 90-351) authorizes forgivable loans and grants for inservice law enforcement officers and persons desiring careers as law enforcement officers. "Law enforcement" is defined by Section 601(a) to include "all activities pertaining to *crime* prevention or reduction and enforcement of the *criminal* law" (emphasis added). The LEEP Manual (Chapter III-B-2) defines "law enforcement officer" (police component) as including employees of any Federal, State, or local agency "having as its primary function the enforcement of criminal laws, in general . . ." and as excluding employees of any agency the primary function of which is the enforcement of civil, regulatory, or administrative law . . . even though arrest powers may be associated with the position," inuring from "special police or deputy commissions issued by a unit of local, State, or Federal government."

This LEEP regulation is perfectly consistent with the language and legislative history of Title I, and expressly excludes the two Massachusetts agencies about which you inquire. Both are regulatory agencies concerned with the implementation of specialized areas of administrative law. Neither agency is primarily concerned with enforcement of the criminal law. Since they do not meet the "primary function" criterion, the fact that their employees have and may occasionally exercise peace officer powers does not qualify them as criminal law enforcement officers in the context of Title I.

It is also the opinion of this Office that a similar "primary function" test must be applied to determine eligibility of agencies and individuals under Part C, which authorizes block and discretionary grants for "programs and projects

to improve and strengthen law enforcement." Since "law enforcement" must have the same meaning in Part C as in Part D, the Massachusetts agencies and their employees cannot be considered "law enforcement agencies" or "law enforcement personnel" for Part C purposes. Thus, neither agency may receive a grant for agencywide purposes, such as agency reorganization, recruiting of personnel, or training of personnel. And employees of the agencies are not eligible for assistance—such as executive development fellowship grants—available only to "law enforcement officers."

However, this does not mean that the agencies and their employees are ineligible to receive any kind of assistance under Part C. Under Part C, LEAA is limited to making grants to States and units of general local government. Each State must make at least 75 percent of its block grant funds available to local units. However, the act imposes no limitations on the range of grantees to whom the States and cities may disburse their respective shares of LEAA funds, so long as the funds are used for programs and projects to improve and strengthen law enforcement. Thus, the Massachusetts State Criminal Justice Planning Agency (SPA) or a local unit in the State may disburse funds to the Registry of Motor Vehicles or the Department of Natural Resources for any qualifying crime control program in which the agencies have the authority to participate. For example, the Registry of Motor Vehicles could receive a grant from the State or from a city to participate in a program relating to motor vehicle theft. And the Division of Law Enforcement of the Department of Natural Resources could receive grants to participate in programs relating to civil disturbances or narcotics violations.

For the same reasons, this Office previously issued an opinion that the District of Columbia Fire Department may not be given a grant for the purposes of general departmental reorganization and sensitivity training for departmental personnel, but may be given a grant to buy protective canopies for fire trucks for use in fighting fires during riots. The primary function of the D.C. Fire Department is firefighting, not crimefighting; hence, a grant to reorganize the department or to support the general activities of the department would not be within the scope of Part C. However, the protective canopies would be useful only during riots and other civil disturbances, and thus would be authorized by the provisions of Section 301(b) relating to civil disorders.

In summary, agencies which are not primarily engaged in the enforcement of the criminal law, but rather have as their primary function the implementation of civil, regulatory, or administrative law, are not "law enforcement" agencies for Part C eligibility purposes even though they may have some criminal law enforcement powers. Similarly, employees of such agencies who are not primarily engaged in the enforcement of the criminal law are not individually eligible for Part C assistance as "law enforcement" officers. However, such agencies and employees may receive assistance for the purpose of participation in *programs or projects* which qualify under Part C. In such cases, eligibility is based upon the program or project rather than upon the nature of the agencies or the employees.

Legal Opinion No. 70-16—Definition and Usage of Technical Assistance Under Title I of the Safe Streets Act—December 8, 1970

TO: Associate Administrators, LEAA

As requested, this Office has reviewed LEAA's technical assistance authority.

Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (Public Law 90-351) directs LEAA to assist States and local governments in strengthening and improving law enforcement. The principal thrust of LEAA's efforts has been through the block grant program. However, the States and units of local government have a need for expertise that will enable them to utilize effectively the funds they are granted. This need begins with the development of planning techniques and action programs. It carries through to the provision of training programs and the preparation of informational manuals in selected areas of law enforcement.

LEAA has attempted to meet this need by providing technical assistance to the States and units of local government. The importance of this effort was underlined by LEAA in testimony before the House Appropriations Committee on the fiscal year 1971 appropriation. It was stated there that "to a large extent the value of the grant-in-aid program depends on the amount and quality of technical assistance which LEAA can provide."[1] In fiscal year 1971, a number of questions have arisen regarding the scope and range of technical assistance which LEAA is authorized to provide. This memorandum will attempt to define what is meant by technical assistance and to identify authorized technical assistance projects and their associated costs.

The Definition of Technical Assistance

Section 515(c) of the act authorizes LEAA:

> . . . to cooperate with and render technical assistance to States, units of general local government, combinations of such States or units, or other public or private agencies, organizations, or institutions in matters relating to law enforcement.

The act, however, does not define "technical assistance," and there is no pertinent legislative history to assist in determining what Congress meant by the term.[2] However, the term is found in the enabling legislation of other government agencies which carry out technical assistance programs, and it is a well-settled principle of statutory construction that the interpretation of the term in our act should be guided by reference to these laws.[3]

The term "technical assistance" traditionally has been associated with programs of international assistance. However, in recent years, the term also has been employed in the language of many of the statutes which authorize programs of Federal domestic assistance. While an examination of the legislative and administrative materials relating to these programs reveals no comprehensive definition of "technical assistance," a comprehensive definition can be gleaned from the proliferation of social science literature relating to the subject of international and domestic assistance. These materials generally describe technical assistance as the communication of knowledge, skills, and know-how.[4] The means of communication are said to include the provision of expert advisory personnel, the conduct of training activities and conferences, and the preparation and dissemination of technical publications.[5]

The phrase "the communication of knowledge, skills, and know-how by means of expert advisory personnel, the conduct of training activities and conferences, and the preparation and dissemination of technical publications" would appear to provide a satisfactory working definition of the term "technical assistance," and it is suggested that this definition be adopted. The three categories of means of communication are broad enough to encompass all of the technical assistance activities in which LEAA has engaged to date, as well as those which it contemplates undertaking in the future. The nature of these activities has been made clear to Congress in LEAA's fiscal year 1970 and 1971 budget presentations, and Congress has provided implicit approval of these programs by tacit acceptance of the presentations and approval of increases in the amount of funds appropriated for technical assistance purposes.[6]

The proposed definition also conforms to the programs established by other government agencies in their domestic assistance programs.[7] Thus, this definition not only finds support in the legislative history developed by LEAA in the Congress, but also in the usages of other programs in the field of international and domestic assistance.

Technical Assistance Projects

The budget presentations for LEAA's fiscal year 1970 and 1971 appropriations specifically allocated a certain portion of the total appropriation to be utilized for the implementation of technical assistance projects under

[1] *Hearings on H.R. 17575 Before the Subcommittee on the Departments of State, Justice, and Commerce, the Judiciary and Related Agencies of the House Committee on Appropriations*, 91st Congress, 2d Session, Part 1, at 903 (1970) (hereinafter referred to as *"FY 1971 House Appropriations Hearings"*).

[2] The act in Section 303 also requires that each State Criminal Justice Planning Agency in its comprehensive plan shall "demonstrate the willingness of the State to contribute technical assistance or services for programs and projects contemplated by units of general local government."

[3] J. Sutherland, *Statutory Construction*, Sections 6101-6105 (3rd ed. 1943); *Keifer* v. *Reconstruction Finance Corp.*, 306 U.S. 381 (1939).

[4] M. Domerque, *Technical Assistance* (1968), Volume 2, pp. 46-52.

[5] *Id.*, at pp. 53-72. See also, Martin, *Technical Assistance: The Problem of Implementation*, 12 Public Administration Review 258 (1952).

[6] *Hearings on H.R. 12964 before the Subcomm. on the Depts. of State, Justice & Commerce, the Judiciary, & Related Agencies of the House Comm. on Appropriations, 91st Cong., 1st Sess., Pt. I, at 1013-14 (1969)* (hereinafter referred to as *"FY 1970 House Appropriations Hearings"*) and *FY 1971 House Appropriations Hearings, supra*, at 878-9.

[7] Many of these programs are described in the *Catalog of Federal Domestic Assistance* (1970). The catalog was prepared by the Office of Economic Opportunity for the Executive Office and is an anthology of all governmental domestic assistance programs.

Section 515(c) of the Safe Streets Act. The remainder of the appropriation was allocated for other purposes, such as administrative expenditures, planning grants, action grants, and the Institute. It is necessary to define carefully the types of programs which qualify as technical assistance programs in order to provide a working rule for the allocation of expenses to the technical assistance fund.

There is a wide range of programs which fall within the proposed definition of technical assistance and the limitations imposed by Section 515 of the act. Technical assistance, in the context of the block grant concept, is the primary way, and in many instances the only way, in which LEAA can respond effectively to the needs of the States and cities for specialized direction in areas in which they lack the necessary expertise. The interaction of technical assistance and action grants can accelerate adoption of improvements in all aspects of law enforcement. As the LEAA program expands, it is anticipated that the States and units of local government will develop much of the needed expertise, but at present there is a vacuum which must be filled by LEAA.

Generally, technical assistance programs which would fall within the proposed definition and the limitations of Section 515(c) of the act include:

1. Conferences, lectures, seminars, workshops, and demonstrations.
2. Onsite assistance, training, and publications:

- To assist planning and operating agencies in developing and implementing comprehensive criminal justice planning and management techniques.
- To assist planning and operating agencies in identifying the most effective techniques of controlling specific crime problems.
- To assist State and local agencies in implementing new law enforcement programs and techniques.
- To assist citizen action groups and other nongovernmental groups in developing projects to participate in State and local crime control efforts.

Specific technical assistance programs which have already been undertaken by LEAA[8] and which could clearly be conducted in the future include:

- Training workshops in comprehensive criminal justice planning for regional groupings of States.
- Regional workshops on financial management of block grant programs.
- National workshops on planning correctional elements in State plans.
- Annual national workshops of State Criminal Justice Planning Agency (SPA) directors and LEAA personnel to evaluate the previous year's activities, resolve problems, and explore the major issues to be faced in the following year.
- Workshops on organized crime programs.
- LEAA program division consultations with virtually all States on programming in one or more of the major crime control areas (police, courts, corrections, disorders, organized crime).
- Direct consultation with operating agencies in the corrections and organized crime areas (similar efforts are anticipated in the courts and financial management areas).

[8] See *FY 1970 House Appropriations Hearings* and *FY 1971 House Appropriations Hearings, supra.*

- Publication and dissemination of planning and action guidelines.
- Multi-State meetings of SPA directors by LEAA regional offices to help States resolve problems of policy, fund administration, and programs.

It should be noted that technical assistance cannot include onsite assistance in the actual day-to-day operations of a law enforcement agency. Such assistance is specifically forbidden by Section 518(a) of the act; this was underlined by the Attorney General in the recent hearings on the proposed amendments to the act.[9] Technical assistance would, however, encompass assistance relating to the organization, administration, and general operational efficiency of law enforcement agencies and law enforcement planning units.

Costs Allocable to Technical Assistance

The authority to provide technical assistance under Section 515(c) is vested in "the Administration" (of LEAA) and thus is not limited to any particular program area or organizational component. In the LEAA fiscal year 1970 presentation to Congress, it was made clear that the Office of Law Enforcement Programs (OLEP), the National Institute of Law Enforcement and Criminal Justice, the Office of Academic Assistance (OAA), the National Criminal Justice Information and Statistics Service (NCJISS), and the Regional Offices would provide technical assistance and would expend technical assistance funds. Accordingly, projects and activities of all of these program offices can be charged against LEAA's technical assistance allocation.[10]

At the same time, it must be recognized that the technical assistance funds are limited. Where a program falls within the Institute's authorizing provision (Section 402) or NCJISS's provision (Section 515(b)), for example, consideration should be given first to charging the costs against program office allocations and not technical assistance.[11]

In order accurately to reflect the actual costs incurred in rendering technical assistance, all of the *direct and identifiable* costs incurred in the conduct of technical assistance projects normally should be charged against the funds allocated for technical assistance purposes. The elements of cost which generally will be encountered in the provision of technical assistance include: salary, travel, per diem, materials, rent, and postage. For example, the salary paid to a consultant and the travel and per diem expenses of staff members and consultants, when they are participating in technical assistance programs, should be charged against technical assistance funds, for these costs

[9] *Hearings on H.R. 14341, 15947 & Related Proposals before Subcommittee No. 5 of the House Committee on the Judiciary, 91st Congress, 2d Session, at 630-631 (1970).*

[10] Technical assistance funds should be used sparingly by the Institute since the legislative history of fiscal year 1971 LEAA appropriation makes it clear that Congress intended the Institute to have $7.5 million and no more unless it specifically approved an increase in this amount. Accordingly, any undue increase in Institute expenditures through technical assistance would be looked on unfavorably by Congress. See generally, the *Congressional Record* for Thursday, May 14, 1970.

[11] In a given fiscal year, reference should first be made to annual LEAA appropriations hearings to determine where to allocate the costs of a particular program. If the record established at the hearings identifies the fund to be charged for the program, the costs of the programs should be charged to that fund.

are both direct and identifiable. (The salary of a LEAA staff member would be indirect and not identifiable unless *all* he did was provide technical assistance.)

Although these salary, travel, and per diem costs traditionally are charged to funds allocated for administrative purposes, there is adequate authority in the House Appropriations Committee hearings on the fiscal year 1971 budget requests to permit LEAA, in appropriate cases, to charge the salary of consultants and the travel costs of consultants and LEAA personnel against technical assistance funds.[12] Where technical assistance projects are conducted by independent contractors, the entire contract cost incurred in conducting the project should be charged against technical assistance funds.

Conclusion

It is recommended that "technical assistance" be defined in the act as "the communication of knowledge, skills, and know-how by means of the provision of expert advisory personnel, the conduct of training activities and conferences, and the preparation and dissemination of technical publications." In applying this definition to determine the costs allocable to technical assistance, a program or project should first be identified as a program to which technical assistance funds can be allocated. All of the direct and identifiable costs of these programs and projects, excepting the salary of LEAA personnel, should be charged to technical assistance.

Legal Opinion No. 70-17—Interest Accrual on LEEP Awards—December 11, 1970

TO: Director
Office of Academic Assistance, LEAA

This is in response to your memorandum of November 24, 1970, requesting an opinion as to whether, in view of Section 203 of the Intergovernmental Cooperation Act of 1968 (40 U.S.C. 531, 42 U.S.C. 4201, *et seq.*), which permits States to retain interest accruing on certain Federal grant funds, your office may continue to require both public and private institutions to return interest accruing on Law Enforcement Education Programs (LEEP) funds.

In the opinion of this Office, the Intergovernmental Cooperation Act does not apply to LEEP awards and you should continue to recover accrued interest from both public and private institutions.

Section 203 of the Intergovernmental Cooperation Act of 1968 provides that "States shall not be held accountable for interest earned on grant-in-aid

[12] The salary of LEAA personnel who perform nothing but technical assistance, while direct and identifiable, should not be charged against technical assistance. Salaries of government personnel are normally considered administrative expenses and there is nothing in the hearings to indicate that these expenses would be charged against technical assistance funds.

funds, pending their disbursement for program purposes" (42 U.S.C. 4213). "State" is defined by Section 102 of the act to include "any agency or instrumentality of a State" (42 U.S.C. 4201(2)), which presumably would include State educational institutions. However, Section 106 (42 U.S.C. 4201(6)) defines "grant" or "grant-in-aid" to mean money or property paid or furnished to a State under a fixed annual authorization which either:

> (i) requires the States or political subdivisions to expend non-Federal funds as a condition for the receipt of money or property from the United States or (ii) specifies directly, or establishes by means of a formula, the amounts which may be paid or furnished to States or political subdivisions, or the amounts to be allotted for use in each of the States by the States, political subdivisions, or other beneficiaries.

Moreover, Section 106 expressly excludes "loans or repayable advances."

Since LEEP awards are essentially loans or repayable advances, it is arguable that they are expressly excluded from the coverage of the act. In any case, since LEAA's authorization for the LEEP program does not require matching contributions by LEEP grantees and does not set forth a fixed formula for division of LEEP funds among the States, it seems clear that the LEEP program is not a grant-in-aid program of the kind Congress had in mind when it enacted the Intergovernmental Cooperation Act. In view of the fact that the Comptroller General testified against the interest provision on the grounds that there was "no valid reason" for it (*3 1968 U.S. Code, Cong. & Adm. News*, p. 4247), it can be presumed that he will interpret it narrowly.

Therefore, the conclusion is that the Intergovernmental Cooperation Act does not apply to LEEP awards and that the Office of Academic Assistance should continue to apply the general rules announced by the Comptroller General to govern the disposition of interest accruing on Federal funds in the hands of public or private grantees, i.e., that:

> . . . interest earned on funds so granted by the United States, as a result of deposit in banks and delay in using the funds for the purposes for which granted, inures to the benefit of the United States rather than to the grantee and under the terms of Section 3617, Revised Statutes, 31 U.S.C. 484, should be accounted for and deposited in the Treasury as miscellaneous receipts. (42 Comp. Gen. 289, 292.)

LEGAL OPINIONS

OF THE

OFFICE OF GENERAL COUNSEL

OF THE

LAW ENFORCEMENT ASSISTANCE ADMINISTRATION
UNITED STATES DEPARTMENT OF JUSTICE

JANUARY 1 TO DECEMBER 31, 1971

ADMINISTRATOR

JERRIS LEONARD

ASSOCIATE ADMINISTRATOR

RICHARD W. VELDE

ASSOCIATE ADMINISTRATOR

CLARENCE M. COSTER

GENERAL COUNSEL

PAUL L. WOODARD

Legal Opinion No. 71-1—Nebraska Jurisdiction Over LEAA Funds—February 8, 1971

TO: Executive Director
Nebraska Commission on Law Enforcement and Criminal Justice

At your request, this Office has reviewed Legislative Bill 225, which was introduced in the Nebraska Legislature on January 13, 1971. The bill would amend Section 81-1423 of the Revised Statutes of Nebraska, which relates to the powers and duties of the Nebraska Commission on Law Enforcement and Criminal Justice, the agency designated by the Governor to receive and administer Federal funds made available to the State by LEAA pursuant to the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644). The amendment would provide that funds received by the Commission "shall first be used for funding those qualifying State projects approved by the Legislature" and would also provide that communications equipment may not be acquired without the written approval of the director of the telecommunications division of the Department of Administrative Services.

The first provision of the amendment would be inconsistent with the Safe Streets Act, since it would vest in the legislature ultimate discretion over the distribution of LEAA funds which, under Section 203 of the act, must be vested in a "State planning agency" created or designated by the Governor and subject to his jurisdiction and control.

Section 203 expressly provides that the State Criminal Justice Planning Agency (SPA) designated by the Governor to receive and administer LEAA planning and action grants must have the authority to "define, develop and correlate programs and projects" and "establish priorities" for law enforcement improvement throughout the State. It is not inconsistent with this requirement for the State legislature to prescribe the size, composition, or other characteristics of the agency, or to provide that the agency shall operate in accordance with State fiscal and administrative procedures, such as State procurement, audit, or fund expenditure policies, so long as they are not inconsistent with Federal policies. However, the Governor's jurisdiction over and responsibility for the agency must be clear and the agency must retain the essential authority to develop and approve programs and projects and determine the order of priority for funding them. The legislature may grant or withhold State funds to provide the non-Federal share of the costs of such programs and projects, but it may not, as Bill 225 would do, substitute its own judgment for that of the SPA with respect to the distribution of LEAA grant funds.

There is no objection to the second part of the amendment, which would require that written approval be obtained from the Department of Administrative Services prior to the acquisition of communications equipment. It is permissible for an SPA to be required to operate in accordance with statewide procurement policies designed to insure uniformity and consistency throughout the State in the acquisition of equipment. In any case, the Department of

Administrative Services is in the executive branch and subject to the Governor's jurisdiction.

For the reasons stated above, if Legislative Bill 225 were enacted in its present form, the Nebraska Commission on Law Enforcement and Criminal Justice would be considered ineligible to receive block planning and action grants from LEAA.

Legal Opinion No. 71-2—Grants to Indian Tribes—February 23, 1971

TO: Indian Affairs Specialist, LEAA

Discussions have been held with the Bureau of Indian Affairs (BIA) on the questions of (1) qualification of Indian tribes as local units under Section 601(d), and (2) which Indian tribes should be eligible for 100 percent grants under Section 301(c) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644).

In the opinion of this Office, Section 601(d) embraces those Indian tribes that actually exercise the full range of criminal jurisdiction in the same sense as a city or county. However, "Indian tribe" as used in Section 301(c), as amended, is much broader and should include any recognized group of Indians eligible for any form of LEAA assistance. Thus, an Indian tribe, community, or other group not qualified under Section 601(d) for treatment as a local unit might be eligible to receive a single grant for a drug abuse program or for use in upgrading its criminal justice competence with a view toward eventually reclaiming criminal jurisdiction from the State and qualifying under Section 601(d). All such grants should be on a 100 percent matching basis if the group or community can be identified as an Indian entity for any governmental purpose.

On the basis of advice from this Office, BIA has agreed to develop two definitions of "Indian tribe." One definition would be for Section 601(d) purposes and would be designed to include those tribes that exercise full law enforcement powers and thus should be eligible for grants to support all or any aspects of law enforcement. The other definition would be for Section 301(c) 100 percent funding purposes and would include all tribes, groups, bands, communities, or other Indian entities recognized by the Interior Department in any way. All Section 601(d) and Section 301(c) Indian tribes would be eligible for 100 percent grants.

Legal Opinion No. 71-3—Proposed New Hampshire Statute on SPA—February 9, 1971

TO: Director, New Hampshire Governor's Commission on Crime and Delinquency

Upon request, this Office has reviewed a letter which sets out the general outline of a proposed New Hampshire statute to establish a "State Commission on Crime and Delinquency" to replace the existing commission established by

the Governor. The question is whether the proposed commission would qualify to receive LEAA funds under the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644) and LEAA's guidelines.

Since this Office has not seen the actual text of the proposed statute, it cannot offer an opinion as to whether the new commission would comply with the act and LEAA regulations. However, the general outline of the statute set out in the letter suggests several possible points of conflict. The first is the matter of the new commission's membership. Section 203(a) of the act requires that the LEAA State Criminal Justice Planning Agency (SPA) "shall be created or designated by the Chief executive of the State and shall be subject to his jurisdiction." This has been interpreted to mean that the State Governor must have the authority to select and appoint at least a majority of the agency's members. The letter seems to contemplate that the Governor would appoint all of the members, but that 14 of the 21 members would be "selected for appointment" by others. This would not comply with the act. It would be permissible to have a majority of the members nominated or recommended by other individuals or organizations, but the statute would have to make it clear that the Governor retains the ultimate authority to approve the selection of a majority of the members.

The second point of possible conflict with the act is the matter of development of the annual comprehensive State law enforcement plan. Section 203(b) of the act makes it very clear that the SPA shall have the authority to establish priorities for law enforcement improvement throughout the State, develop programs and projects for law enforcement improvement, and incorporate those priorities, programs, and projects into a comprehensive State plan to be submitted to LEAA. The letter states that the comprehensive State plan would be "presented" by the new commission, but that it would be assembled from components approved by local law enforcement planning councils. To the extent that this arrangement would deprive the commission of the power of ultimate approval or disapproval of every part of the comprehensive State plan, it would be in conflict with the act. Local participation in the planning process is assured by the act through the requirements that the SPA be representative of local governments and that a part of planning funds be made available to local units to enable them to participate in the development of the plan. This participation can involve studies, analyses, or even development of recommended local components of the plan. However, the ultimate authority to decide what shall be included or not included in the comprehensive State plan must be vested in the SPA.

Third, the proposed statute described in the letter would appear to deprive the SPA of authority to approve planning and action grant requests from local governments and would vest that authority in local law enforcement planning councils subject to an allocation formula to be set forth in the statute. For the reasons discussed above, this would be inconsistent with the act. The ultimate responsibility for the allocation and distribution of LEAA funds must reside in the SPA. This does not preclude the delegation by the SPA of important advisory roles or limited suballocation authority to other State, regional, and

local agencies; but final approval authority must remain in the SPA, subject to the jurisdiction of the Governor and, of course, the limitations and requirements set forth in the act.

Finally, the proposal does not reflect recent amendments to the act regarding the share of block planning and action funds to be made available to local governments. LEAA now has authority to approve a "passthrough" of less than 40 percent of planning funds in appropriate cases, and New Hampshire might well qualify for such an adjustment. With respect to action funds, a variable formula will become effective in fiscal year 1973 which will mean that local governments in New Hampshire will be entitled to a good deal less than the 75 percent of block action funds now required to be made available to them. Any State legislation should reflect these changes.

If a bill is actually drafted along the lines suggested in the letter, LEAA will be pleased to review it and give a particularized analysis of its consistency with the act.

Legal Opinion No. 71-4—Inquiry from Colorado Concerning Public Availability of SPA Subgrant Applications—March 29, 1971

TO: Deputy Director
Office of Law Enforcement Programs, LEAA

The director of the Colorado State Criminal Justice Planning Agency (SPA) has asked whether the State's policy of not releasing applications for Metropolitan Enforcement Groups or organized crime intelligence operations is consistent with LEAA's recently announced policy that State plans should be available to the public.

Colorado's policy is not in conflict with LEAA's. LEAA's policy on public availability of State plans is based on the Freedom of Information Act (5 U.S.C. 552). That act recognizes a number of exceptions to the general rule that "identifiable records" of government agencies shall be made available to the public upon request. Among the exceptions are investigative files compiled for law enforcement purposes and material that is privileged or confidential. Information concerning the operations of police intelligence units and other such classified or confidential police operations would fit somewhere within these two exceptions. Thus, such information may be withheld in appropriate cases.

It should be emphasized, however, that, consistent with the basic policy of the Freedom of Information Act, the SPA's should construe the exceptions narrowly and not withhold information unless there are compelling reasons for doing so. Thus, applications and other material relating to police operations should not be withheld unless disclosure would jeopardize the operations or would, for some other reason, be clearly against the public interest

Legal Opinion No. 71-5—LEEP Eligibility of Teachers at Traffic Institute of Northwestern University (TINU)—April 19, 1971

TO: Director
Office of Academic Assistance, LEAA

This is in response to your request for an opinion as to whether full-time instructors at TINU are eligible for Law Enforcement Education Program (LEEP) benefits under Section 406(d) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644). In the opinion of this Office, they are not. Section 406(d) extends LEEP eligibility to full-time teachers "in institutions of higher education which are eligible to receive funds under this section. . . ." In order to be eligible to receive funds, an institution must offer "undergraduate or graduate programs approved by the Administration and leading to degrees or certificates in areas related to law enforcement or suitable for persons employed in law enforcement" (Section 406(b)). Since Northwestern University does not give academic credit for Traffic Institute courses, the Traffic Institute program is not a degree or certificate program and, hence, Traffic Institute teachers are ineligible for LEEP.

This interpretation is supported by the legislative history of Public Law 91-644, which added subsection (d) to Section 406. Both the Senate and House reports[1] and a floor speech by Senator John L. McClellan[2] contain identical statements that the amendment was intended to enable LEAA to "help to relieve the present short supply of qualified teachers to staff the new and developing law enforcement *degree* programs" (emphasis added).

Legal Opinion No. 71-6—Reorganization of New York SPA—April 21, 1971

TO: Executive Director
New York State Office of Crime Control Planning

This Office has reviewed the materials regarding a reorganization of New York's planning resources. Although much of what is proposed is not in conflict with LEAA's interpretation of provisions of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644), there is one serious objection.

Based upon the language and intent of Section 203(c) of the act, as amended, it is required that the designated State Criminal Justice Planning Agency (SPA) have a director and staff devoted full time solely to matters of

[1] House Report No. 1174, 91st Cong., 2d Sess. 12 (1970). Senate Report No. 1253, 91st Cong., 2d Sess. 47 (1970).
[2] Cong. Rec. S17532 (daily ed. Oct. 8, 1970).

law enforcement and criminal justice in connection with responsibilities and mandates pursuant to the act. It is unacceptable that the professional staff of the SPA devote portions of their time to other than law enforcement and criminal justice activities, even though there may be an attempt to apportion time allocations fairly to Federal funding under the act.

Although the Safe Streets Act's references to the SPA clearly imply the establishment of an independent LEAA planning agency separate from such other State government agencies as general purpose planning offices, LEAA has not objected to the placement of SPA's within broader planning units so long as a full-time staff is devoted solely to SPA concerns.

Legal Opinion No. 71-7—Inquiry from North Dakota Concerning Matching Provisions—April 23, 1971

TO: Deputy Director
Office of Law Enforcement Programs, LEAA

This is in response to your request for LEAA's views on an interpretation of the matching provisions suggested by the director of the North Dakota State Criminal Justice Planning Agency (SPA) in his letter to you dated February 24, 1971. The director suggests that if the State legislature were to appropriate 100 percent of the cost of increasing the salaries of State judges, funding should stretch as far as it will go to supply the match for "other projects under the same general program of judicial improvements," as provided by the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644).

"Judicial improvements" is not really a program under the North Dakota comprehensive plan format. It is a functional category, stated in the North Dakota plan as "Judiciary and Law Reform." Under the interpretations of the matching provisions that have thus far been announced, LEAA permits matching on a total program basis, but not on a total functional category basis. That is, overmatch for one project within a program may be applied to other projects within that program, but may not be applied to projects within other programs under the same functional category. The matching provisions may be properly interpreted to permit overmatch in one program to apply to other programs within a functional category. Thus, overmatch for a program of increased judicial salaries could apply to other programs under the functional category of Judiciary and Law Reform.

The only exception that should be suggested is that 75-25 programs not be comingled with 50-50 construction programs. This interpretation should be helpful to the States that are going to have problems getting matching funds from their legislatures, since LEAA will permit them to seek 100 percent funding by the legislatures of programs that they can sell to the legislature and apply the overmatch to other programs that are not as attractive to the legislature.

Legal Opinion No. 71-8—Clarification of Grant Eligibility for Veterans in the State of Rhode Island—April 23, 1971

TO: Director
Office of Academic Assistance, LEAA

This is in response to your request for an opinion concerning the eligibility of certain law enforcement officers in Rhode Island for Law Enforcement Education Program (LEEP) funds. The State of Rhode Island has for some years had a law enforcement education program to provide free education for law enforcement officers in the State. However, the State has determined that officers receiving Veterans' Administration (VA) benefits are ineligible for the State law enforcement education program and has disqualified a number of law enforcement officers on that ground. You wish to know whether extension of LEEP benefits to those officers would violate LEAA's nonsupplanting requirement.

In LEAA's opinion, the officers are eligible for LEEP benefits under the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644). The nonsupplanting provision seeks to prevent a State's withdrawing previously provided non-Federal funding for law enforcement education because of the availability of LEEP funds. However, in this case, State educational benefits are being withdrawn for another reason, namely, receipt of VA benefits.[1] Thus, there is no violation of LEAA's nonsupplanting rule.

Legal Opinion No. 71-9—Title to Property Purchased With LEAA Grant Funds—April 27, 1971

TO: Chief
Administrative Services Division, LEAA

This is in response to your request for a legal opinion as to whether title to property purchased with LEAA grant funds may be vested in the grantee.

This question has been discussed informally with the General Counsel's Office at the General Accounting Office (GAO). GAO indicated that there is

[1]Editor's Note: *See* 38 U.S.C. 2013, which indicates that certain amounts received as pay or allowances by veterans shall be disregarded in determining the needs or qualifications of participants in any manpower training program financed by Federal funds.

no general Federal policy dealing with the vesting of title in grantees.[1] Additionally, GAO indicated that there is no requirement that an agency recapture property purchased with grant funds. This is based on a series of Comptroller General decisions which hold that Federal funds granted to a State or city lose their character as Federal funds and, in the absence of a grant condition to the contrary, are not subject to Federal laws applicable to the expenditure of funds by Federal agencies. GAO indicated that retention of title under a particular grant program would turn on the conditions of the grant and the purpose for which the grant is made.

Planning Grants

Section 202 of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644) authorizes LEAA to make grants to the States "for the establishment and operation of State law enforcement planning agencies." Section 203 provides that "a grant made under this part to a State shall be utilized by the State to establish and maintain a State [Criminal Justice] Planning Agency" (SPA). It is clear from these provisions that LEAA funds can be used to purchase equipment for the operation of the SPA's and that Congress intended the SPA's to be continuing bodies. Thus, title to the equipment could be vested in an SPA to be used during the life of the LEAA program in the State.

LEAA's Office of Law Enforcement Program (OLEP) Financial Guide addresses this issue on pages 20-24 wherein it authorizes SPA's and their subgrantees to purchase equipment and to take title to this equipment. However, the Guide provides that the allowability of the costs for the equipment must be reduced to the extent of its resale value where the equipment is no longer used for law enforcement purposes.

Action Grants

Section 301(b)(1) authorizes LEAA to make grants to States for the "purchase of methods, devices, facilities and equipment designed to improve and strengthen law enforcement and reduce crime in public and private places." Section 301(b)(4) provides that grants can be made for the construction of buildings or other facilities. Finally, under Section 301(b)(7), grants can be made for the acquisition of riot control equipment. It is clear from these provisions, as well as the basic purpose of the Safe Streets Act, that Congress anticipated that LEAA funds would be utilized by the State and local governments for the purchase of law enforcement equipment and that title to this equipment could be retained by the State and local governments. This interpretation is strengthened by the extensive legislative history

[1]This is true with one exception. Congress in 42 U.S.C. Section 1892 authorized government agencies to vest title in higher education and nonprofit institutions to equipment purchased by them under grants for basic or applied research. This law has recently been implemented by Office of Management and Budget (OMB) Circular No. 101.

developed on the floor of both Houses in the debates on the act, indicating that Congress intended that ultimate control of LEAA programs was to be vested in the States.

The provisions of the Financial Guide applicable to the purchase of equipment under planning grants are also applicable to block grants. Thus, recipients of block grant funds can take title to equipment purchased with grant funds. However, they must continue to use the equipment for law enforcement purposes after termination of the funded project.

A distinction should be made, with respect to this question, between block action grants and discretionary action grants. Title to equipment purchased with discretionary grants may be vested in the States and units of local government since these grants are made under the same provisions of Part C as are block grants. However, since, in many instances, discretionary funds are used for demonstration or short-term projects, the equipment purchased may not be needed by the grantee for law enforcement purposes after termination of the project. Accordingly, in LEAA's discretionary grant conditions, it reserved the right to recapture title to this equipment within 120 days after termination of the grant period. This Office understands that at the termination of each discretionary grant OLEP receives an accounting of property purchased under the grant and makes a determination as to whether or not LEAA will exercise its option to recapture title to this equipment. LEAA has on occasion recaptured title to discretionary grant property.

Institute Grants

LEAA is authorized under Section 402(b)(1) of the act:

> To make grants to, or enter into contracts with public agencies, institutions of higher education or private organizations to conduct research, demonstrations or special projects pertaining to the purposes described in this title, including the development of new or improved approaches, techniques, systems equipment, and devices to improve and strengthen law enforcement.

This provision is sufficiently broad to authorize LEAA to vest title in its grantees to equipment purchased with National Institute of Law Enforcement and Criminal Justice grant funds. However, the type of grantee involved should be a factor in LEAA's decision as to whether to vest title. As noted above, the vesting of title in universities and nonprofit organizations under Federal grants for basic or applied research is specifically authorized by 42 U.S.C. Section 1892, and the conditions under which title can be vested are set out in OMB Circular No. 101. As to other grantees, decisions should be made on a case-by-case basis.

The Institute provides in its grant conditions that title to property acquired with grant funds shall vest in the grantee subject to divestment at the Institute's option within 120 days of the termination of the grant. The Institute then reviews the property acquired by a grantee under its program and allows the grantee to retain title to the property if it determines that the grantee will continue to use the equipment for law enforcement purposes. Ordinarily, individuals or profitmaking organizations should not be allowed to retain title to equipment purchased with grant funds.

Part E Grants

Part E authorizes grants for the construction, acquisition, and renovation of correctional institutions and facilities and for the improvement of correctional programs and practices. The provisions of Part E relating to title are even stronger than those of Part C. Section 453 of Part E of the act states that:

> The Administration is authorized to make a grant under this part to a state planning agency if the application incorporated in the comprehensive state plan—
>
> * * * * *
>
> (2) provides satisfactory assurances that the control of the funds and title to property derived therefrom shall be in a public agency for the use and purpose provided in this part and that a public agency will administer these funds and that property. . . .

"Public agency" is defined in Section 501(i) of the act as "any State, unit of local government, combination of such States or units, or any department, agency or instrumentality of the foregoing." Clearly, then, LEAA may vest title in its State and city grantees to property purchased with Part E funds. Part E provides for block grants and discretionary grants, and OLEP is incorporating a provision in the Part E discretionary grant conditions for recapture of grant property at LEAA's option.

Technical Assistance and Statistical Grants

LEAA is authorized by Section 515 of the act to make grants for technical assistance to States, units of local government, or public or private agencies. There is no provision in Section 515 which deals with title to property. However, if equipment purchased with technical assistance grant funds is to be used to strengthen law enforcement in the State or local governments, LEAA may vest title in the grantees. Technical assistance grants presently contain a provision for recapture of property and, since most technical assistance projects will be of a one-time or short-term nature, LEAA should give consideration to exercising this option.

Authority to make grants for statistical studies and systems analyses can be found in Sections 515 and 402 of the act. Authority to vest property title in the recipients of such grants is based upon the rationale developed above for vesting title under Institute grants and technical assistance grants. National Criminal Justice Information and Statistics Service (NCJISS) grants presently provide for recapture of property purchased with grant funds.

Academic Assistance Grants

Under the new amendments to Section 406 of the act, LEAA is authorized to make grants to institutions of higher education:

> . . .to assist them in planning, developing, strengthening, improving, or carrying out programs or projects for the development or demonstration of improved methods of law enforcement education. . . .

This provision is broad enough to authorize LEAA to vest in the grantee title to equipment purchased with grant funds. When grants are made under this provision, the Office of Academic Assistance (OAA) should include a condition authorizing LEAA to recapture property purchased with grant funds. In addition, OAA can make research grants under Section 406(e), and 42 U.S.C. 1892 and OMB Circular No. 101 would apply to these grants.

Training Grants

Sections 407 and 408 of the act authorize LEAA to develop and support regional and national law enforcement training programs and to establish and support a training program for State and local prosecuting attorneys engaged in the prosecution of organized crime. These provisions, interpreted in light of the legislative history, authorize LEAA to make grants to establish continuing training programs and to vest title to grant-purchased equipment in the grantees for the life of the programs.

Recommended Action

LEAA has ample authority to vest title to grant-purchased property in its grantees under all forms of LEAA grants. However, the agency should initiate procedures to assure that property purchased under grants will be used only for the improvement and strengthening of law enforcement. One suggested procedure would be to obtain a certification from each grantee that property purchased under the grant and titled in the name of the grantee will be used for law enforcement purposes only. All of LEAA's nonblock grants presently contain a recapture-of-property provision; procedures should be established requiring the grant monitor or reviewer to assure that the suggested certification has been obtained and to make a written determination at the termination of each grant that it would be to the benefit of the Government to leave title with the grantee. Guidelines should be developed to assist the person making these determinations.

Additionally, grantees should be required to maintain a separate inventory of property purchased with LEAA grant funds. This inventory should be made a part of the grantee's official records for use by Federal auditors in establishing a negotiated overhead rate.[2] This inventory could also be useful in determining if a grantee has included any federally purchased property as part of his matching contribution.

[Note: Bureau of the Budget Circulars A-21 and A-87 have been replaced by Federal Management Circulars 74-4 and 74-7 issued by the General Services Administration. These circulars now provide detailed guidance on the distribution of property under grants to educational institutions and State and local governments.]

[2]Bureau of the Budget Circulars A-21 and A-87, as well as the Federal Procurement Regulations, provide for the establishment of a negotiated overhead rate which is applied to determine the cost incurred under all Federal grants or contracts received by an LEAA grantee. The computation cannot include the cost of any equipment purchased by the grantee with Federal grant funds.

Legal Opinion No. 71-10—Grantee Contributions—May 4, 1971

TO: Director, Financial Operations
Office of Law Enforcement Programs (OLEP), LEAA

It would be permissible to use funds provided under the Appalachian Regional Development Act of 1965 (40 App. U.S.C. 1 *et seq.* for a portion of the matching contributions to some of the grants made under Part C of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644).

The general rule established by the LEAA Financial Guide is, as you pointed out, that funds provided by other Federal programs cannot be used to provide matching shares to grants made under Title I of the act. The only exception to this rule is Section 105 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3305). However, the wording of Section 214 of the Appalachian Act and the wording of Section 105 of the Demonstration Cities Act are very similar in that both allow funds provided under their acts to be used to furnish part of matching funds to grant-in-aid programs established by other acts. Because of this similarity, Section 214 of the Appalachian Act should also be considered an exception to our general rule and the funds provided under this act could be used as part of the matching contribution to grants under Part C of the Safe Streets Act.

However, the use of these Appalachian Act funds is limited by Section 214(c) to matching grants made for the purpose of "construction or equipment of facilities." This clause would eliminate their use for the training, educational, and other purposes for which grants are made under Part C of the Safe Streets Act.

Also as provided by Section 214(b) of the Appalachian Act, the total Federal contribution to a program—the combination of a grant under the Safe Streets Act and matching funds from the Appalachian Act—could not be more than 80 percent of the cost of a program.

Legal Opinion No. 71-11—One-Third Salary Support Limitation—May 13, 1971

TO: Deputy Director
Office of Law Enforcement Programs (OLEP), LEAA

LEAA has been asked for a legal opinion as to whether, under the recent amendments to the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644), the one-third salary support limitation must be applied to each individual discretionary grant. In the opinion of this Office, it must be.

The amended bill separates the authority to make block grants and the limitations applicable to them from the provisions affecting discretionary

grants. Block grants are governed by Section 301. Subsection 301(d) provides that not more than one-third of "any grant made under this section" (meaning block grants) may be expended for certain kinds of salary support. Thus, under the revised language, LEAA may continue its practice of accounting for the salary support limitation on a total block grant basis.

However, Section 306 of the act was amended to provide expressly for discretionary grants and to set forth expressly the limitations applicable to them. Subsection (a)(2) provides that 15 percent of the funds appropriated each year for Part C may "be allocated among the States for grants to State planning agencies, units of general local government, or combinations of such units, according to the criteria and on the terms and conditions the Administration determines consistent with this title." That subsection provides further that:

> The limitations on the expenditure of portions of grants for the compensation of personnel in subsection (d) of Section 301 of this title shall apply to a grant under such paragraph [2].

There is no question whatever that the salary support provision applies to each discretionary grant.

The only way a discretionary grant can be lumped in with a block grant for purposes of applying the salary support provision is where the discretionary grant is to supplement the block grant. If the discretionary grant is for any other purpose, it must stand alone even if it is given to the State Criminal Justice Planning Agency or SPA.

Legal Opinion No. 71-12—LEEP Trust Funds at John J. Pershing College—May 28, 1971

TO: Trustee in Bankruptcy
John J. Pershing College, Inc.

This is in response to your letter of April 30, 1971, in which you ask whether there is any agreement, statute, or regulation which makes the $2,400 which was awarded to John J. Pershing College as a participant in the Law Enforcement Education Program (LEEP), trust funds in LEAA's favor.

There is nothing in the provision of the statute which authorizes LEAA's Academic Assistance Program, Section 406 of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644), or in the agreement between LEAA and John J. Pershing College, which specifically refers to the funds given as "trust funds" or states that they will be held "in trust" by the college. However, the statute and the agreement establish what amounts to a trustee relationship between the college and the funds held in accordance with the statute and agreement.

The statute specifies in subsections 406(b) and (c) that the funds are given to educational institutions not for their own use but for the use of a certain specified class of students attending a certain specified class of courses.

Further, the agreement between the college and LEAA specifies that the LEAA funds will be kept in a separate account to be used only for specific purposes. The college is envisioned only as a holding or local administrative officer for the purpose of administering grants and loans. That the college does not possess the funds for its own use is emphasized in Chapter 6, paragraph G1, page VI-9, "Law Enforcement Education Program Manual," published by LEAA's Office of Academic Assistance and made part of the LEAA-college agreement by the terms of the agreement, which stresses that accrued interest on the funds will be returned rather than kept by the college.

On the basis of the above, this Office believes that John J. Pershing College was holding funds set aside in trust for LEAA.

Legal Opinion No. 71-13—Hard Match and Buy-In Amendments—June 1, 1971

TO: LEAA Regional Fiscal Officer
Philadelphia

This is in response to your request for an interpretation of the meaning of the term "in the aggregate" as used in the hard match and buy-in amendments included in the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644).

The term "in the aggregate," as used in the hard match provision, means merely that a State legislature or city council need not appropriate, by line item, for each individual project to which the appropriated funds will be applied. Rather, the legislature or city council may make one appropriation, without identifying individual programs and projects, so long as the appropriation bill clearly earmarks the funds for purpose of supplying non-Federal funding for LEAA programs and projects. However, accounting for hard match must be on an individual program basis. That is, 40 percent of the non-Federal funding of each program must be cash, although it may come from a lump sum appropriation that does not specifically mention the program.

With respect to the buy-in, "in the aggregate" means that the State may buy in on some local projects, but not on all, so long as the total buy-in commitment equals at least one-fourth of the non-Federal match for the total amount of funds required to be made available to local units for local programs and projects. This means that the State may provide one-half of the non-Federal funding for some projects, three-fourths of the funding for others, and none of the funding of others, so long as the average equals at least one-fourth of the non-Federal funding for all local programs and projects. The buy-in provision requires the State to contribute to the cost of local programs and projects; therefore, a State allocation of funds to a project such as the police academy in question would not count as buy-in funding if the police academy were a State program.

Legal Opinion No. 71-14—Commitment to Cost of an LEAA Program—June 7, 1971

TO: County Attorney
Sarpy County, Nebraska

This Office has reviewed the statement of the Board of County Commissioners of Sarpy County, Nebraska, concerning the county's inability to make an unqualified commitment to assume the cost of an LEAA program after a reasonable period of Federal assistance.

The statement appears to satisfy the requirement in Section 303(a)(8) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644). That provision of the law does not require an unqualified commitment on the part of the applicant but rather a demonstration of the willingness of the applicant to assume the cost of LEAA-funded improvements after a reasonable period of Federal assistance. "Willingness" is construed to mean that the applicant intends to assume the cost of the improvements if it can reasonably do so. It is recognized that unforeseen circumstances, such as those mentioned in the statement, may prevent an applicant from being able to assume the cost of LEAA-funded projects. Thus, what is required is merely a statement that the applicant is *willing* to assume such costs; this is not interpreted as an unqualified commitment.

The application should indicate that the county is willing to assume the cost of the program after a reasonable period of Federal assistance, if able to do so.

Legal Opinion No. 71-15—Distribution of LEAA Funds in Missouri—June 28, 1971

TO: Deputy Director
Missouri Law Enforcement Assistance Council

At your request, this Office has reviewed Missouri Senate Bill 320 and House Bill 4. Senate Bill 320 purposes the addition of a new section (Section 33.087) to the Revised Statutes which would require each State agency desiring to receive or expend money received from the Federal Government—such as the Law Enforcement Assistance Council—to submit plans for the expenditure of such funds to certain legislative committees for ultimate legislative approval. House Bill 4 is an appropriations bill which in Section 4.190 refers to the amount of Federal funds available to the Law Enforcement Assistance Council and in Section 4.195 provides that the Law Enforcement Assistance Council will use these funds, together with funds from other sources, "at least twenty percent of said money solely for capital improvement purposes; the remainder to be used solely for the recruitment, training and

compensation of members of organized law enforcement agencies; and both allotments to be based on the ratio that the population of the area affected bears to the total population of the State."

Both of the proposals referred to would be inconsistent with the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644), since they would vest in the legislature ultimate discretion over the distribution of LEAA funds which, under Section 203 of the act, must be vested in a "State Criminal Justice Planning Agency (SPA)" created or designated by the Governor and subject to his jurisdiction and control. Section 203 expressly provides that the SPA designated by the Governor to receive and administer LEAA planning and action grants shall be broadly representative of law enforcement expertise within the State and shall have the authority to "define, develop and correlate programs and projects" and "establish priorities" for law enforcement improvement throughout the State. It is not inconsistent with this requirement for the State legislature to provide that the agency shall operate in accordance with State fiscal and administrative procedures, such as State procurement, audit or fund expenditure policies, so long as they are not inconsistent with Federal policies. However, the agency must retain the essential authority to develop and approve programs and projects and determine the order of priority for funding them.

The legislature may grant or withhold State funds to provide the non-Federal share of the costs of such programs and projects, but it may not, as Senate Bill 320 and House Bill 4 would do, substitute its own judgment for that of the SPA with respect to the allocation of LEAA funds among the various components of law enforcement and the development of programs and projects to be supported by such funds.

For the reasons stated above, if Senate Bill 320 and House Bill 4 were enacted in their present form, LEAA would consider the Missouri Law Enforcement Assistance Council to be ineligible to receive block planning and action grants from LEAA.

Legal Opinion No. 71-16—Representative Composition of the Minnesota SPA—July 28, 1971

TO: LEAA Regional Administrator
Chicago

This is in reference to your request that LEAA examine the composition of the Minnesota Governor's Commission on Crime Prevention and Control (the State Criminal Justice Planning Commission or SPA) to determine whether it is representative as required by Section 203(a) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644), and guidelines contained in the Comprehensive Law Enforcement Planning and Action Grant Guide, pp. 5-6. It is the opinion of this Office that with one exception the composition of the commission meets

the representative requirements, although there is concern over the fact that in some of the required categories only the very minimum amount of representation is present.

The exception is that the commission as presently constituted does not appear to offer the "reasonable geographical and urban-rural balance and regard for the incidence of crime and the distribution and concentration of law enforcement services in the State" required by subparagraph (7) of the Guide at page 6. Of the 29 members of the crime commission, only four are from outside the Minneapolis-St. Paul metropolitan area. (A possible fifth is the director of the Department of Court Services for Scott County, Shakopee, but Shakopee is only about 10 miles from the Minneapolis-St. Paul city limits and the county is also adjacent to the Twin Cities so that it is doubtful that the area represented is significantly different from that represented by the commission members from Minneapolis-St. Paul.) This leaves a geographic distribution of 25 members from one area, four located throughout the northern and middle parts of the State, and none in the southern and particularly the southwestern parts of the State.

In addition, of the four commission members outside the Minneapolis-St. Paul metropolitan area only two have responsibility for what could be considered a rural area. This makes the rural-urban balance 2 to 29. Although it is probable that Minneapolis-St. Paul has the highest incidence of crime and the greatest concentration of law enforcement services in the State, its incidence of crime and concentration of law enforcement services are probably not as proportionately high compared with that of the rest of the State or compared with the State's rural areas as its proportionate representation on the board.

There is another possible problem with the geographic balance of the board's membership. Section 203(a), as amended, and the guidelines in subparagraph (7) required the State Criminal Justice Planning Agency (SPA) to have a reasonably geographically balanced membership. However, Section 203(a) is somewhat ambiguous as to whether each category enumerated (law enforcement agencies, units of general local government) must also be represented on a geographically balanced basis on the SPA. The format and the wording of the guidelines seem to require only that the entire board have a geographically balanced membership.

In more detail, Section 203(a) in its previous version read: "The State planning agency shall be representative of law enforcement agencies of the State and of units of general local government within the State." In its present version the Section reads: "The State planning agency and any regional planning units within the State shall, within their respective jurisdictions, be representative of the law enforcement agencies, units of general local government, and public agencies maintaining programs to reduce and control crime." (There is no legislative history to indicate that there is any difference between the original and the amended versions on this geographical balance point.) The clause relating to law enforcement agencies, for example, could be interpreted as requiring only representation by different types of law enforcement agencies (police, correctional, court, juvenile, and adult) regardless of where the representatives were from throughout the State or as

requiring representation of different types of law enforcement agencies by different agencies throughout the State.

The guidelines chose to interpret the clause as requiring different types of law enforcement agencies and required in subparagraph (4) that the three main types be represented and in subparagraph (5) that juvenile justice also be represented. They did not interpret it to mean that the type of law enforcement agencies represented had to be geographically distributed throughout the State. They did break the clause down into another division by type—State and local law enforcement agencies in subparagraphs (1) and (3)—which need not necessarily be a geographical distribution if the local government representatives are from the State capital, but the balanced geographic distribution requirement included in the guidelines by subparagraph (7) refers to the whole board and not to each separate category.

The result is that a situation could arise in which the citizen or other nonlaw enforcement agency representatives would represent enough diverse geographical areas to give the entire board a balanced geographic representation, but all or most of the representatives of the law enforcement agency category or a subcategory of either police, corrections, and court systems within the law enforcement functions category would come from one or two areas. Even if the one or two areas so heavily represented were the high crime areas, this would still not seem to be appropriate for the composition of a group that is to undertake law enforcement planning on a statewide basis nor would it seem to satisfy the general statewide approach of the Safe Streets Act.

This is what has happened in Minnesota, except that, as noted above, there is no general geographic balance on the board as a whole. Concerning the category of law enforcement agencies, of the 29 members on the commission, 12 are listed as representatives of law enforcement agencies generally, and 8 as representing local law enforcement agencies. Of these, only one—the Sheriff of Clay County, Moorhead—is from an agency outside the Minneapolis-St. Paul metropolitan area (again, a second would perhaps be the Shakopee representative). Even though the incidence of crime is highest in Minneapolis—St. Paul, this does not seem to justify the fact that the law enforcement agency of only one other area is represented and that there are no representatives of law enforcement agencies from Duluth—the State's second largest city with a population of over 100,000 (the one representative from Duluth is apparently a housewife)—on the commission that is to make statewide plans for law enforcement. Also considering geographical representation in a subcategory of law enforcement agencies—the court system—none of the eight representatives of the court system is from outside Minneapolis-St. Paul. This geographic imbalance within categories listed in 203(a) and subcategories listed in the guidelines would perhaps be undesirable but appears to be permissible within the guidelines.

Some other reservations concerning the representative composition of the commission are as follows:

Units of General Local Government by Elected Policymaking or Executive Officials, subparagraph (2). The composition of the Minnesota Crime Commission probably meets this requirement because the commission lists two people, an Indian

reservation tribal council leader and a Minneapolis alderman, in this category. However, this would seem to be the absolute minimum that would satisfy the requirement.

Law Enforcement Officials or Administrators from Local Units of Government, subparagraph (3). The commission membership includes the required representatives, but as noted above, the representation is not balanced geographically.

Each Major Law Enforcement Function—Police, Corrections, and Court Systems, subparagraph (4). Two of the three representatives of the corrections system hold the position of "Director of the Department of Court Services," (a somewhat unusual title for a corrections officer) and are also listed as the commission representatives of "juvenile delinquency control" required under subparagraph (5). This seems to indicate that they have something to do with reform schools or some other type of juvenile correction facility, which leaves only the State Commissioner of Corrections as the representative of the problems of all the adult local, county, and State prisons and jails. Three people representing the field of corrections are probably adequate to meet the requirements, but the representation is weak. Also, as noted above, the representatives of the State court system are not from balanced geographic or urban-rural areas.

Community or Citizen Interest, subparagraph (6). Approximately one-third of the commission is composed of citizen or community members. This is perhaps a large percentage, but it is permissible under the guidelines, which contain no maximum percentage, and the legislative history of the amendment to Section 203(a). The legislative history shows that although the phrase "the general community within the State" was included among the categories that must be represented in SPA's in the bill passed by the Senate, it was later eliminated by the conference committee from the final bill passed by both Houses; the intention of this action, as explained in both Houses, was not to exclude nonlaw enforcement people from participation as members of the SPA.

In summary, the composition of Minnesota's Governor's Commission on Crime Prevention and Control does not appear to offer a "reasonable geographic and urban-rural balance and regard for the incidence of crime and the distribution and concentration of law enforcement services in the State," as required by subparagraph (7) of the Guide at page 6. However, it complies with the other requirements of Section 203(a) of the Safe Streets Act and the LEAA guidelines, although the compliance is minimal in some cases.

Legal Opinion No. 71-17—LEAA Funding of Full-Time Indian Criminal Justice Planners—July 29, 1971

TO: Acting Deputy Assistant Administrator
Office of Criminal Justice Assistance, LEAA

This is in response to your memorandum concerning the use of LEAA funds to provide Indian criminal justice planners as staff to State Criminal Justice Planning Agencies (SPA's). Your memorandum indicated that LEAA last year gave a technical assistance grant to the Indian Justice Planning Association to provide planning assistance to Indian tribes. You also indicated that LEAA has not obtained satisfactory results from the program and you would prefer not to extend the grant for another year, but instead, to provide appropriate SPA's with their own Indian criminal justice planning program personnel through

nonmatch LEAA funds, provided for under the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644).

It is the opinion of this Office that LEAA can make technical assistance grants to SPA's for the employment of experts in the Indian justice planning area. LEAA has been doing this indirectly, as you indicated, through its Four Corners Project with the Indian Justice Planning Association. The change you suggested is merely one of form and does not differ in purpose from LEAA's grant to the planning association.

LEAA has defined technical assistance as the "communication of knowledge, skills and know-how by means of the provision of expert personnel. . . ." A staff study on technical assistance by the Office of Administrative Management stated that:

> LEAA discharges its T.A. functions in the context of a shortage of criminal justice expertise in the nation and a need for innovation in the system coupled with ultimate LEAA accountability for the success or failure of the Safe Streets Act program. This context is relevant to decisions that LEAA must make concerning the leadership stance that LEAA should adopt in T.A. and the importance it should attach to the objective of upgrading state T.A. capability.

The making of technical assistance grants to States with significant Indian populations for expert personnel to plan and assist in the implementation of Indian criminal justice programs would fall clearly within LEAA's definition and the general functions and responsibilities identified by the staff study. However, if this is funded as a technical assistance program, recognized planning experts must be utilized and grants for these planners should be made on a year-to-year basis with a view toward discontinuing these grants when the Indian tribes and the SPA's have developed sufficient expertise to adequately prepare and monitor Indian programs for themselves.

Another possible source of nonmatch funds for this program would be discretionary funds. Under Section 306(a) of the Safe Streets Act, LEAA may make 100 percent discretionary grants to combinations of Indian tribes. It would be permissible to use discretionary funds for this program in a particular State if concurrence of the Indian tribes of that State could be obtained. The grant would be made to the SPA for the benefit of the Indian tribes of that State, who would signify in writing their agreement to receive such benefit in lieu of direct receipt of grant funds.

Legal Opinion No. 71-18—Bill Introduced in the Minnesota Legislature to Create an Office of District Prosecutor—August 5, 1971

TO: LEAA Regional Administrator
Chicago

At your request, this Office has reviewed the bill introduced in the Minnesota Legislature to create an office of district prosecutor for each judicial district of Minnesota. The bill, if enacted, would require the Minnesota State

Criminal Justice Planning Agency (SPA) to allocate LEAA block grant funds for the program.

As stated previously, portions of the bill would be inconsistent with Title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644). More specifically, Section 203 of the act expressly provides that the SPA designated to receive and administer LEAA funds—in this case the Governor's Commission on Crime Prevention and Control—must "design, develop and correlate programs and projects" and "establish priorities" for law enforcement improvement throughout the State.

It is proper under the Safe Streets Act for the State legislature to provide that the SPA must operate in accordance with State fiscal and administrative policies so long as they are consistent with Federal policies. However, the SPA and the Governor have exclusive authority under the act to develop programs and projects for funding with LEAA block grant funds and to allocate funds for those programs and projects. These decisions may not be made by the State legislature.

The proposed bill would substitute the judgment of the Minnesota State Legislature for that of the Governor and the Commission on Crime Prevention and Control in determining programs and priorities for expenditure of LEAA funds. Accordingly, insofar as the bill attempts to mandate the expenditure of LEAA block grant funds, it is inconsistent with the Safe Streets Act. Under the Supremacy Clause of the United States Constitution, the bill, if enacted, would be ineffective in the allocation of LEAA block grant funds. (*King* v. *Smith*, 392 U.S. 309, 333 (1968).) The district prosecutor program could be funded with LEAA funds only if approved by the Minnesota Governor's Commission and if contained in a comprehensive plan approved by LEAA.

Legal Opinion No. 71-19—School Districts as "Units of General Local Government"—August 30, 1971

TO: Governor, Nevada

Attention has been called to an opinion given by the Attorney General of Nevada to the Clark County School District to the effect that a county school district created under Nevada law is a "unit of general local government" within the meaning of that term in the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644), and is thus eligible for Federal grant-in-aid assistance made available under that act to such local units. This opinion finds that that State opinion is in conflict with LEAA's interpretation of the act and calls this matter to the attention of the State Commission on Crime, Delinquency and Corrections.

The Attorney General's opinion is based upon the definition of "unit of general local government" set forth in the Nevada Revised Statutes (NRS), Section 216.075, which defines such units as "any political subdivision. . . which performs law enforcement functions." Since NRS 386.010, subsection 4, declares county school districts to be political subdivisions of the State and since the Clark County School District is proposing programs which serve law enforcement functions within the scope of the Safe Streets Act, the Attorney General concluded that the Clark County School District is a unit of general local government for purposes of the act.

However, the Attorney General's opinion entirely overlooks the definition of "unit of general local government" set forth in the Safe Streets Act itself which is controlling in this situation and which compels a different conclusion. The act (Section 601(d)) defines "unit of general local government" as a "city, county, township, town, borough, parish, village, or other general purpose political subdivision of a State, or an Indian tribe which performs law enforcement functions. . . ."

It is clear from the examples given in the definition and the phrase "other general purpose political subdivision" that the only local governmental units that qualify are those with general political jurisdiction—that is, those that possess the variety of jurisdictional powers (e.g., taxing power, lawmaking power, law enforcement authority) usually possessed by a city, town, county, or similar local units. Some general law enforcement authority would be a particular requisite. Since NRS 386.010, subsection 4, which is quoted in the Attorney General's opinion, expressly states that county school districts shall be political subdivisions whose "purpose is to administer the State system of public education," such school districts appear to lack general authority to enforce the criminal laws and other political authority possessed by cities, towns, counties, and similar general purpose political subdivisions. For this reason, county school districts are not "units of general local government" under the Safe Streets Act.

This means that county school districts are not eligible for direct discretionary grants from LEAA under Section 306 of the act, nor for direct grants from the 75 percent share of State block grants required by Section 303(a)(2) of the act to be made available to units of general local government. However, the act imposes no restrictions on the range of entities to which the State may grant its 25 percent share of block grant funds. Similarly, there is no restriction on the range of entities to which city and county grantees may disburse funds for program purposes. Hence, county school districts could receive funds for law enforcement programs from the State or from cities and counties which receive subgrants from the State. Thus, LEAA funds for the programs proposed by the Clark County School District may be granted directly by the State from its 25 percent share of block grant funds or may be granted to the Clark County government or a city within the county for disbursement to the school district to enable it to carry out the proposed programs.

Legal Opinion No. 71-20—Indian Tribes as "Units of General Local Government"—September 14, 1971

TO: Office of Inter-Governmental Relations
Bureau of Indian Affairs (BIA)

This is to confirm the agreement reached yesterday concerning qualification of Indian tribes as "units of general local government" under Section 601(d) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644). A copy of this letter has been sent to the National Council on Indian Opportunity, to the Judicial, Prevention and Enforcement Services, BIA, and to the National Council on Indian Opportunity.

The agreement stated that only those Indian tribes that still have law enforcement jurisdiction, as opposed to those that have terminated under Public Law 280, qualify as units of general local government under Section 601(d). This is consistent with the legislative history of this section, which indicates that Congress meant to include as units of general local government only those Indian tribes with full criminal jurisdiction similar to that possessed by cities and towns. Where an Indian tribe has ceded criminal jurisdiction to the State, it cannot qualify as a unit of general local government even though it may perform some activities that are within the scope of "law enforcement" as defined in Section 601(a) of the act.

It is understood that BIA will update the list of tribes with criminal jurisdiction and that the Secretary of Interior will publish in the Federal Register a statement to the effect that only the tribes on that list are eligible as units of general local government. This does not affect the accuracy of the earlier notice in the Federal Register to the effect that all Indian tribes recognized or serviced by the Bureau of Indian Affairs perform some law enforcement activities, since that notice referred to Section 601(a) of the act.

Legal Opinion No. 71-21—Use of Federal Emergency Employment Act Funds to Supply Non-Federal Match for LEAA Programs—September 17, 1971

TO: Assistant Administrator
Office of Criminal Justice Assistance, LEAA

This is in response to your request for an opinion as to whether funds granted to the States and cities under the Federal "Emergency Employment Act of 1971" (EEA) (42 U.S.C. 4871 *et seq.*) may be used as non-Federal match for LEAA programs under the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644). The EEA authorizes the Labor Department to make grants to States and local units to provide unemployed and underemployed persons with

transitional "public service" employment during times of high unemployment. The Mayor of Baltimore has asked the Maryland State Criminal Justice Planning Agency (SPA) whether the salaries of additional city law enforcement personnel funded by the EEA may be counted as local match if the employees are detailed to LEAA programs.

EEA funds and personnel employed with such funds may not be counted as local match for LEAA grant programs. The LEAA Financial Guide states (at 38-39) that funds derived from other Federal grant programs may not be used as local matching funds, except for Model Cities funds. The exception for Model Cities funds is based upon express language in the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3305) that the funds may be used to provide match for other Federal grant-in-aid programs. On May 4, 1971, this Office issued an opinion that the same is true of funds granted under the Appalachian Regional Development Act (40 U.S.C., Appendix), since that act also contains express language permitting such an application. The EEA does not contain such language, however, and so the general rule must apply to prohibit the use of EEA funds as LEAA match.

It is interesting to note that the Labor Department's regulations for the EEA program contain a 10 percent non-Federal match requirement and a provision to the effect that other Federal grant funds may not be used as match, either cash or in-kind, unless specifically permitted by the law under which the other funds were made available. Thus, LEAA is consistent with the Labor Department in its ruling on this matter.

Legal Opinion No. 71-22—Waiver of Local Matching Shares to Menominee County—September 27, 1971

TO: Executive Director
Wisconsin Council on Criminal Justice

This is in response to a request by the Wisconsin Council on Criminal Justice for a waiver of the local matching share in grants by the State to Menominee County.

The Council states that Menominee County is composed "almost exclusively" of the Menominee Indian tribe. However, not all of the residents of the county are Indians, and not all members of the Menominee tribe live in the county (2,500 of the 3,200 enrolled members live there). Federal supervision over the tribe was terminated in 1961, and since then the Menominees have not been regarded as Indians for any Federal purposes.

Based upon these facts, LEAA has concluded that Menominee County does not qualify for a waiver of the local matching share under Sections 301(c) and 306(a) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351; as amended by Public Law 91-644) which authorize such a waiver in the case of a grant to an "Indian tribe or other aboriginal group." Menominee County clearly cannot be considered an Indian tribe, since not all residents of the county are Menominee Indians and since the

Menominees are not regarded as Indians by the Federal Government. To be eligible for a waiver, the county would have to be considered an "aboriginal group" and LEAA is of the opinion that it does not qualify under that term as Congress intended it to be interpreted.

The term "aboriginal group" was added pursuant to an amendment offered in the Senate Judiciary Committee by Senator Marlow W. Cook to cover the Eskimo tribes of Alaska. Senator Cook first suggested the addition of the words "or Eskimo tribe." However, when it was pointed out by Committee members that there are also Aleuts and other tribal groups in Alaska and that Federal statutes designed to cover all Alaska tribal groups usually refer to them as "Eskimos, Aleuts and other aboriginal groups," Senator Cook suggested the present language in the act. This is supported by a statement in the Committee report describing the waiver authority as applying to grants to "Indian tribes and other aboriginal groups, including Eskimos" (Senate Report No. 1253, 91st Cong., 2d Sess. 44 (1970)) and by a statement on the Senate floor by Senator John L. McClellan, floor manager of the bill, that the provision applies to "Indian tribes and other tribal groups" and is based upon the premise that "Indian tribes and Eskimo groups have severe law enforcement deficiencies and in many cases have no funds to pay any part of the cost of improvement programs" (Cong. Rec. S17531 (daily ed. Oct. 8, 1970).)

Based upon this legislative history, LEAA is of the view that the term "aboriginal group" refers to tribal groups such as the Alaska Eskimos and Aleuts who still maintain tribal status rather than having been assimilated into the political structure of the State government. Under this view, Menominee County, which is a political subdivision of the State of Wisconsin and is not composed entirely of Indians even if the Menominees could be considered Indians, does not constitute an "aboriginal group."

Legal Opinion No. 71-23—Eligibility of Registry of Motor Vehicles for LEEP Funds—October 29, 1971

TO: Registrar
Registry of Motor Vehicles
The Commonwealth of Massachusetts

This is in response to your letter dated October 7, 1971, requesting that LEAA review the opinion given last year by the General Counsel that personnel of the Registry of Motor Vehicles are ineligible for assistance under LEAA's Law Enforcement Education Program (LEEP).

The General Counsel's opinion correctly states that LEEP assistance is available only to agencies that are engaged primarily in the enforcement of the general criminal law. Agencies that have as their primary function the enforcement of regulatory law are ineligible, even though they may possess and occasionally exercise some criminal law enforcement authority. On the basis of these rules, LEAA believes the opinion correctly concludes that the Registry of

Motor Vehicles is engaged primarily in regulatory functions and, therefore, is not a law enforcement agency, even though some of its employees are authorized to exercise peace officer powers.

The investigators, examiners, and other "badge" positions in the enforcement branch of the Registry admittedly are authorized by State law to exercise the same peace officer powers as the State police and other peace officers throughout the State. However, these personnel are not in fact primarily engaged in peace officer activities, but continue to engage, as they did before the law was amended in 1970, primarily in regulatory activities related to the inspection and registration of motor vehicles. LEEP eligibility depends upon the activities in which an agency's employees are actually primarily engaged on a day-to-day basis, not upon statutory authority possessed but not exercised by such employees. Therefore, the uniformed members of the enforcement branch of the Registry of Motor Vehicles are not, in general, eligible for LEEP assistance under the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644).

It is possible, however, that some members of the enforcement branch may be primarily engaged in criminal law enforcement activities and may be eligible for LEEP assistance. You state in your letter that such criminal offenses as motor vehicle theft and possession of master keys with intent to steal a motor vehicle are within the jurisdiction of the Registry. You further state that it is possible that Registry enforcement personnel will be assigned to carry out functions identical to those of the State police. In the event that personnel of the enforcement branch are assigned to units that are engaged primarily in police activities, such as the investigation of motor vehicle thefts, such personnel may be deemed eligible for LEEP assistance.

Legal Opinion No. 71-24—Minnesota Appropriation for LEAA Matching Funds—November 17, 1971

TO: LEAA Regional Administrator
Chicago

This Office has reviewed the appropriation bill passed by the Minnesota Legislature which creates a "Criminal Justice Contingent" fund available "to provide additional matching funds for the various State agencies and local governments for programs qualifying under the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644)." The bill provides that the funds "shall not be available until the criminal justice State plan has been reviewed by the Senate Committee on Finance and the House Committee on Appropriations" and, in addition, provides that "at least 30 days before action by the legislative advisory committee, the commission shall submit the individual project requests to the respective committees for review."

This bill is not inconsistent with the Safe Streets Act. Although the State legislature (by its committees) will be reviewing the State comprehensive plan

and individual projects, this review will be done as a proper part of the State appropriation process. A State legislature has every right to know and approve of the purposes for which State funds will be spent and can inquire into such programs prior to appropriating funds. This necessarily gives a State legislature considerable leverage in federally assisted programs, such as LEAA's, which require State matching funds. Although the legislature cannot usurp the authority of the State Criminal Justice Planning Agency (SPA) with respect to development and approval of the comprehensive plan, determination of priorities, definition of projects, and allocation of Federal funds, it can refuse to appropriate matching funds unless it approves of the plan and the individual projects.

Presumably, Minnesota law permits the legislature to appropriate funds for a general purpose subject to subsequent committee approval or veto of specific applications of such funds. This "committee veto" arrangement has been held unconstitutional under Federal law because it permits congressional committees to interfere in the administration of executive programs, thus violating the doctrine of separation of powers.

Legal Opinion No. 71-25—Uninsured Motorists' Funds—December 8, 1971

TO: LEAA Regional Administrator
Atlanta

This is written confirmation of the oral opinion that the State of South Carolina can use funds collected through the State Highway Department's uninsured motorists' fund to satisfy the buy-in requirement if the statute providing for the collection and disposition of funds is amended to provide expressly for their utilization as buy-in.

The South Carolina State Highway Department collects $5 per year from each motorist to cover accidents involving uninsured motorists. All funds are deposited in the State Treasury and transferred monthly to a special deposit fund to be used to defray the administrative costs of the uninsured motorists' program. The statute provides that "Any balance shall be used in highway safety programs as appropriated by the General Assembly." There is no supplanting problem arising from the fact that the funds have been available for highway safety programs which in some respects overlap LEAA programs. According to the statute, the balance from the uninsured motorists' fund goes into the State Treasury and must be appropriated by the State legislature in order to be available for highway safety programs. If the State legislature were to appropriate these funds to the LEAA program instead, this would be no different from appropriating any other funds from the State Treasury.

Any question on this matter can be resolved by amending the statute to provide that the funds can be used for LEAA programs and, if possible under South Carolina law, to provide for the transfer of such funds to the LEAA program without the necessity for further action by the State legislature. One

way to do this would be to amend the phrase quoted above to read "Any balance shall be transferred annually to the Law Enforcement Assistance Program to provide the non-Federal share of the costs of programs funded under the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644)."

Legal Opinion No. 71-26—Matching Funds Under Amendments to the Safe Streets Act—December 17, 1971

TO: Governor, Virginia

You have expressed concern about the new provisions in the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644) that will require the States to provide additional money to match LEAA funds. You indicated that the new requirements may constitute an almost insurmountable barrier to further participation in the LEAA program by Virginia and other States.

These statements apparently were made in reference to two provisions recently added through amendments to the Safe Streets Act which become effective in fiscal year 1973. The first provision is the "buy-in" provision which requires each State to provide, in the aggregate, 25 percent of the non-Federal share of the costs of all LEAA block grant projects undertaken by units of local government within the State. The second provision is the "hard match" provision which requires States and units of local government to provide *in cash* 40 percent of the non-Federal share of the costs of LEAA block grant projects which they undertake. The following legislative background will indicate that LEAA did not initiate or support either of these provisions, but rather did everything possible to soften their impact on the States.

As originally enacted, the Safe Streets Act permitted LEAA to pay up to 60 percent of the costs of most LEAA-funded projects and required the States and cities to provide the remaining 40 percent. This non-Federal contribution could be in cash or in services, facilities, or other "in-kind" match. In practice, if a State sponsored a project, the State provided the full 40 percent match, and, if a unit of local government funded the project, the State generally passed the full matching burden to the unit of local government. In 1970, Congress amended the Safe Streets Act by reducing the required State and local matching share to 25 percent of total project costs, and—acting on a longstanding recommendation of the Advisory Commission on Intergovernmental Relations—requiring the State to "buy in" on local LEAA projects by providing in the aggregate one-fourth of the non-Federal share of the costs of such projects. This buy-in provision was written into the 1970 legislation by the House Judiciary Committee after eliciting extensive testimony from the mayors of many large cities concerning their inability to provide the non-Federal share of the costs of LEAA projects and the unwillingness of the States to assist them. The House provision would have required the States to buy in on all local projects.

Subsequently, on the basis of testimony by the Attorney General before the Senate Judiciary Committee, the buy-in provision was deleted from the Senate version of the Safe Streets Act. The Senate Judiciary Committee report, reflecting the Attorney General's testimony, stated that the committee did not wish to see an "inflexible standard" included in the act which might "have the effect of requiring some States to withdraw from the program because of inability to meet matching requirements." In the conference committee convened to resolve the differences between the House and Senate versions of the legislation, the buy-in provision was accepted by the Senate conferees, but with modifications that postponed the effective date until fiscal year 1973 and allowed the States to buy in on an aggregate basis rather than on a project-by-project basis. This compromise provision ultimately became law. The "in the aggregate" language allows a State to buy in on selected projects and to provide more or less than the required 25 percent for individual projects so long as it provides overall at least 25 percent of all projects funded by units of local government throughout the State.

The hard match provision was added to the Safe Streets Act by the Senate Judiciary Committee in response to testimony indicating that many of the States and cities were providing non-Federal matching shares in large part in donated goods and services rather than in cash. In explaining the purpose of the provision, the Senate Judiciary Committee report stated:

> This provision should work to guarantee that these new Federal funds will, in fact, draw new State and local funds into the criminal justice system and avoid the real danger that Federal funds would merely replace State and local funds in financing the system.

The provision specifies that 40 percent of the non-Federal share of LEAA-funded programs or projects (or 10 percent of the total cost) must be "money appropriated in the aggregate. . .for the purpose of the shared funding of such programs or projects." LEAA has interpreted this language as leniently as the legislative history will permit, to mean that hard match does not have to be provided for each individual project undertaken by a State or unit of local government with LEAA funds, so long as at least 40 percent of the non-Federal share of the costs of all projects within each major program set out in the State's comprehensive plan is provided in cash. This means that some projects may have more or less than 40 percent hard match, so long as each major program set out in the plan complies in the aggregate with the hard match requirement. It should be emphasized that units of local government will have the primary responsibility for providing the hard match for local projects, although the State buy-in may be used at the option of the State to provide all or part of the hard match for such projects.

LEAA recognizes that the buy-in and hard match requirements will place difficult burdens on the States and units of local government and it presently is developing financial guidelines that will permit as much flexibility as possible in complying with the new requirements.

A specific example of how the buy-in and hard match provisions would work in Virginia in a given fiscal year will help to clarify the provisions and will demonstrate that the additional cash burden will not be as great as is feared.

Treating this year's LEAA appropriation as the basis for the example, Virginia would be eligible to receive a block action grant of $9.33 million. Under the present "local pass-through" provision, 75 percent of these funds, or approximately $7 million, must be made available to units of local government. This $7 million in Federal funds could then be used to pay 75 percent of the costs of local LEAA projects. The 25 percent non-Federal share of the costs of these local projects would be $2.33 million. Under the buy-in, the State would have to provide, in the aggregate, one-fourth of this amount, or approximately $583,000, and the local governments would have to provide the remaining $1.75 million.

The hard match provision would require that 40 percent of the non-Federal share of the costs of these local projects, or $933,000 in the aggregate, must be in cash appropriated for the purposes of the shared funding of LEAA programs or projects. The primary responsibility for providing this cash match would rest with the local units. The State's only obligation with respect to these local projects would be to provide the $583,000 buy-in, and, while it is anticipated that the buy-in generally will be in the form of cash, it may be possible for the State to provide some part of the buy-in in the form of in-kind services or facilities.

The State could retain $2.33 million of its block grant for expenditure on State programs. It would have to provide the full 25 percent non-Federal share of the costs of these programs, a total of $780,000. Of this amount, 40 percent, or $310,000, would have to be hard match specifically appropriated for the purpose of matching LEAA programs, and the remaining $470,000 could be in the form of in-kind match.

In summary, the State's total matching obligation for a block grant of $9.33 million would be $1,363,000. Of this amount, approximately $893,000 would have to be provided in cash—$583,000 as buy-in on local projects (unless some part of the buy-in could be satisfied by in-kind match) and $310,000 as hard match for State projects. By way of contrast, before the enactment of the recent amendment reducing the non-Federal matching share from 40 percent to 25 percent, the State's matching obligation for a block grant of this amount would have been $1.55 million. Thus, in net effect, the recent amendments reduced the State's overall matching obligation, but required that a significant part of its matching contribution be in cash.

Two additional factors will come to bear on the matching obligations of the States in fiscal year 1973 and beyond. Another new provision which will become effective in 1973 is the "flexible pass-through" provision which will repeal the fixed 75 percent pass-through requirement and permit each State to pass through to local units a percentage of its block grant that corresponds with the percentage of non-Federal law enforcement expenditures in the State borne by local units. This will mean that in fiscal year 1973 Virginia will have the option of passing through to local units only about 63 percent of its block grant funds and may retain up to 37 percent for State programs. If the State elects to retain the full 37 percent, its total match obligation will increase to about $1.64 million, of which $460,000 will have to be provided in cash as hard match for State projects and $490,000 will have to be provided as buy-in on local projects—probably in cash.

The second factor concerns the timing of the non-Federal matching contribution. LEAA's present guidelines permit block grant funds to be expended by the States and cities over a period of 3 fiscal years—the fiscal year in which the block grant award is made plus 2 additional fiscal years. The non-Federal share of the costs of an LEAA-funded project does not have to be available at the outset of the project, but may be contributed at any time prior to the end of the project period or the expenditure of the entire Federal share, whichever occurs first. Thus, it is possible for a project to be financed for a considerable period of time entirely from Federal funds, so long as the non-Federal share is contributed before all Federal funds for the project are expended. This means that the States and cities may have up to 2 years after the fiscal year in which an LEAA block grant is made to contribute the non-Federal share, a factor that should afford relief to many States and cities, particularly those whose legislatures appropriate on a biennial basis.

Legal Opinion No. 71-27—Section 406(f) of the Safe Streets Act—December 27, 1971

TO: Director
Manpower Development Assistance Division (MDAD), LEAA

This is in response to your memorandum requesting an opinion and comments on the following MDAD policy interpretations of Section 406(f) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644).

1. A person receiving Law Enforcement Education Program (LEEP) funds may not concurrently receive internship funds.

- Section 406(f) of the act provides that internship grants may be given to full-time students during summer recess or while on leave from the degree program. During this recess or leave period, a student would not be eligible for other MDAD funds. However, the student may receive MDAD funds in other periods of the same year.

2. A "full-time internship" is defined as at least 30 hours per week.

- This is consistent with the LEEP Manual 1969 VII-8(28), which defines "full-time" as a minimum of 30 hours per week.

3. The payments to interns are grants and therefore are not subject to the withholding requirements of a "salary."

- The act states at Section 406(f) that the payments are grants. However, the Internal Revenue Service opinion of March 9, 1970 (T.I.I. 1.2.) does not speak to grants for internship programs. LEAA therefore requests an opinion from IRS as to whether internship grant funds should be considered a part of gross income. In addition, it should be noted that this is a change of MDAD policy (see internship programs guide, May 1970, Section III D).

4. A person receiving internship funds may receive Veterans' Administration (VA) benefits.

- The educational institution may award grants to persons receiving VA benefits. However, whether a student's participation in an internship program makes him eligible for VA educational benefits is a determination to be made by the VA, not LEAA.

5. "On leave from the degree program" is interpreted to mean that the student is not responsible to the university for *content* or *quality of work* performed on the internship.

6. "Academic credit" for an internship is left to the discretion of the institution. The act does not prohibit the institution from granting credit for work experience; however, the phrase "on leave from the degree program" indicates that the institution has no control over conditions of the internship. Additionally, upon completion of the internship, the student may not use LEEP funds to register for an examination for credit based on the intern experience.

- The phrases "during any summer recess" or "on leave" cannot be imputed to a legislative intent to relieve or prohibit the educational institution from having control over the conditions of the internship program, its content, or quality of work. The only meaning that can be imputed from these phrases is that the internship program cannot be concurrent with an active academic semester or quarter. LEAA and the educational institution have the responsibility to insure that the internship programs are such that they will get young people interested in criminal justice careers and provide assistance to criminal justice agencies in attracting young people. LEAA and the institution should insure that the programs will meet these criteria. Senator Edward M. Kennedy introduced Section 406(f) to carry out this purpose. The participating law enforcement agency must express a desire for and willingness to accept interns, and any arrangement of program content between the agency and the educational institution should be on a voluntary basis.
- "Academic credit" is the prerogative of the educational institution.
- The use of MDAD funds to register for an examination for credit based on the intern experience is a policy matter within the discretion of LEAA (MDAD).

7. In the event that the internship agency does not supplement the internship grant, the university may make direct payment to the intern.

- The method of payment of the grant funds to the student under any circumstances is within the administrative and policy discretion of LEAA (MDAD).

LEGAL OPINIONS

OF THE

OFFICE OF GENERAL COUNSEL

OF THE

LAW ENFORCEMENT ASSISTANCE ADMINISTRATION
UNITED STATES DEPARTMENT OF JUSTICE

JANUARY 1 TO DECEMBER 31, 1972

ADMINISTRATOR

JERRIS LEONARD

ASSOCIATE ADMINISTRATOR

RICHARD W. VELDE

ASSOCIATE ADMINISTRATOR

CLARENCE M. COSTER

GENERAL COUNSEL

THOMAS J. MADDEN

Legal Opinion No. 72-1—Matching Provisions—January 12, 1972

TO: Director
Division of Justice and Crime Prevention
Richmond, Virginia

This opinion concerns the manner in which the Virginia Legislature appropriates funds for hard match for LEAA programs under the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644). The practice in Virginia is to appropriate lump sums for the operating expenses of State departments and agencies without identifying the various purposes for which the funds may be spent. There generally is no committee report breaking the lump sum into identifiable parts. However, each agency submits to the legislature a detailed budget request which does identify the purposes for which funds are requested. These budget requests would identify part of the funds as LEAA matching funds. The question is whether this practice in Virginia will satisfy the hard match language which requires that hard match funds be appropriated for the express purpose of matching LEAA funds. There is a statement in a draft guideline distributed by this Office in January 1971, indicating that there must be language in the appropriation bill identifying the funds as LEAA matching funds.

This Office has determined that the Virginia practice complies with the law. Even though the appropriation bill itself does not contain line item identifications of the purposes for which the funds are appropriated, the appropriation is made in response to detailed budget requests which do identify the purposes for which the funds are requested and which, under Virginia law, are binding on the requesting agencies just as if the purposes were set out in the appropriation bill itself. Therefore, where an agency's budget request identifies part of the funds requested as LEAA matching funds and the legislature includes that amount in a lump sum appropriation to the agency, the hard match provision will have been satisfied.

Legal Opinion No. 72-2—Use of Part E Funds for Planning—January 24, 1972

TO: Deputy Assistant Administrator
Office of Criminal Justice Assistance, LEAA

This is in response to your memorandum of September 17, 1971, requesting an opinion on the Colorado State Criminal Justice Planning Agency (SPA) proposal to use 10 percent of Colorado's Part E allocation to support the SPA planning staff.

The general rule is that where an appropriation is made available for a specific purpose, other appropriations may not be used in lieu thereof. Part B,

Section 203(a) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644) states:

> A grant made under this part to a State shall be utilized by the State to establish and maintain a State planning agency.

This Office has always taken the position that only Part B funds may be used for the operation of the SPA. On that ground, it has previously denied requests by several SPA's to use a percentage of Part C funds for "administration" of subgrants. The same rule must apply to Part E funds. These funds were intended for action purposes, with maintenance of the SPA to remain supported by Part B. If Part E adds new planning and administration burdens on the SPA, which is clearly the case here, the proper recourse is to seek more funds under Part B. That is being done for fiscal year 1973. In fact, the "Part E burden" concept is being used as part of the justification for increasing the Part B appropriation.

This means only that Part E funds may not be applied directly to maintenance of the SPA staff. Part E funds can support planning, however. Costs related to correctional construction project planning, such as architectural estimates, site location, and determination of facilities' size, may be paid from Part E funds.

Legal Opinion No. 72-3—State Buy-In—January 25, 1972

TO: Administrator, LEAA

This memorandum is a followup to a discussion at an executive committee meeting in December concerning the legality of State proposals to utilize funds that have traditionally been "local revenues" to satisfy the buy-in, as provided under the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644).

LEAA must distinguish between situations where a State is redirecting State revenues to satisfy the buy-in, which is permitted, and those situations where a State is in effect telling local units that they must use traditionally general purpose local revenues for law enforcement, which does not, in the opinion of this Office, satisfy the buy-in requirement.

An example of the first situation is the South Carolina uninsured motorists' fund. Those funds are collected by the State Highway Department and deposited in the State Treasury. They thus become State revenues and can be diverted from purposes for which they have traditionally been used to local law enforcement projects in satisfaction of the buy-in.

An example of the second situation is the South Carolina beer and wine tax. The beer and wine taxes are collected by the State Tax Commission, but not all of the taxes are deposited in the State Treasury. There is a distribution formula which directs that a certain percentage of the funds "shall be paid into the State Treasury for ordinary State purposes. . . ." These are State funds and can be used to provide buy-in. The remaining percentage of the beer and wine tax

funds is distributed by law to counties and cities on the basis of population. This is a statutory revenue sharing scheme that has been in effect in South Carolina for decades. The local share of the beer and wine tax is by law and practice considered to be local revenues available for general local purposes. What South Carolina proposes to do is to direct its cities and counties to use these funds for law enforcement on the theory that this satisfies the buy-in. The point is that these funds cannot be used for the buy-in because they are not State funds; they are local funds.

If the South Carolina Legislature amends Section 65-740 of the South Carolina Code to provide that all beer and wine tax funds shall be paid into the State Treasury, the funds would be available for buy-in purposes. LEAA cannot interfere in that legislative process. Nonetheless, short of such an amendment, LEAA must tell South Carolina and other States that propose similar schemes that they must satisfy the buy-in from State revenues and cannot utilize funds that under law are local revenues.

Legal Opinion No. 72-4—Applicants for Subgrants With Units of General Local Government—February 14, 1972

TO: Governor's Justice Commission
Commonwealth of Pennsylvania

Your letter of January 28, 1972, requests an interpretation of the phrase "units of general local government" and an opinion as to which individual in the local government has the legal authority to apply for grants.

Section 601(d) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644) defines unit of general local government as a "city, county, township, town, borough, parish, village, or other general purpose political subdivision of a State, or an Indian tribe which performs law enforcement functions. . . ." It is clear from the examples given in the definition and the phrase "other general purpose political subdivision," that the only local governmental units that qualify are those with general political jurisdiction—that is, those that possess the quality of jurisdictional powers (e.g., taxing power, lawmaking power, law enforcement authority) usually possessed by a city, town, county, or similar unit. Some general law enforcement authority would be a requisite.

As to who has the authority legally to bind the unit of general local government when making an application for a grant, this Office agrees that State law will determine this. However, there may be situations where this determination will have to be made on an ad hoc basis.

Legal Opinion No. 72-5—Proposed Law Concerning California State Planning Agency—March 8, 1972

TO: California Council on Criminal Justice
Los Angeles, California

This Office has reviewed California State Assembly Bill 375 to establish a five-man Criminal Justice Board to replace the existing California Council on Criminal Justice.

There are various provisions in this proposed legislation that bring it into direct conflict with Section 203(a) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644). Section 203 expressly provides that the State Criminal Justice Planning Agency (SPA) shall be subject to the jurisdiction of the Governor and shall be representative of the law enforcement agencies, units of general local government, and public agencies maintaining programs to reduce and control crime.

Section 13800 of the proposed legislation is inconsistent with the requirement regarding the SPA's representative character. This section states:

> Each member shall represent the state at large and not any particular portion thereof. . . .

Notwithstanding the fact that the proposal calls for one member of the five-man board to be "qualified" in the field of local government, this could not be construed as conforming to the requirement that the SPA be representative of the units of general local government. Secondly, while the proposal calls for the Governor to appoint the five members, such appointment ". . .shall be subject to confirmation by the Senate. . .and the refusal or failure of the Senate to confirm an appointment shall create a vacancy in the office to which the appointment was made" (Section 13800).

Section 13803 empowers the legislature to remove a member of the board from office.

Granting removal and confirming authority to the legislature is inconsistent with the mandate of Section 203(a) of the Safe Streets Act, which makes the SPA subject to the jurisdiction of the Governor.

In addition it is questionable whether, as authorized by Section 13804, that where three members of the board constitute a quorum, this could be considered a representative body as contemplated by the Safe Streets Act.

While there is no statutory authority prohibiting full-time paid board members, this might create a problem since the board members, even if they were representative of the various State and local groups as required by the act, could conceivably lose such identity upon becoming full-time State employees.

This Office does not believe that any of the above inconsistencies would be cured by the creation of a representative Advisory Committee on Criminal Justice (proposed Section 13820).

Legal Opinion No. 72-6—Use of Model Cities Funds as Match for LEAA Programs—March 9, 1972

TO: Assistant Administrator
Office of Criminal Justice Assistance, LEAA

Funds derived from other Federal grant programs may not be used as local matching funds, unless specifically permitted by the law under which the other funds were made available. The Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3305d) contains such express language permitting the use of funds as match.

The concept of the matching contribution is the demonstration of the involvement and interest of State and local government in a *program* being carried out with Federal funds. The special provision of the Model Cities legislation, allowing the funds available under that program to match other Federal funds, was to assist Model Cities, and it is doubtful that Congress intended such grants to fulfill the entire local matching contribution requirements under all other Federal grant programs. There is, however, no prohibition in the Model Cities legislation against using the funds to meet all matching requirements under a particular Federal project or group of projects subject to the following conditions:

1. The funds to be used as match are not necessary to support other new or additional Model Cities projects.
2. The Federal grant-in-aid program is part of an approved comprehensive city demonstration program.
3. The funds are not to be used for general administration of local government.
4. The funds are not to be used to replace non-Federal contributions obligated prior to application for Model Cities funds.

In addition, the following LEAA conditions must be met before Model Cities funds may be used as match:

1. The Model Cities funds may only be used as match by the unit of local government to which the grant is awarded (in this instance, the city of Cleveland).
2. The Model Cities funds used as match must have been awarded to carry out programs and projects to improve and strengthen law enforcement.
3. The Model Cities funds will only be allowed as match funds in the same manner and to the same extent that a particular cost element would have been an allowable cost if paid for out of LEAA grant funds.

Legal Opinion No. 72-7—Propriety of Subgrant to U.S. Attorney's Office, Washington, D.C.—March 9, 1972

TO: U.S. Attorney's Office
Washington, D.C.

This is in response to your memorandum of March 8, 1972, requesting an opinion as to whether a grant made to the Washington, D.C., State Criminal Justice Planning Agency (SPA) with the Office of U.S. Attorney, Washington, D.C., as a subgrantee was allowable.

As a general rule, Federal agencies are not permitted to finance their operations from any source other than their own appropriation. Nor may funds or services provided from outside sources be used directly or indirectly to finance agency operations for which appropriations are available. This is considered an improper augmentation of an appropriation (15 Comp. Gen. 390, 392 (1935)). However, there are legislative exceptions to this rule. Congress authorized an exception when it amended Section 601(1) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644) to include, for the purpose of eligibility for funds, any agency of the United States Government performing law enforcement functions in and for the District of Columbia. Such funding was limited "...for the sole purpose of facilitating the transfer of criminal jurisdiction from the United States District Court for the District of Columbia to the Superior Court of the District of Columbia pursuant to the District of Columbia Court Reform and Criminal Procedure Act of 1970."

Senate Report No. 91-1253 specifically mentions the U.S. Attorney's Office as being eligible for assistance:

> The Committee has also modified the House revision of the definition of unit of general local government to make sure that Federal agencies and instrumentalities performing local law enforcement functions in the District of Columbia are eligible for Title I assistance.... Such agencies include...the United States Attorney's Office.

The U.S. Attorney's Office for the District of Columbia is eligible for funds, therefore, as long as these funds are used for the purpose of facilitating the transfer of criminal jurisdiction to the D.C. Superior Court. Therefore, the grant to update the automated system in the new Superior Court would appear to conform to such a purpose.

As to whether an award to the U.S. Marshal's Office would be proper, it will be necessary to know whose personnel is being trained. If U.S. Marshal forces are being trained, then such a grant would probably not be proper.

However, if the recipients of such training are State and local participants, this might be a proper award provided that this is not a normal or contemplated Federal agency operation for which appropriations are available.

Legal Opinion No. 72-8—Legality of Oklahoma's Proposed 1972 Program for Criminal Justice Coordinating Councils (CJCC)—March 21, 1972

TO: LEAA Deputy Regional Administrator
Dallas

This is in response to your request for an opinion regarding the legality of Oklahoma's proposed 1972 program entitled "Aid to Substate Planning Districts for Developing and Implementing Programs." According to the Oklahoma program, Part C funds of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644) are intended to be used to support the coordination, technical assistance, and some planning aspects of the 11 substate planning districts.

Section 301(b) of the act was amended to authorize LEAA to make grants to States for the establishment of a criminal justice coordinating council for any unit of general local government or any combination of such units within the State. A limitation was placed upon the eligibility of units of general local government or combinations of such units for grants under this program. A unit must have a population of 250,000 or more. The Senate Judiciary Committee in its report indicated that this limitation was added because establishment of councils for smaller population areas would be a needless proliferation of the planning function. As stated by Senator Roman L. Hruska:

> ...The Senate amendment expresses the intent to concentrate this assistance in heavily populated areas which are the ones generally characterized by high law enforcement activity.

Other than in a single definable governmental unit with a population in excess of 250,000 which has a concentration of population, it was intended that LEAA would assure that this type of Part C assistance was provided in such a manner as to avoid a needless proliferation of the planning function. To this end, authority exists within LEAA to set limits or impose requirements for combinations of units without large individual concentrations of population. At the minimum, LEAA's recommendation would require that individual governmental units that combine to achieve the 250,000 population minimum to qualify for eligibility for a CJCC grant meet the following requirements:

1. The CJCC agency (or region in this case) must have authority or capacity from the State level of government and delegations of authority from the local units that will enable that unit to achieve effective "regionalized" operations and activities.

2. Some individual units totaling the 250,000 minimum population must have police, corrections, and court (where a unified court system does not exist) related operational responsibilities.

3. The State Criminal Justice Planning Agency (SPA) must make a determination that adequate Part B funds are not available to achieve these purposes.

Legal Opinion No. 72-8—Legality of Oklahoma's Proposed 1972 Program for Criminal Justice Coordinating Councils (CJCC)—March 21, 1972

TO: LEAA Deputy Regional Administrator
Dallas

This is in response to your request for an opinion regarding the legality of Oklahoma's proposed 1972 program entitled "Aid to Substate Planning Districts for Developing and Implementing Programs." According to the Oklahoma program, Part C funds of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644) are intended to be used to support the coordination, technical assistance, and some planning aspects of the 11 substate planning districts.

Section 301(b) of the act was amended to authorize LEAA to make grants to States for the establishment of a criminal justice coordinating council for any unit of general local government or any combination of such units within the State. A limitation was placed upon the eligibility of units of general local government or combinations of such units for grants under this program. A unit must have a population of 250,000 or more. The Senate Judiciary Committee in its report indicated that this limitation was added because establishment of councils for smaller population areas would be a needless proliferation of the planning function. As stated by Senator Roman L. Hruska:

> . . .The Senate amendment expresses the intent to concentrate this assistance in heavily populated areas which are the ones generally characterized by high law enforcement activity.

Other than in a single definable governmental unit with a population in excess of 250,000 which has a concentration of population, it was intended that LEAA would assure that this type of Part C assistance was provided in such a manner as to avoid a needless proliferation of the planning function. To this end, authority exists within LEAA to set limits or impose requirements for combinations of units without large individual concentrations of population. At the minimum, LEAA's recommendation would require that individual governmental units that combine to achieve the 250,000 population minimum to qualify for eligibility for a CJCC grant meet the following requirements:

1. The CJCC agency (or region in this case) must have authority or capacity from the State level of government and delegations of authority from the local units that will enable that unit to achieve effective "regionalized" operations and activities.

2. Some individual units totaling the 250,000 minimum population must have police, corrections, and court (where a unified court system does not exist) related operational responsibilities.

3. The State Criminal Justice Planning Agency (SPA) must make a determination that adequate Part B funds are not available to achieve these purposes.

Under the above criteria, unless the 11 Oklahoma substate planning districts contain individual units with a population of 250,000, or meet the special requirements set out in this opinion, they would not be eligible for Part C CJCC money.

Section 601(d) defines a unit of general local government as a "city, county, township, town, borough, parish, village, or other general purpose political subdivisions of a State, or an Indian tribe which performs law enforcement functions. . . ." It is clear from the examples given in the definition and the phrase "other general purpose political subdivisions" that the only local governmental units that qualify are those with general political jurisdiction—that is, those that possess the quality of jurisdictional powers (e.g., taxing power, lawmaking power, law enforcement authority) usually possessed by a city, town, county, or similar unit.

As far as a criminal justice coordinating council is concerned, what was envisioned by Congress was a body whose purpose would be to provide improved coordination of all law enforcement activities, such as those of the police, the criminal courts, and the correctional system. The intent was that such a council would serve as a catalyst to overcome the pervasive fragmentation of police, court, and correctional agencies. It was viewed as a tool for the city to coordinate the operations of each functional area. This necessarily entails some planning functions so that, in some respects, similar types of activities may be handled by both Part B and Part C funds. However, each CJCC subgrant to a unit that has a Part B agency should receive close scrutiny by the SPA so that each operation is clear as to the scope of its activities and duplication may be avoided.

The only purpose to which these funds may be put are purposes relevant to criminal justice functions. Thus, other than the limited type of clearinghouse activities relevant to criminal justice program coordination, the Criminal Justice Coordinating Council subgrant cannot be a fund source for the region to carry out clearinghouse activities or other multifunctional purpose activities related to other planning or the Project Notification and Review System.

It should also be noted that it was recommended that Part C assistance for a council be conditioned upon its meeting the representation requirements of amended Section 203(a). (Senate Report No. 1253, 91st Cong., 2d Sess. 44 (1970).)

Legal Opinion No. 72-9—Eligibility of State Legislatures for LEAA Grants—March 30, 1972

TO: LEAA Regional Administrator
San Francisco

This is in reference to your memorandum of March 22, 1972, regarding the eligibility of a State legislature for LEAA funds as provided under the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644) and whether such funding is prohibited by

Office of Management and Budget (OMB) Circular A-87. This issue has been discussed previously with OMB, which advised that the phrase "whether incurred for purposes of legislation or executive direction," is not intended to prohibit the funding of activities that indirectly affect the legislative process, but rather to cover the normal activities of some local bodies such as county supervisors or school boards that have powers not easily classifiable as legislative or executive.

Based on the above interpretation of the A-87 provision, LEAA may properly draw the "unallowable" line at the formal lawmaking process of a State legislature. This would make the usual standing and special committee activities, such as hearings on proposed legislation, unallowable because they are undertaken as part of the usual formal lawmaking process. However, it would permit the LEAA funding of study committees and commissions that undertake activities outside the formal processes of the legislature even though the committees or commissions may make findings or recommendations, including proposed legislation, that ultimately enter the formal stages of the lawmaking process. This is especially true where the membership of the body includes nonlegislative members. The Arizona project involves an ongoing research and evaluation staffing unit to prepare for the Criminal Code revision. If the committee has no authority to take any final action as part of the lawmaking process, and its recommendations and findings will be advisory only, its functions would be outside of the scope of formal legislative activities intended to be made unallowable by A-87.

A companion issue was whether Part C funds could be utilized for this project.

A memorandum from this Office dated January 19, 1970, stated that State legislatures were eligible for Part D and E grants but ineligible for Part C money. This Office has reviewed this memorandum and finds that a proper resolution of this issue requires LEAA to hold that State legislatures are eligible to receive Part C funds for activities not part of the usual lawmaking process.

Section 301(b)(1) of the act authorizes LEAA to make grants to States for:

> Public protection, including the development. . .implementation. . .and purchase of methods. . .designed to improve and strengthen law enforcement and reduce crime in public and private places.

The grant to the Arizona Legislature would be in accord with the provisions of Section 301(b)(1) because the funds would be expended upon a project to revise the Arizona Criminal Code.

Section 303(a)(2) provides that 75 percent of all Federal funds granted to a State will be available to units of general local government. There is nothing in the act to prohibit a State from approving a grant to a State legislature from the remaining 25 percent of the funds available.

Legal Opinion No. 72-10—Supplanting Funds and Reimbursement Arrangement Questions, New Mexico Department of Corrections—March 30, 1972

TO: LEAA Regional Administrator
Dallas

This is in response to your communication dated December 22, 1971, requesting an opinion on the nonsupplanting funds requirement of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644).

Section 303(a)(10) of the act states that the comprehensive State plan shall:

> . . .set forth policies and procedures designed to assure that Federal funds made available under this title will be so used as not to supplant State or local funds, but to increase the amounts of such funds that would in the absence of such Federal funds be made available for law enforcement. . . .

It is clear that this language means that LEAA funds should be used as a supplement to State or local funds and to increase the total funds available for law enforcement rather than to replace State or local funds with Federal funds.

The Financial Guide, Section II, G, requires a certification that the aggregate State agency or local expenditures are at least as great as in the preceding years. It would seem, therefore, that if the State in this case could show compliance with the nonsupplanting requirement in the aggregate, it would not be prohibited from reimbursing funds appropriated by the State prior to the subgrant award. A new appropriation that increases the State appropriation for law enforcement and that is predicated on an anticipated LEAA grant meets this requirement. It must be clearly shown, however, that this anticipated arrangement was a condition of the appropriation of funds by the State. LEAA funds should not be used to supplant State project funds that are appropriated without this condition.

The remaining issue is whether LEAA may authorize reimbursement of funds advanced by the State.

Section 301(b) of the act states:

> The Administration is authorized to make grants to states having comprehensive state plans *approved* by it. . . . (Emphasis added.)

The Comptroller General Decisions hold that:

> The word 'approval' is sufficiently broad to encompass both an authorization in advance or an approval after the fact. (31 Comp. Gen. 308 and 21 Comp. Gen. 921.)

Section 516(a) of the act states that payments under this title may be made by way of reimbursement as determined by the LEAA Administrator. Chapter 41, subpart 1-15.712-6, of the Federal Regulations relative to principles for determining costs applicable to grants with State and local government (incorporated into LEAA procedures pursuant to Office of Management and Budget (OMB) Circular A-87 and State Criminal Justice Planning Agency (SPA)

Notice of March 30, 1971) states in general that costs incurred prior to the effective date of a grant are allowable when specifically provided for in the grant agreement.

Therefore, the State may advance or lend funds for a project for which it anticipates LEAA funds will be available within the nonsupplanting fund requirement. However, this opinion is not to be regarded as an approval, intention to approve, or concurrence in the project referred to in the subject letter. Nor is this an approval of the proposed method of funding, that being the discretion of the appropriate approving authorities.

Legal Opinion No. 72-11—Missouri, Senate Bill No. 320—April 3, 1972

TO: LEAA Regional Administrator
Kansas City

This Office has reviewed Missouri Senate Bill No. 320, which relates to the submission by a State Criminal Justice Planning Agency (SPA) of all applications for Federal funds to the director of the budget, the legislative fiscal officer, the chairmen of the Senate and House appropriations committees, and the minority floor leaders of the State Senate and House of Representatives. In addition, the legislature is to receive a complete report concerning the expenditure of funds, number of programs, duration, objectives, and performance.

This bill is not inconsistent with the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644) so long as the purpose of the review is to assure that the SPA plans comply with the State budgetary policies and do not constitute a review of the substantive merits of any applications. The legislature cannot usurp the authority of the SPA and supervisory board with respect to development and approval of the comprehensive plan, determinations of priorities, definition of projects, and allocation of Federal funds. It may review how money is appropriated and spent.

The language of Section 33.087.3, "No federally funded program may be expended above the level specified in the plans approved by the legislature," appears to require the legislature to approve the plans of the SPA in respect to federally assisted projects. Approval by the State legislature would be inconsistent with the congressional mandate placing the exclusive authority in the SPA subject only to the policy supervision of the Governor. This section needs to be clarified. It may be that the section is intended to relate to overall State agency operations.

Section 33.087.3 and .4 require that programs not be continued for a period of more than one fiscal year without prior approval of the committee on State fiscal affairs. The natural life of many programs extends for a longer period than 1 year, and this Office suggests that this section be amended to reflect a more realistic time frame.

Legal Opinion No. 72-12—Funding Operation Eligibility—April 13, 1972

TO: Virgin Islands Law Enforcement Commission

This is in regard to your letter of April 7, 1972, requesting written views as to the eligibility of the Virgin Islands Office of U.S. Attorney for LEAA funds.

The U.S. Attorney's Office is not eligible for LEAA funds because that office is financed by a separate congressional appropriation. LEAA cannot direct its funds to support any agency that has its own congressional appropriation without express authority from Congress. No such authority exists for the U.S. Attorney's Office in the Virgin Islands.

Although there may be non-Federal functions performed by the U.S. Attorney's Office, these functions would necessarily be authorized, and the U.S. Attorney's Office appropriation would cover such functions.

The District of Columbia U.S. Attorney's Office is in an analogous situation in that many non-Federal crimes are prosecuted by that office. LEAA does provide funds to the U.S. Attorney's Office in the District of Columbia, but only because a specific amendment was added to the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644), Section 601(d). This amendment requires that such assistance eligibility be for the sole purpose of facilitating transfer of criminal jurisdiction from the United States District Court for the District of Columbia to the Superior Court of the District of Columbia.

Legal Opinion No. 72-13—Wilmington Narcotics Screening Program—April 27, 1972

TO: Administrator, LEAA

This is in response to your request for a legal opinion as to whether Part E funds may be utilized in conjunction with Part C funds for a single program, i.e., a narcotics screening program in the Wilmington, Delaware, jail, under the provisions of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644).

A program to test arrestees and to create diagnostic and treatment programs for those found to be addicts is entirely consistent with the purposes for which Part E funds may be utilized. Section 451 states: "It is the purpose. . .to encourage States and units of general local government to develop and implement programs and projects. . .for the improvement of correctional programs and practices." Section 601(1), which was a 1970 amendment passed in conjunction with the Part E amendment, defines correctional institutions and facilities to include places for confinement of those "charged with. . .criminal offenses."

This type of program is being conducted at the present time in the District of Columbia, where the percentage of felony as well as misdemeanor arrestees found to be on drugs is significant, generally more than one-third. The availability of such information at the preadjudicated stages will aid the court in formulating a proper release program.

Thus, this program may be funded from Part E fund sources in addition to Part C sources on the basis that the arrestees are in the correctional system, that a high degree of correlation exists between those arrestees and the use of drugs, and that the availability of this information will be of assistance to the courts and correctional officials in providing correctional programs consistent with the emphasis of Part E of the act.

A statement should accompany the grant application as to whether Part C or Part E funds will be separately accounted for, or whether all Part E assurances, emphases, and advanced practices will be applied to both the Part C and Part E funds.

Legal Opinion No. 72-14—Use of Part E Funds—May 10, 1972

TO: LEAA Regional Administrator
Denver

This is in response to your memorandum of March 21, 1972, describing various projects and requesting an opinion as to whether Part E funding provided for under the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644) could be utilized.

The purpose of Section 451 is to encourage the construction of correctional facilities and to encourage the development and improvement of correctional programs and practices. The following programs, therefore, can be funded under Part E.

- Court sentencing and diagnostic improvement procedures (Section 453(4)).
- Educational programs for police and judges related to the method of corrections and the interrelationships with their functions (Section 453(8)).
- Community education related to the reentry of the offender into society (Section 453(4)).
- Counseling services to families of juvenile delinquents and diversionary activities (as long as they deal with the offender or ex-offender). (These could be funded under the broad umbrella of Section 453(1)—improvement of correctional programs and practices.)

Delinquency prevention and recreational activities for delinquent-prone youth would not be part of a corrections program and could not be funded with Part E money. A program aimed at adjudicated or preadjudicated delinquents while they are under a court order or the supervision of a juvenile delinquency agency would be consistent with the provisions of Part E and eligible for funds. An example of such a program would be a delinquency

education program for youths diverted by the courts. However, a program for youths diverted by the police without going through some stage of the court process would not be eligible for Part E funding.

Legal Opinion No. 72-15—Section 303: Funding for Units of General Local Government—May 17, 1972

TO: Governor's Justice Commission
Commonwealth of Pennsylvania

This is in response to your letter of May 5, 1972, requesting an opinion as to the meaning of Section 303 of Part C, Title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644) in regard to "making available 75 percent of the funds to units of general local government."

Under the appropriate circumstances, budgeted funds that were not applied for by local government units may be used to fund projects for State agencies.

For the Governor's Justice Commission and LEAA to fulfill their obligations under the act, the following conditions must be met:

1. The program areas for which funds are allocated must adequately take into account the needs and requests of the units of general local government.
2. Local units must be provided adequate notice and an opportunity to apply for funds (at least 6 months after the LEAA block grant award).
3. Programs, if necessary, must be reprogramed within the limits of 15 percent or, with the approval of the Regional Office, in accordance with the needs and requests of the local units.
4. The local units must be given notice of funds available that are unclaimed prior to use by the State.

These general criteria may vary in individual instances where other facts are brought out.

This Office does not concur with giving consideration of a grant application on a first-come, first-serve basis, after a "cutoff date." Local units of government must always be given priority in the allocation of these funds if the application is meritorious and there is sufficient time to process and complete the grant prior to the lapse of the funds.

Legal Opinion No. 72-16—Definition of a "Unit of General Local Government," District Attorney's Office—June 1, 1972

TO: LEAA Regional Fiscal Officer for Operation
Denver

This is in response to your memorandum of March 15, 1972, regarding the definition of "unit of general local government." After reviewing the definition

of "unit of general local government" in Section 601(d) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644), the position of LEAA remains that the Colorado District Attorney's Offices and the State Judicial Districts do not meet the statutory definitional requirements. The exceptions must be rejected as being without basis. It is quite clear, and has always been the position of LEAA, that the definition of a "unit of general local government" was meant to include only those local governmental units that have broad political jurisdiction. In fact, the descriptive examples of such units specifically mention only those governmental units that exercise a variety of jurisdictional powers, including taxing power, lawmaking power, and law enforcement authority. Although it is recognized that certain State, municipal, and county governmental agencies possess some of these powers, it is necessary to possess a full range of such powers to be within the definition.

Any other interpretation of "unit of general local government" would be inconsistent with the statutory intent of giving county and municipal governments a role in State program planning and would cause an involuntary bypass of these governmental units by allowing all funding to be channeled between State planners and ultimate users.

Thus, the District Attorney's Offices and the Judicial Districts cannot be considered as "units of general local government" for the purpose of LEAA funding. Such an interpretation would violate the specific intent of Section 601(d) and the general spirit of the act.

In any case, the objections go to the question of form rather than substance. The use of the label "local funds" brings with it the statutory requirement that political units such as counties or municipalities exercise supervision in every situation over the distribution of funds. This supervision is accomplished when funds are given directly to the county or municipality for distribution; when distributions are sent to agencies with the concurrence of such counties or municipalities, or combinations of such units; or when such counties or municipalities waive their right to supervise the funding. No other funding arrangement is acceptable under the provisions of the act.

In conclusion, the Colorado District Attorney's Offices and Judicial Districts may be classified as local governmental agencies but they are not "units of general local government" as defined by the act.

Legal Opinion No. 72-17—Use of LEAA Funds for the Defense of Police Officers—June 26, 1972

TO: LEAA Regional Administrator
Dallas

This is in reference to a letter from the Texas Criminal Justice Council requesting an opinion on whether LEAA money may be used to fund a program to provide for the direct payment of counsel fees (or insurance costs)

for the defense of police officers sued personally in civil suits arising out of the official acts of the officers in the performance of their duties.

While there is no clear statutory prohibition, there is nothing in the legislative history to justify the funding of this type of program. Federal funds cannot be spent in violation of the Constitution. In each lawsuit, this Office would be obligated to determine if a prima facie constitutional violation is made. This in turn would project LEAA into a review of the internal operation of a law enforcement agency in violation of the intent of Congress in enacting Section 518(a) (no LEAA direction, control, etc., over law enforcement agencies) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644).

LEAA agrees that civil suits brought for the purpose of harassment would create a serious morale problem. In attempting to research the degree of harassment involved in civil litigation against the police, LEAA found that there was not enough information with sufficient specificity to generalize on the magnitude of such harassment.

The alternative suggested—that of providing insurance as protection against suits, frivolous or otherwise—does not appear to be a viable one. At present, such insurance policies afford little protection for civil liability. Among other things, they exclude willful and malicious acts, judgments for punitive damages, damages arising from violation of State or local law, or violations of civil rights.

There is a move at present to protect police officers subject to such litigation either by some sweeping State law changes or by Federal legislation. It is from this direction that relief should be sought.

Legal Opinion No. 72-18—North Dakota State Highway Patrol and Use of "Locally Available" Funds by State Agencies—July 12, 1972

TO: LEAA Regional Administrator
Denver

This is in response to your request as to whether the North Dakota State Highway Patrol's functions can be defined as law enforcement functions for purposes of eligibility to receive LEAA funds under the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644). An unsolicited opinion on the question of at what point State agencies can use funds earmarked for local units of government is also included.

Law enforcement is defined under the act as "any activity pertaining to crime prevention, control or reduction, or the enforcement of the criminal law, including but not limited to, police efforts to prevent, control or reduce crime or to apprehend criminals." In determining the eligibility of a grantee for a particular project, the nature of the project must be examined. In determining

grant eligibility, it must be determined whether the primary function of the applicant (or the function set out in a specific grant application) is the enforcement of criminal law.

Chapter 39-03-09 of the North Dakota Century Code, titled "Powers of Highway Patrol," indicates that the patrol has a number of duties including "to exercise general police powers over all violations of law committed in their presence upon any highway and within the highway right of way or when in pursuit of any actual or suspected law violator." The highway patrol has exercised and is exercising criminal investigation powers. To date there has been no challenge to the arrest authority of the highway patrol.

It thus appears that the patrol is able to receive assistance under the act. North Dakota may fund a project that would substantially improve law enforcement. The portion of the "police career training program" that devotes itself to law enforcement matters, such as motor vehicle theft, would be eligible for LEAA assistance while that portion related to traffic and highway safety matters would not be eligible. As substantial portions of the police career training programs deal with law enforcement matters, it would appear that the project could be partially funded.

The IACP management study could only be partially funded as the purpose of the highway patrol is only partially concerned with the enforcement of the criminal law. In each situation, Section III, 1(iii) of the LEAA Financial Guide or a similar proration of cost principles must be applied.

In summary, in agencies that have responsibilities besides the enforcement of criminal law, examination must be made of each project and in such cases eligibility is based upon the program or projects rather than the nature of the agency or employees. Therefore, in determining the eligibility of the highway patrol, a specific examination must be made of each project to determine if it is within the criteria of eligibility under the Safe Streets Act. Funding eligibility will thus be determined by the project's purpose rather than by the organizational structure of the agency.

A secondary issue is also raised by the background correspondence provided to this Office. North Dakota requested, in its March 30, 1972, letter to LEAA, an opinion as to whether 1970 funds that were made available to local units of government but for which applications were not received could be used for State programs. The March 15, 1972, response to this request was not accurate. The substance of the response stated that North Dakota was not eligible to use Section C action funds because it did not qualify for a waiver of the pass-through requirement. This answer was not responsive to the question asked.

Under the appropriate circumstances, budgeted funds that were not applied for by the local government units may be used to fund projects for State agencies. For the North Dakota Law Enforcement Council and LEAA to fulfill their obligations under the act, the following conditions must be met:

1. The program areas for which funds are allocated must adequately take into account the needs and requests of the units of general local government.

2. Local units must be provided adequate notice and an opportunity to apply for funds (at least 6 months after the LEAA block grant award).

3. Programs, if necessary, must be reprogramed within the limits of 15 percent or, with the approval of the Regional Office, in accordance with the needs and requests of the local unit.

4. Local units of government must be notified that funds are available and unclaimed prior to use by the State.

These general criteria may vary in individual instances where other facts are brought out.

Legal Opinion No. 72-19—Funding of Fellowships and Internships out of Part C and Part E Block Grant Funds—August 1, 1972

TO: LEAA Regional Administrator
Dallas

This is in response to your memorandum of May 19, 1972, requesting an opinion as to whether block grant funds can be used to support internships in law enforcement for students enrolled in an approved course of police science or related field at an institute of higher learning.

Section 406(f) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644) authorizes LEAA to make payments to institutions of higher education for grants not exceeding $50.00 per week to persons enrolled on a full-time basis in undergraduate or graduate degree programs who participate in full-time internships in law enforcement agencies.

Since there has been a specific authorization by Congress in this area, in order to use Part C funds for internships, a State would have to show in its comprehensive plan that:

- There is insufficient money under Law Enforcement Education Program (LEEP) to carry out the internship;
- These Part C funds will be made available under the terms and conditions set forth in Section 406(f).

By requiring that terms and conditions of a Part C internship program retain essentially the elements of a LEEP internship program, including the limits on the amount of assistance to any individual, LEAA will insure that assistance to individual students, whether from Part C or Part D funds, will be of the same character and thus avoid competitive funding schemes.

Part E funds could only be used for the training of interns in correctional activities, including probation, parole, and rehabilitation.

Legal Opinion No. 72-20—Lobbying Activities of SPA's—August 3, 1972

TO: LEAA Regional Administrator
Atlanta

In response to your memorandum of July 5, 1972, regarding the application of lobbying contracts at the Federal, State, and local level, it should be noted that Federal funds cannot be used for publicity or propaganda purposes not authorized by Congress or expressed in Public Law No. 92-77, 7, 701, August 10, 1971. The Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644), however, allows the National Institute of Law Enforcement and Criminal Justice to:

> Make recommendations for action which can be taken by Federal, State, and local governments and by private persons and organizations to improve and strengthen law enforcement.

LEAA's policy is to promote legislation that would be beneficial toward its projects and programs. Within the scope of this promotion, LEAA is permitted to fund study committees and commissions that undertake activities outside the formal processes of the legislature even though the committees or commissions may make findings or recommendations that ultimately enter the formal stages of the lawmaking process. This authority is found in Section 301(b) of the act which authorizes LEAA to make grants to States for:

> Public protection, including the development. . .implementation. . .and purchase of methods. . .designed to improve and strengthen law enforcement and reduce crime.

The authority under the act does not go so far as to allow for the hiring of a lobbyist or for the spending of LEAA funds solely to attain a legislative aim. Lobbying itself is a misdemeanor in Georgia under Georgia C. Ann. Section 2-205 (1948), with the exception that:

> . . .this shall not include such services as drafting petitions, bills, or resolutions attending to the taking of testimony, collating of facts, preparing arguments and memorandums and submitting them orally or in writing to a committee or a member of the General Assembly and other services of like character intended to reach the reasons of the legislatures.

It should also be noted that the Office of Management and Budget (OMB) specifically prohibits in OMB Circular A-87 the funding activities that would affect the formal lawmaking process. This would make the usual standing and special committee activities, such as hearings on proposed legislation, unallowable since they are taken as part of the usual formal lawmaking process. It would permit the LEAA funding of study committees and commissions that undertake activities outside the formal processes of the legislature even though the committee may make findings or recommendations, including proposed legislation, that ultimately enter the formal stages of legislation.

Based on the above, it would appear that each individual project planned by LEAA or the State planning agency must be examined to see if it fits within the above guidelines affecting lobbying.

Legal Opinion No. 72-21—The Meaning of "Aboriginal Group" as Used in Sections 301(c) and 306(a)(2) of the Safe Streets Act of 1968, as Amended—August 3, 1972

TO: Assistant Administrator
Office of Criminal Justice Assistance, LEAA

This is in response to a request concerning the meaning of "aboriginal group" as used in the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644).

The act in Sections 301(c) and 306(a)(2) says that "In the case of a grant...to an Indian tribe or other aboriginal group," the match requirements of the act may be waived. As the only aboriginal groups expressly mentioned in the act are Indian tribes, it must be ascertained what Congress meant by the term "aboriginal group."

It is clear from the legislative history of the act, other Federal statutes, and caselaw that both Eskimos and Aleuts are to be considered aboriginal groups. The term "aboriginal group" was added pursuant to an amendment offered in the Senate Judiciary Committee by Senator Marlow W. Cook. Senator Cook first suggested the addition of the words "or Eskimo tribe." However, when it was pointed out by the committee members that there are also Aleuts and other tribal groups in Alaska and that Federal statutes designed to cover all Alaska tribal groups usually refer to them as "Eskimos, Aleuts and other aboriginal groups" (see 25 U.S.C. 443(a) and 479 (1972)). Senator Cook suggested the present language of the act. This is supported by a statement in the committee report describing the waiver authority as applying to grants to "Indian tribes and other aboriginal groups, including Eskimos" (Senate Report No. 1253, 91st Cong., 2d Sess. 44 (1970)), and by a statement on the Senate floor by Senator John L. McClellan, floor manager of the bill, that the provision applies to Indian tribes and other tribal groups and is based upon the premise that "Indian tribes and Eskimo groups have severe law enforcement deficiencies and in many cases have no funds to pay any part of the cost of improvement programs" (113 Cong. Record S17531 daily ed. October 8, 1970). In addition, caselaw indicates that both Eskimos and Aleuts are aboriginal groups of Alaska. (See *United States* v. *Booth*, 161 F. Supp. 269 (D. Alaska 1958).)

To ascertain what other peoples are to be considered aboriginal groups for the purposes of LEAA assistance, "aboriginal group" must be defined. Before attempting a definition of the term itself, the term must be separated into its component parts. "Aborigines" are defined as "the first or earliest known inhabitants of a region; natives" (*Webster's New World Dictionary* 4 (College ed. 1968) [hereinafter *Webster's*]) or "the inhabitants found in a country at

the time of first discovery" (Aborgines, 1 *Encyclopedia Britannica* 42 (1971)). Under either definition, it seems clear that the Samoans, the Chamorros of Guam, and the Hawaiians are aboriginal to their islands.

The difficult question becomes, what is meant by the word "group," as used in the act. *Webster's* has two definitions that could possibly be applicable. The first defines "group" as "a number of persons or things gathered closely together and forming a recognizable unit; cluster; aggregation; band...." The second says a "group" is "a number of persons or things classified together because of common characteristics, community of interests, etc...." In the context of Sections 301(c) and 306(a)(2), the first definition of "group" is more appropriate.

Under the second definition, all Indians in the United States could be considered a group, but only those Indians who continue to live together, as a tribe, band, or community, can be considered a group under the first definition. Sections 301(c) and 306(a)(2) are concerned with conditions and procedures for awarding grants to Indian tribes and other aboriginal groups. In this context only the first definition makes sense. To make a match free grant, there must be a number of people living in proximity to each other to whom the grant can be made; there must be officials and leaders who will be responsible for the proper expenditure of the Federal funds. It is clear that a match free grant can be made to a "group" only as that word is defined in the first definition.

In addition, it is significant that Congress used the term "Indian tribe" in these sections, not the word "Indians." Congress must have realized that, while it would be possible to make grants to Indian tribes, it made no sense to talk of grants to Indians. Also, Congress most surely used "group" as a synonym for "tribe." Therefore, in order to give a rational interpretation to the phrase "Indian tribe or other aboriginal group," "group" must be defined so as to be consistent with "tribe." Only the first definition of "group" gives this consistency.

Based on these considerations, the term "aboriginal group" refers to the descendants of the first or earliest known inhabitants of a region who continue to live in a band, tribe, community, or any other recognizable unit, rather than having been assimilated into this country's social and political structure.

Given this definition, it can be determined which of the aboriginal peoples under the jurisdiction of the United States can be considered an "aboriginal group" in the context of the act. It is clear the Samoans qualify as an "aboriginal group." These natives of American Samoa still retain their tribal government, tribal court, and the Department of Interior furnishes policemen much as the Bureau of Indian Affairs police are furnished on various Indian reservations. It is equally clear that the Hawaiians do not fit that definition. These natives have not retained their tribal government or tribal relationship, but have been assimilated into the political structure of the State of Hawaii.

The Chamorros of Guam present a somewhat closer question; however, evidence indicates they should not be considered an aboriginal group. The Chamorros, according to C. Brewster Chapman, Jr., Associate Solicitor, Territories, Wildlife and Claims, Office of General Counsel, Department of Interior, do not have a tribal government, do not live in a tribal relationship,

and are much like the Hawaiians. Their tribal courts and land tenure laws have been abolished, and the natives have been assimilated into the American political and social structure of the island.

Legal Opinion No. 72-22—Conformity of California State Budget Act With Safe Streets Act Requirements—August 8, 1972

TO: California Council on Criminal Justice
Sacramento, California

This is in response to your letter of July 6 requesting clarification as to whether certain sections of the California State Budget Act for fiscal year 1972-73 are in conformity with Federal statutory requirements of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644).

The interpretation of the term "in the aggregate" has a different meaning in two separate sections of the act. In the "buy-in requirement" (Section 303(3)), the term "in the aggregate" actually applies to an aggregate Federal dollar figure, i.e., the total required Part C pass-through funds available to local units of government. However, in Section 301(c) (hard match), the term is modified by the additional language referring to the application of the requirement to "programs and projects."

The Senate Judiciary Committee has stated through Senator John L. McClellan that the "in the aggregate" language in both the "hard match" provision and the "buy-in" provision would permit the States a much needed measure of flexibility. It was the intent of the act to permit hard match and buy-in to be employed in selected programs and projects on the basis of need, rather than to require that these funds be present in each project.

The flexibility resulting from the interpretation that hard match need not be on a project-by-project basis is a vital feature in effective administration of this program. Unnecessary limits on this flexibility tend to erode the block grant concept and the stated purpose of the act to "encourage States and units of general local government to prepare and adopt comprehensive plans *based upon their evaluation* of State and local problems of law enforcement." (Emphasis added.) A State's evaluation of law enforcement problems may indicate extremely high priority problems in the very poorest communities.

Additional hard match or buy-in funds (over the minimum required) may become necessary to begin attempts at problem resolution in these areas. Set requirements for State participation may preclude the implementation of a specific project or may, in effect, require more State participation to begin the project, since all other local projects would, under the Budget Act, require a minimum amount of participation.

It should also be noted that Section 203(a) of the Safe Streets Act requires that the State Criminal Justice Planning Agency (SPA) be created by the chief executive of the State and subject to his jurisdiction. Section 203(b)(3) imposes a responsibility on this State agency to "establish priorities for the improvement of law enforcement throughout the State."

It is conceivable that the State Budget Act and its set requirements for the distribution of buy-in funds may negate or make impossible the effective implementation of the established priorities.

While it is a generally applied principle that States may take more restrictive administrative measures to implement the technical financial provisions of a Federal act, it has not been done in any other State in implementation of the buy-in requirement.

This Office strongly recommends against such restrictive legislation and feels that the spirit of the Safe Streets Act, if not the technical requirements, is threatened by the provision in the State Budget Act.

Legal Opinion No. 72-23—Potential Part E Funding of Public Defender Services Required by *Argersinger*—August 23, 1972

TO: Administrator, LEAA

This memorandum addresses the following questions:

1. What is the general impact of *Argersinger* v. *Hamlin*, 407 U.S. 25 (1972) holding to LEAA, including the possible areas where defense services might now be required if the *Argersinger* test is logically extended?
2. To what degree will these services be fundable under Part E of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644)?
3. Would the Alabama proposal be eligible for Part E funding?

Brief Analysis of Impact of *Argersinger* Holding

Justice William O. Douglas writing the majority opinion in *Argersinger* held:

> . . . that absent a knowing and intelligent waiver, no person may be imprisoned for any offense whether classified as petty misdemeanor, or felony, unless he was represented by counsel. (*Id.* at 38.)

Justice Douglas, quoting from *Stevenson* v. *Holzman*, 254 Or. 94, 102, 458 P. 2d 414, 418 (1969), went on to state that:

> . . . no person may be deprived of his liberty who has been denied the assistance of counsel as guaranteed by the sixth amendment. *Argersinger* at 37.

The rationale for this holding as stated in the opinion is that a poor man charged with a crime is denied procedural and substantive safeguards when forced to confront his accusers without counsel. *Powell* v. *Alabama*, 287 U.S. 45 (1932); *Gideon* v. *Wainwright*, 372 U.S. 335 (1963).

> The requirement of counsel may well be necessary for a fair trial even in a petty offense prosecution. We are by no means convinced that legal and constitutional questions involved in a case that actually leads to imprisonment even for a brief period are any less complex than when a person can be sent off for six months or more. *Argersinger* at 33.

The thrust of this opinion is to guarantee the sixth amendment right to counsel to all criminally accused who may face imprisonment if found guilty. The test which Justice Douglas seems to apply to determine whether the right to counsel attaches is whether or not the accused may be imprisoned for his actions. This test, if logically extended, may require counsel at all proceedings where imprisonment may result. Consequently, it could have a far-reaching effect in increasing the quantity of legal services that must be provided not only for misdemeanants but to persons facing probation and parole revocations, prison disciplinary hearings, bail revocation hearings, and so forth.

A brief analysis of the state of law prior to *Argersinger* reveals that heretofore counsel was not required by the sixth amendment at parole and probation revocations so long as the revocation hearing did not also include a sentencing hearing where substantial rights of the accused are in jeopardy. *Mempa* v. *Rhay*, 389 U.S. 128 (1967); *Wood* v. *Texas*, 440 F. 2d 1347 (5th Cir. 1971). The rationale employed for denying the right to counsel here is that these revocation hearings are not criminal prosecutions; that the accused's right to liberty was in jeopardy and taken at trial where he did have the assistance of counsel; and that because sentencing took place at trial, no substantial rights are now at stake in a revocation hearing.

Obviously, a person facing parole or probation revocation may be imprisoned if he cannot resist the revocation, but his right to liberty has already been litigated with the assistance of counsel and this may be sufficient to meet the test of not being imprisoned for an offense, regardless of its nature, unless represented by counsel. If, however, the alleged violation of probation or parole is considered an offense for which the accused may be imprisoned, then *Argersinger* will require the appointment of counsel.

Argersinger will probably have no discernible impact on the right to counsel for juveniles. The Supreme Court has already held in *In re Gault*, 387 U.S. 1 (1967), that:

> . . . [t]he Due Process Clause of the Fourteenth Amendment requires that in respect of proceedings to determine delinquency which may result in commitment to an institution in which the juvenile's freedom is curtailed, the child and his parents must be notified of the child's right to be represented by counsel retained by them, or if they are unable to afford counsel, that counsel will be appointed to represent the child. *Id.* at 41. *re Gault, supra* at 41.

As a practical matter, counsel for trial has usually already been appointed before bail, eligibility hearings, or bail revocation hearings are held so *Argersinger's* impact here will also be minimal. But where there is still no provision for counsel at these preliminary stages of trial or for counsel at bail hearings pending appeal stages, *Argersinger* could arguably require the appointment of counsel since revocation means imprisonment.

A prison disciplinary hearing is another proceeding where the accused could be subject to continued imprisonment (loss of good time) and therefore might come within the *Argersinger* test. But, like parole and probation revocations, it might be determined that absent another criminal charge, the accused's right to liberty was already adjudicated with the assistance of counsel at the original trial.

Other footnotes to the *Argersinger* holding provide further data on its potential impact. While 19 States currently provide for appointment of counsel in most misdemeanant cases and a total of 31 States extend the right to defendants charged with less than felonies, the balance of States must be presumed to be in need of assistance to bring them into compliance with this case. One estimate given indicated that between 1,575 and 2,300 full-time attorneys would be needed to represent all indigent misdemeanants excluding traffic offenders. Even if roughly accurate, 2,000 full-time attorneys at an average of $15,000 for salary and support would require approximately $30 million a year to implement *Argersinger*. This would not include the need to increase prosecutor capabilities to meet the increased workloads.

Possible Use of Part E Funds to Implement *Argersinger*

The brief analysis of *Argersinger* v. *Hamlin* illustrates the additional burden that must be carried by the States in providing appointed counsel. The question now is what part, if any, of this burden LEAA could fund under Part E. (Part C funds present no legal problem.)

The purpose of Part E is to:

> . . . [e]ncourage States and units of general local government to develop and implement programs and projects for the construction, acquisition, and renovation of *correctional* institutions and facilities, and for the improvement of correctional programs and practices. Public Law 90-351, Title I, Section 451, as added by Public Law 91-644, Title I, Section 6(a), 1971. (Emphasis added.)

Grants may be authorized under Part E if, among other things, the application in the State comprehensive plan insures that:

> Section 453(4) provides satisfactory emphasis on the development and operations of community-based correctional facilities and programs, including diagnostic services, halfway houses, probation, and other supervisory release programs for preadjudication and postadjudication referral of delinquents, youthful offenders, and first offenders, and community-oriented programs for the supervision of parolees.
>
> * * * * *
>
> Section 453(8) provides satisfactory assurances that the State is engaging in projects and programs to improve the recruiting, organization, training, and education of personnel employed in correctional activities, including those of probation, parole, and rehabilitation.

The intent of Part E as evidenced by the language above is to fund correctional programs involving institutions and other rehabilitative services, facilities, and projects in the hope of curbing recidivism. Thus, the only defender services that would be eligible as correctional programs would be those that are directly related to the rehabilitative, dispositional, or corrective aspects of the criminal justice system. Any defense or prosecutorial activity related to trial or the determination of guilt or innocence would not be sufficiently correctional in nature as to be fundable under Part E. Only those legal services that deal with such things as probation, parole, prison discipline, and preadjudication disposition in lieu of trial (e.g., first offender programs,

etc.) would be within the funding purview of Part E. As previously noted, the need of these services may be increased in the light of *Argersinger*, but the bulk of increased legal service demands will be in response to the misdemeanant's right to counsel at trial, and these trial services cannot be funded with Part E money.

Possibly under Section 453(8) some Part E money could be used to train court-appointed counsel in correction-related services that might have to be rendered in response to *Argersinger* (e.g., what parole and probation programs are available, alternative dispositional services available, strategies and procedures for aiding a client once he has come within the jurisdiction of corrections). Any counsel services that are pretrial (absent some few dispositional alternatives) or trial-related, including appellate cases, are not reducing recidivism but are continuing the determination of the need for corrections or rehabilitation (guilt or innocence); thus, they are not eligible for Part E funds.

Use of Part E Funds for Alabama Proposal

Alabama's proposed program for Improvement of the Prosecution and Defense of Indigent Defendants is not eligible for Part E funding even though, in the light of *Argersinger*, some further services may have to be provided in the corrections area, because the thrust of the program is to hire new defense and prosecution lawyers to handle the increased caseload, that is, all misdemeanor cases that now require counsel.

Alabama proposes:

1. to establish a Public Defender Commission to administer and implement a public defender program.
2. to aid local circuits in formulating and implementing programs for the handling of indigent misdemeanants and felons.
3. to establish municipal prosecutors where needed throughout the State.

These services are not related to corrections and rehabilitation but primarily to trial. There is no way LEAA can justify funding Alabama's Public Defender program as a correctional program. Since the impact of *Argersinger* in the corrections area is still speculative, it is almost impossible, and probably not desirable, to try to determine what percentage of defender services would be corrections-related and thus eligible for Part E funding.

Legal Opinion No. 72-24—Allowability of Federal Court Participation on a Reimbursable Basis in a Program Funded Under the Safe Streets Act—August 31, 1972

TO: LEAA Regional Administrator
Seattle

This is in reference to your memorandum of August 21, requesting an opinion as to whether a small number of cases can be referred by the Federal

court to the Multnomah County Diagnostic Center in order to compare the results of county services with the services available to the Federal court. It is understood that the Federal court will reimburse the county for such referral services.

Not only is this activity allowable, but this type of cooperation is mandated by Section 508 of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644):

> The Administration is authorized... to cooperate with the Department of Justice and such other agencies and instrumentalities in the establishment and use of services, equipment, personnel, and facilities of the Administration....

The money received by the Diagnostic Center should be considered incidental income and will reduce the gross cost of the program.

Legal Opinion No. 72-25—Proposed Illinois Bill and Jurisdiction Over LEAA Funding Expenditures—September 1, 1972

TO: Executive Director
Illinois Law Enforcement Commission

This Office has reviewed Illinois Senate Bill No. 970 which, under Section 4, requires the Illinois Law Enforcement Commission (the State Criminal Justice Planning Agency or SPA) to pay, from appropriations made to it for grants-in-aid to local units of government, for additional compensation to law enforcement officers meeting certain educational standards.

The proposed bill would substitute the judgment of the Illinois State Legislature for the Governor and the Illinois Law Enforcement Commission in determining a program for expenditure of LEAA funds. Section 203 of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644) expressly provides that the SPA designated to receive and administer LEAA funds (in this case the Illinois Law Enforcement Commission) must develop and correlate programs and establish priorities. It is the SPA and the Governor who have authority under the act to allocate funds for programs and projects. This decision may not be made by the State legislature.

Insofar as the bill attempts to mandate the expenditure of LEAA funds, it is inconsistent with the Safe Streets Act. Under the Supremacy Clause of the United States Constitution, the bill, if enacted, would be ineffective as to the allocation of LEAA grant funds. *(King* v. *Smith,* 392 U.S. 309, 333 (1968).) The Illinois Law Enforcement Officers Training Board could be provided with LEAA funds only if approved by the Illinois Law Enforcement Commission and if contained in a comprehensive plan approved by LEAA.

Legal Opinion No. 72-26—Eligibility of Mississippi Law Student Intern Program for Part C Funding—September 11, 1972

TO: Law Enforcement Assistance Division
Office of the Governor
Jackson, Mississippi

This is in response to your letter of August 22, 1972, requesting an opinion as to the eligibility of the Mississippi Law Student Intern Program for Part C funding under the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644). Specifically, the problem appears to be whether Section 406(f) of the act would require a $50 per week per intern limit to be applied to the funding system proposed by the Mississippi Law Student Intern Program.

The purpose of Section 406(f) is to provide a subsistence allowance for the interns. As noted in the legislative history dealing with this provision:

> The University would provide up to $50 per week from the Federal funds for subsistence to the interns. The University or college or the agency could, of course, add to this amount if other funds were available.

The intern program provides reimbursement of documented actual expenses (including travel) incurred by the interns. Under these circumstances, this would not conflict with the limitations set forth in Section 406(f) so long as the lodging and board expenses do not exceed $50 per week per intern. A State would still be required, however, to show in its comprehensive plan that there is insufficient money under the Law Enforcement Education Program (LEEP) to be able to utilize Part C funds.

Legal Opinion No. 72-27—Kentucky Area Development Districts—October 19, 1972

TO: LEAA Regional Administrator
Atlanta

This is in reply to the September 8, 1972, request for a legal opinion concerning Kentucky Area Development Districts. The interpretation that the Area Development Districts would require waivers from local units of government before funds granted to them would be part of the 40 percent pass-through requirement of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644) is correct. A regional planning agency established by the State can have Part B funds count as a portion of the required passthrough only if there are written waivers by local government units as detailed in the January 19, 1972, LEAA General Counsel legal opinion.

In evaluating the Kentucky Area Development Districts, it appears that the Districts are State-created in that they are organized to function at the

direction of State government. LEAA Guideline Manual, State Planning Agency Grants, M 4100.1, dated August 22, 1972, paragraph 20, details LEAA policy on Regional Criminal Justice Planning. It appears that the Kentucky Area Development Districts are general planning districts and are not a "combination of units of general local government." Therefore, any funds they received would not count toward the pass-through requirement, unless appropriate waivers are given.

Legal Opinion No. 72-28—Rural Development Act of 1972—October 26, 1972

TO: LEAA Regional Administrator
New York

This memorandum is in reply to your memorandum of October 10, 1972, requesting a legal opinion in regard to the use of money borrowed from the Farmer's Home Administration as hard match under the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644).

Public Law 92-419, the Rural Development Act of 1972, Title I, Section 104, authorizes the Farmer's Home Administration to make loans or insure for "essential community facilities including necessary related equipment." It is readily apparent that these loans could be for procuring facilities related to law enforcement.

The LEAA interpretation of the hard match requirement is found in the June 14, 1972, addition to Section IV of the Financial Guide. Hard match "shall be new money appropriated. . .by the State or local unit of government, for the purpose of the shared funding of such programs or projects." Since this is for the non-Federal share, grant funds from other Federal programs are excluded from being used as hard match. Loan funds are in a different category from grant funds. There is nothing in the hard match provision that precludes a unit of government from engaging in deficit financing. The source of the loan being a Federal agency does not make the funds Federal in character. The obligation for repayment is with the local unit of government, and therefore, the loans are not Federal funds.

If a unit of government uses a loan to meet its hard match requirement, then the provisions of Office of Management and Budget (OMB) Circular A-87 apply. Attachment B, Section D, Paragraph 7, specifically states that interest costs are unallowable as program costs.

Legal Opinion No. 72-29—Allowability of Inmate Maintenance Costs as Match—November 1, 1972

TO: Alabama Law Enforcement Planning Agency

This is in reply to your letter of September 11, 1972, requesting a legal opinion on the allowability of inmate maintenance costs as match for the Jefferson County Pilot Vocational Rehabilitation Program, as provided under the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644).

The question of whether a specific item is an allowable cost and therefore an in-kind contribution, for a project is in large measure determined by how the program is defined. For a cost to be allowable, it must meet the criteria set forth in the LEAA Financial Guideline (1971). The guidelines state, at page 16, "that costs pertinent to carrying out unrelated functions of government are not allowable." Generally, a cost is allowable if it is directly benefiting and specifically identifiable to the grant program. In the Jefferson County project, any cost dealing with evaluating the prisoners would be allowable. If the program description included rehabilitation, then any cost dealing with the rehabilitation effort would be allowable. The letter is unclear as to whether the program description included rehabilitation. If the program was limited to evaluation, then only evaluation costs are allowable.

As to the specific question of whether inmate maintenance expenses are allowable costs to the program, it appears they are not. The inmates are the reason for the program's existence, but their maintenance costs are not specifically identifiable to the grant program. The State has an obligation to provide for the maintenance of its prisoners merely by the fact that they are in the prison. This means that the maintenance expense must go on as long as the inmate is confined and is therefore unrelated to the evaluation effort.

The point is raised that had the inmates not been in the evaluation program, they may have been available for work detail. If the inmates' stay in prison were dependent on their working on the detail, then the point would be valid. This is not true, however, because the inmates will stay confined whether they are on the work detail or not, and the State has an obligation to maintain them if they are confined. This being the case, the inmate maintenance expense is not a contribution to the evaluation program.

Legal Opinion No. 72-30—Public Interest Groups—November 1, 1972

TO: Associate Administrator, LEAA

This is in response to your memorandum of October 20, 1972, on the process for selection of public interest groups for policy clearance.

Title IV of the Intergovernmental Cooperation Act of 1968 (Public Law 90-577, 42 U.S.C. Section 4231 *et seq.*) provides for giving chief executives of

State and local governments a reasonable opportunity to comment on major proposed Federal rules, regulations, standards, procedures and guidelines, and major interagency agreements concerning program operations and major organizational changes, any of which have a significant and nationwide effect on State and local governments (see Office of Management and Budget (OMB) Circular No. A-85, January 20, 1971). Title IV of the Intergovernmental Cooperation Act of 1968, 42 U.S.C. 4231(b), states that:

> All viewpoints—national, regional, State, and local—shall to the extent possible, be fully considered and taken into account in planning Federal or federally assisted development programs and projects. State and local government objectives, together with the objectives of regional organizations shall be considered and evaluated within a framework of national public objectives, as expressed in Federal law, and available projections of future national conditions and needs of regions, States, and localities shall be considered in plan formulation, evaluation, and review.

The congressional mandate as stated in Section 401 of the act (see also Section 501 of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644)) expresses the objective of considering the viewpoints of State and local governments together with those of regional organizations within the framework of national public objectives. This mandate necessarily implies that chief executives of State and local governments should be the individuals who compose any such public interest group. Therefore, organizations representing these individuals are members for A-85 reviews.

OMB Circular No. A-85, *supra,* specifically designates those State and local government organizations to be included in the review process. They include: the National Governors' Conference, Council of State Governments, International City Management Association, National Association of Counties, National League of Cities, and United States Conference of Mayors. Circular No. A-85 also states that: "Other groups representing central management units may be sent copies of material of concern to them." This provision has yet to be interpreted, but is considered as a catchall for any groups representing units of general purpose government.

OMB has the authority to designate what groups are public interest groups that shall participate in the A-85 review process. Title IV, Section 403 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. Section 4233) gives OMB the authority to prescribe rules to administer Title IV. Section 403 states that:

> The Bureau of the Budget or such other agency as may be designated by the President is hereby authorized to prescribe such rules and regulations as are deemed appropriate for the effective administration of this subchapter.

OMB is determined to limit the organizations participating in the A-85 review process to the aforementioned groups that represent executives of general purpose governments. Although the National Legislative Conference is now a member of the Coordinating Committee of the National Associations of State, County, and City Governments, it is not a public interest group for A-85 review purposes and in no way officially participates in the review process. Though it is most unlikely that any other groups will be designated public interest groups for the A-85 process, it might be possible to be included among the A-85 process in "other groups representing central management units."

In any event, the current trend is that more and more Federal agencies are participating in proposed rulemaking hearings whereby agency-proposed rules are published in the Federal Register for comments before the proposals become effective. This process may provide an avenue whereby concerned organizations can present their views for consideration before Federal agency rules are put into effect.

The A-85 review procedure relates to planning programs and projects that are national in scope that affect State and local governments. Federal agencies may consult with organizations they feel have an interest in the project or program, whether the scope of the action is local or national. LEAA in consulting with organizations having a specific interest in certain programs or projects has established its own interest groups in relation to Civil Disorders, Corrections, Courts and Prosecution, Law Enforcement Education, Organized Crime, Police-Oriented, and Systems and Data Processing. Such organizations are relevant to an individual agency's functional areas of concern, are encouraged by OMB, and are not affected by the A-85 review procedure.

LEGAL OPINIONS

OF THE

OFFICE OF GENERAL COUNSEL

OF THE

LAW ENFORCEMENT ASSISTANCE ADMINISTRATION

UNITED STATES DEPARTMENT OF JUSTICE

JANUARY 1 TO JUNE 30, 1973

ADMINISTRATOR

JERRIS LEONARD (RESIGNED MARCH 14, 1973)

DONALD E. SANTARELLI

ASSOCIATE ADMINISTRATOR

RICHARD W. VELDE

ASSOCIATE ADMINISTRATOR

CLARENCE M. COSTER

GENERAL COUNSEL

THOMAS J. MADDEN

Legal Opinion No. 73-1—Use of Part C Funds for Juvenile Delinquency Prevention—January 26, 1973

TO: LEAA Regional Administrator
New York

This memorandum is in response to your request for a legal opinion regarding the use of Part C funds by the Commonwealth of Puerto Rico for programs for juveniles who have not entered the criminal justice system.

The question is whether the Juvenile Delinquency Prevention and Control Act of 1968, Public Law 90-445, is a prohibition against funding programs that are aimed at potential delinquents. It is evident that the Department of Health, Education, and Welfare has authority to fund programs in this area by that act. At the same time, LEAA is mandated to fund programs in this area by Section 301(b)(9) and the definition of law enforcement in Section 601(d) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644). It is the opinion of this Office that the Juvenile Delinquency Prevention and Control Act does not preempt LEAA funding in this area.

In order to fund a particular program for juveniles who have not entered the criminal justice system, there must be a determination that the target group has characteristics that indicate that those juveniles have a significant chance of becoming juvenile delinquents. This determination is necessarily subjective but should be based on adequate data. The community concerned should have completed an analysis of the delinquency problem. This should show, in quantifiable terms, a relationship between the proposal and the objective of preventing juvenile delinquency. In analyzing the proposed program, two questions should be asked: (1) Will this program impact on the community's delinquency problem? (2) Why will this program achieve this goal? If the plan contains data to answer these two questions, LEAA can fund the program.

Legal Opinion No. 73-2—Grantee Procurement Standards—Specifications Drafted by Bidders—February 7, 1973

TO: Director
Financial Management Development Division, LEAA

This is in response to your inquiry as to whether Federal grantee procurement standards allow a contractor to develop and draft specifications for a proposed procurement and then to bid or submit a proposal to compete for the award.

The controlling Federal regulation is Office of Management and Budget (OMB) Circular A-102, Attachment O, paragraphs 3b and 3c2:

> b. All procurement transactions regardless of whether negotiated or advertised and without regard to dollar value shall be conducted in a manner so as to provide *maximum open* and *free competition.* The grantee should be alert to *organizational conflicts of interest* or *noncompetitive* practices among contractors which may restrict or eliminate competition or otherwise restrain trade.
>
> c. (2) Invitations for bids or requests for proposals shall be based upon a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition.

It is difficult, if not impossible, for this Office to conceive of a circumstance in which the drafting of a specification for a proposed procurement by a bidder would not be in conflict with the above provisions.

The intent and the letter of the OMB Circular is to insure that grantees obtain materials and services in an effective manner with open and free competition. When a bidder is allowed to develop or draft the specification, these standards cannot be met. In addition, the need to preserve the integrity of the competitive system, as well as the confidence of the law enforcement and business communities and the public in the integrity of LEAA's program, outweighs the grantee convenience that fosters such a practice.

Therefore, such a practice is in general violation of Federal grantee procurement standards.

Legal Opinion No. 73-3—Proposed North Carolina Legislation—February 12, 1973

TO: LEAA Regional Administrator
Atlanta

This Office has reviewed, on request, the bill introduced in the North Carolina Legislature that transfers the Committee on Law and Order (redesignated the North Carolina Criminal Justice Planning Council, which is the State Criminal Justice Planning Agency or SPA) from the Department of Natural and Economic Resources to the Department of Justice.

In order to qualify to receive LEAA block planning and action grants, an SPA must be established or created by the Governor in the executive branch and be subject to the Governor's direct supervision. The Governor may create a new agency by executive order, if he has that power under State law, or he may designate an existing agency or a new agency created by the State legislature. However, the agency must be located in the executive branch of the State government, must be made subject to the jurisdiction and direction of the Governor, and must be formally designated by him as the agency to receive and disburse Federal funds under Title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644).

The bill introduced in the North Carolina Legislature is inconsistent with the provisions of Section 203(a) of the act since the SPA will not be subject to the jurisdiction of the Governor but will be under the jurisdiction of the Attorney General, an independently elected official not responsible to the Governor.

Inasmuch as this bill does not meet the requirements of Section 203(a) of the act, such a planning agency, if established, would not be eligible to receive LEAA block planning and action funds.

Legal Opinion No. 73-4—Lobbying Activities—March 10, 1973

TO: Indiana Prosecuting Attorneys' Association
Batesville, Indiana

As noted in the memorandum of this Office dated January 2, 1973, LEAA funds may not be used to promote any lobbying function. This determination as it related to the Indiana Prosecutor Training Coordinator's position was based largely on the information presented to this Office at that time and, in part, upon the fact that the man chosen for the position is a registered lobbyist. It is now understood that this is a requirement for anyone who may have contact with the legislators and is not a determinative factor.

In view of the description of the position as set forth in the letter of February 12, 1973, such a function may very likely be fundable. However, this Office is of the opinion that the question of whether this coordinator position is a lobbying function is basically a factual determination. Accordingly, this factual determination will be deferred to the Indiana Criminal Justice Planning Agency.

LEAA can provide the State Criminal Justice Planning Agency (SPA) with some general guidance to assist in this determination. Activities not related to criminal justice functions and not within an approved project are obviously not fundable from LEAA fund sources. In addition, State law must be looked to for further specifications or restrictions.

Office of Management and Budget (OMB) Circular No. A-87, in setting out the factors to consider in allowing costs, states that costs must "be necessary and reasonable for proper and efficient administration of the grant program...." It is the opinion of this Office that lobbying is neither necessary nor reasonable for the proper and efficient administration of a grant program.

Furthermore, OMB Circular A-87, Attachment B, page 5, disallows cost for membership in any organization "which devotes a substantial part of its activities to influencing legislation." It is understood that membership dues are not involved as a cost item here.

In making the determination, the SPA should consider that activities designed to influence legislation "must be viewed in the sense of influence designed to promote a special interest as opposed to the general interest of the public in having a full consideration of its criminal laws and procedures during the development process. Such a function should not be viewed as 'lobbying' in the ordinary meaning of the word."

If the Indiana Criminal Justice Planning Agency factually finds that the position of the coordinator is not a lobbying function, the cost of this position will not be disallowed.

Legal Opinion No. 73-5—Use of Appalachian Development Act Funds—April 2, 1973

TO: Director
Financial Management Development Division, LEAA

This is in response to your request for an opinion as to whether the Appalachian Regional Development Act (40 U.S.C., Appendix) may be used by a locality to meet the hard match requirement of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644).

Section 214 of the Appalachian Development Act authorizes the Secretary of Commerce to make payments to Federal agencies that are administering Federal grant-in-aid programs "for the sole purpose of increasing the Federal contribution to projects under such programs above the fixed maximum portion of the cost of such project otherwise authorized by the applicable law." The payments are limited to 80 percent of such costs of the project. The phrase "such costs" refers to the total project cost.

Therefore, funds provided under the Appalachian Development Act may be used to increase the Federal portion up to 80 percent. For example, if the project costs were 50 percent Federal and 50 percent match, the Federal share could be increased by 30 percent (making 80 percent) using Appalachian Development Act money. This would leave a match of 20 percent, of which 40 percent would need to be hard match.

Thus, Appalachian Development Act funds could not directly be used to meet the LEAA hard match requirement; but, by reducing the amount of match required, this would be the indirect result.

Legal Opinion No. 73-6—Use of LEAA Funds for Consumer Fraud and Antitrust Programs—April 10, 1973

TO: All LEAA Regional Administrators

This is in response to requests by various regional offices for an opinion as to whether consumer fraud and antitrust programs may be funded under the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644).

Part C of the act encourages States and units of local government to carry out programs and projects to improve and strengthen law enforcement.

Law enforcement is defined under the act as "any activity pertaining to crime prevention, control or reduction, or the enforcement of the criminal law, including but not limited to, police efforts to prevent, control or reduce crime or to apprehend criminals, activities of courts having criminal jurisdiction and related agencies, activities of corrections, probation, or parole authorities, and programs relating to the prevention, control, or reduction of juvenile delinquency or narcotic addiction." (Section 601(a).)

This definition of crime is not limited to "street crime" but encompasses all types of criminal activity.

In determining grant eligibility, one must initially ascertain whether the primary function of the applicant is crime prevention, control, or reduction, or the enforcement of the criminal law. If it is, the applicant may be funded for any of its operations, programs, or projects that are otherwise consistent with the act.

General programs directed to consumer fraud and antitrust projects may be funded under Section 301(b)(1).

Since some consumer fraud may be organized-crime related, such programs could be funded under Section 301(b)(5) if their primary objective is to combat organized crime.

It is clear that consumer fraud protection and antitrust programs may be funded under Section 301(b)(1), (3), and (5) depending on the nature of the activity as long as the primary purpose of such a grant is for the enforcement of the criminal law. A mere "better business bureau" type of program by itself could not be funded since its primary purpose is not the enforcement of the criminal law or crime reduction.

Legal Opinion No. 73-7—Waiver of Pass-Through Requirements—April 10, 1973

TO: All LEAA Regional Administrators

The attached is in response to numerous Regional Office questions on pass-through issues and a need to have a concise summary of legal opinions and guidelines in the pass-through area.

It does not create or change any policy. It merely summarizes a confusing area.

It is broken down as follows:

I. Purpose and Background
II. Planning Pass-Through Requirement
  A. LEAA Statutory Waiver Authority
  B. Local Government Waivers
    1. To Regions
    2. Waiveback to the State
  C. Postallocation Waivers
III. Action Pass-Through Requirement
  A. The Variable Pass-Through Requirement—No LEAA Statutory Waiver Authority
  B. Local Government Waiver
  C. Postallocation Waivers or Approvals

Advice on Waiver of the Planning and Action Pass-Through Requirement

I. Purpose and Background

LEAA legislation has requirements that a portion of block grant funds be made available to local government. These are the pass-through provisions in Section 203(c) and Section 303(2) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644). This paper will attempt to define what the pass-through requirement is and review the guidelines and previous Office of General Counsel opinions on this subject.

Although this paper deals with Section 203(c) and Section 303(2), other provisions of the act must be considered with regard to passthrough. Section 303(3) is one such provision. That section requires the comprehensive plan to:

> . . . adequately take into account the needs and requests of the units of general local government in the State and encourage local initiative in the development of programs and projects for improvements in law enforcement, and provide for an appropriately balanced allocation of funds between the State and the units of general local government in the State and among such units . . . .

What Congress has done with these provisions is to recognize that there is an ongoing debate within most States on the question of which unit of government shall bear the responsibility for law enforcement. The variable passthrough is a device whereby the Federal Government is neutral in this debate. It requires that Federal funds go to State and local governments in proportion to their responsibility in each area. Since proportional responsibility is a rather imprecise term by itself, expenditures by State and local units of government in the previous fiscal year are the index of responsibility.

The Part B planning provision for passthrough does not contain the variability for several reasons. A major consideration is that mechanics of preparing a comprehensive State plan require a certain minimum level of effort. There must be at least a minimum staff to develop the plan. If the variable factor were applied here, a State could be in a position whereby it would not have sufficient funds to prepare the plan. Additionally, data do not exist on which to base a planning function passthrough—hence, the fixed planning fund pass-through percent. If a State desires to pass through a higher proportion than 40 percent, it is authorized because the provision is phrased in "local available" minimum terms. If there is still a need for local planning and coordination money and the 60 percent of Part B funds is being totally utilized, Part C, Section 301(b)(8), funds may be used by local units of government with populations of more than 250,000. (A separate General Counsel opinion has been issued in this area.)

II. Planning Pass-Through Requirement

A. LEAA Statutory Waiver Authority

Section 203(c) contains the following:

> The Administration may waive this requirement, in whole or in part, upon a finding that the requirement is inappropriate in view of the respective law enforcement planning responsibilities exercised by the State and its units of general local

> government and that adherence to the requirement would not contribute to the efficient development of the State plan required under this subchapter.

Guideline Manual, M 4100.1, State Planning Agency Grants, August 22, 1972, Appendix 2-2, Paragraph 3 details the requirements for LEAA in issuing a statutory waiver. Generally, the waiver will not be granted to a State with a population of more than one million, or where the State bears less than a 50 percent share of all law enforcement costs. The waiver may be partial, and LEAA reserves the right to grant a more limited waiver than that requested. The statutory waiver provision applies to the fixed 40 percent pass-through requirement of Section 203(c). That section also includes the following provision:

> In allocating funds under this subsection, the State planning agency shall assure that major cities and counties within the State receive planning funds to develop comprehensive plans and coordinate functions at the local level.

This provision is implemented by Appendix 2-2, Paragraph 3, cited above. But for LEAA to waive this provision, as defined in Appendix 2-2, Paragraph 1, the city and/or county involved would have to have very little jurisdiction over the law enforcement system and/or the population of the State's major city or county would have to be too small to permit meaningful planning. Waiver by the major unit itself requires State submission of such waiver, accompanied by a supplemental statement, to LEAA.

These provisions have been interpreted to mean that the 40 percent pass-through portion need not go to all units of general local government. This would be a needless proliferation of planning funds. A provision for an allocation to a unit of general local government must provide for local participation in the planning process.

B. Local Government Waivers

1. To Regions

Chapter I, Paragraph 20, of Guideline Manual M 4100.1 details the use of Regional Criminal Justice Planning Agencies. Where these regional planning agencies are established by the State, allocations to them ordinarily will count toward the 40 percent passthrough. State legislative or gubernatorial action may require such a procedure. However, in the absence of such action, the local units of government must have been chartered by delegated authority or otherwise must have given their consent to have their share of the 40 percent pass-through funds expended by the region. Such consent must be given in accordance with the normal procedures that local units follow in making decisions that bind them. Thus, for example, letters from city mayors agreeing to have the major cities included in a regional combination will suffice only if the mayor has the authority to bind a city to such an agreement. Otherwise, some evidence of action by the city council or similar body may be necessary. In the event of a challenge, LEAA will deem the State to have the burden of documenting the existence and legal sufficiency of necessary written consents from local units.

Recognizing that it may not be practicable or possible to obtain written consent from every local unit in a region, LEAA has previously announced that it will recognize a regional combination as validly constituted

if consents are obtained from a majority of the local units therein or from local units representing a majority of the population of the region. However, no city or county of significant population may be included in a region against its will and thereby be deprived of any right it may have under any provision of the act to receive funds directly. Thus, any city or county large enough to merit direct planning funding—for example, as a "major" city or county under the language of Section 203 or a fair share of the 40 percent passthrough necessary to achieve a balanced allocation of pass-through planning funds throughout the State—may not be deprived of such direct funding by inclusion in a regional arrangement without its express consent given in accordance with the procedures discussed above.

Once a consent is obtained, the State may consider it as valid until rescinded in accordance with local law, as long as the State notifies the local units each time new funds are proposed to be granted to the region on behalf of the local units and advises them that written consents previously given will be deemed to remain valid unless rescinded.

2. Waiveback to the State

Guideline Manual M 7100.1A, Financial Management for Planning and Action Grants (1973), Chapter 2, Paragraph 18, sets out requirements for State use of local available (Part B) planning funds. In most instances, such State use of services is not to be counted toward the statutory requirement. However, with State Criminal Justice Planning Agency (SPA) Supervisory Board approval and documented consent or waivers (or other acceptable approved mechanisms), funds used at the State level may be counted toward the requirement. Ordinarily the waivers should show specific dollar amounts.

C. Postallocation Waivers

Once funds are allocated to units of general local government, the requirements of Section 203(c) are generally met. It is possible that the unit of local government may decide not to use the funds allocated. In that case, LEAA has the authority, under the last sentence of Section 203(c), to grant authority to the SPA to use the unexpected funds without a waiver from the unit of local government involved.

> . . . Any portion of such 40 per centum in any State for any fiscal year not required for the purpose set forth in this subsection shall be available for expenditure by such State agency from time to time on dates during such year as the Administration may fix, for the development by it of the State plan required under this subchapter.

It is obvious that the State could allocate funds to local units of government in such a way as to make it unlikely that all funds would be used by the local unit. Therefore, the following conditions should be met before any authority is given for a State to use the 40 percent pass-through funds:

1. It must be insured that grants are not overestimated or terminated merely to recover funds for State use.

2. There must be adequate fund control to insure timely recovery so funds will be available for other units of local government.

3. Provisions must be made for notifying other units of local government of the availability of recovered funds.

Timing of these actions has in the past been a matter of regional office judgment in that the fund balances and other circumstances vary in each State and must be considered in setting a date prior to the final date for obligation. If a standardized date is desirable, it should be cleared through the Office of Criminal Justice Assistance (OCJA).

III. Action Pass-Through Requirement

A. The Variable Pass-Through Requirement—No LEAA Statutory Waiver Authority

There is no statutory provision for waiving the variable pass-through requirement in the preallocation stage. The minimum that a State passes through must be 75 percent prior to July 1, 1972 (FY 1973). Beginning with fiscal year 1973, the variable pass-through amount is used. This is a percentage that corresponds to the percentage of local law enforcement expenditures of the total law enforcement expenditures by the State and local units in the preceding year. LEAA has the authority to determine the accuracy and completeness of the data. To accomplish this, the U.S. Bureau of the Census is commissioned by LEAA to provide these statistics on a yearly basis. As a practical matter, there is a 2-year lag on the most accurate and complete data available at any time.

B. Local Government Waiver

Chapter 2, Paragraph 18, of Guideline Manual M 7100.1A sets out requirements for State use of local available Part C action funds. As with planning funds, State use of these funds may not be counted toward the statutory requirement. However, with SPA Supervisory Board approval and documented consent or waivers (or other acceptable approved mechanisms), funds used at the State level may be counted toward the requirement. Ordinarily, the waivers should show specific dollar amounts.

C. Postallocation Waivers or Approvals

There are two types of waivers applicable in this area. One is a waiveback to the State by local government and the other is a waiver by LEAA on a determination that local units of government, following a legitimate allocation to local programs, will not use the funds.

If a unit of government decides to participate in a statewide or regional program, it can give the type of waiver required with Part C funds, as discussed above, and the funds can be spent by a regional or State program for the benefit of the local unit of government.

The second situation, which is technically not a waiver because it approaches the request on the assumption that the statutory requirement has been otherwise met, occurs when local units decline to use the allocated funds. In this situation LEAA can authorize the funds to be expended by a State unit of government. Since abuses can occur, the following conditions must be met before such permission is authorized:

1. It must be insured that the program areas for which funds are allocated adequately take into account the needs and requests of the units of general local government.

2. It must be insured that local units are provided adequate written notice and an opportunity to apply for funds (at least 6 months after the LEAA block grant award).

3. Notice must be provided to the local units of government that funds are available and unclaimed prior to use by the State.

4. A state must reprogram within the limits of 15 percent or with the approval of the Regional Office.

While this paper will cover the bulk of the situations which arise, there are many unique circumstances not covered. These should be brought to the attention of this Office.

Legal Opinion No. 73-8—Establishment of Variable Pass-Through Ratio—April 10, 1973

TO: Assistant Administrator
Office of Criminal Justice Assistance, LEAA

Problem

This is in response to a letter dated February 8, 1973, from the California Council on Criminal Justice, which maintained that the expenditures of several State agencies were wrongfully excluded by the U.S. Bureau of the Census in determining the total State cost for criminal justice activities and, conversely, several local level expenditures, that should have been excluded, were considered by the Bureau in establishing total local costs. California's concern is that by defining law enforcement activity inconsistently, thereby excluding qualified State activities and including unqualified local expenditures, the variable pass-through ratio is weighted in favor of the local units of government and against the State and is not reflective of actual State and local expenditures in the area of law enforcement. California requests that the FY 1970/71 figures be adjusted to reflect a more consistent application of definitions. The State sets forth several excluded State programs, the cost of which it feels should be included, and a few included local operations it feels should not be considered in establishing the pass-through ratio. Each of these activities is dealt with below.

Guidelines

This Office feels that the most efficient and equitable method of establishing the variable pass-through ratio would be to consider only the costs of those programs and activities that would generally be eligible for funding by LEAA under Section 301(b) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644). Since the purpose of the ratio is to direct the flow of LEAA funds, it would be illogical and violative of the apparent legislative intent to include the expenditures of operations ineligible for funding in the determination of the ratio. There are practical problems posed by the difficulty of severability, the demand for flexibility, and the diversity among the States in their methods of dealing with law enforcement problems. For these reasons, the guideline used

by the U.S. Bureau of Census for classification pruposes may well include certain nonfundable activities. The *Classification Procedure for Variable Pass-Through* (hereinafter *Procedures*) is continually being revised and modified but, in view of the problems mentioned above, it is improbable that an ideal method of attaining the ratio will be achieved.

Therefore, the classification procedures used by the U.S. Bureau of the Census will be used as the guidelines in dealing with the problems posed by California. Should any part of these guidelines be subject to more than one meaning, that section shall be interpreted to include fundable activities only. Furthermore, in dealing with the programs presented by California, this Office shall also consider the ability of the U.S. Bureau of the Census to collect data and adjust the 1970-71 expenditure data, should a change be called for in keeping with the guidelines.

Application

A. State Level Expenditures

1. Atascadero State Hospital:

Atascadero is a maximum security facility, 92 percent of whose inmates are criminally insane or mentally disturbed sex offenders. Section 301(a) states that the purpose of Part C is to encourage programs and projects that improve and strengthen law enforcement. Since law enforcement is defined as including activities of corrections authorities (Section 601(a)) and since correctional facility is defined as any place for the confinement or rehabilitation of individuals charged with or convicted of criminal offenses (Section 601(1)), it would appear that Atascadero is eligible for funding under Section 301(b)(2) and should therefore be included in establishing the total State law enforcement expenditure. Section 301(b)(4) deals with construction of correctional facilities, and Part E, Grants for Correctional Institutions and Facilities, contemplates and provides for concurrent Part E and Part C funding. (See Section 453(3).)

Note 3 on page 7 of the classification procedure guidelines, under the category of corrections, includes "operation of institutions exclusively for the confinement and treatment of the criminally insane" as an activity that should be considered in establishing the pass-through ratio. Apparently great import was placed on the word "exclusively," and the facility was excluded because only 92 percent of the inmates were mentally disturbed sex offenders or criminally insane. This interpretation defeats the underlying purpose of the program and fails to consider the practicalities involved; necessity and the limitations of funding and personnel often dictate the common treatment of those with mental problems and preclude separate facilities for those judged mentally insane.

This activity has been included in the 1971-72 census; the 1970-71 data should be adjusted to include this unit.

2. Department of Conservation—Conservation Camps:

The Department's Division of Forestry operates 24 conservation camps for adult offenders and four conservation camps for juvenile offenders. The

expenditures of these units have been included for both 1970-71 and 1971-72; no adjustment is necessary.

3. Department of Motor Vehicles:

(a) California Law Enforcement Telecommunication System (CLETS). This system provides direct access to the Division of Motor Vehicles for criminal justice agencies throughout California on a 24-hour basis. The expenditures of this activity have been included for both 1970-71 and 1971-72; no adjustment is necessary.

(b) Automated Management Information System (AMIS). This system provides motor vehicle ownership information to law enforcement agencies and other users with fast access to the data processing file via remote terminals throughout the State. This program would probably be eligible for funding under Section 301(b)(1), provided that the recipient agencies were engaged in law enforcement activities. This unit has been included in the 1971-72 figures; the 1970-71 data should be adjusted to include this operation.

4. Office of Emergency Services:

According to the Governor's Budget, 1972-73, this unit is "responsible for coordination of emergency activities to mitigate the effects of national, manmade, or war-caused emergencies which imperil life, property, and resources within the State." It would appear, then, that this is a civil defense and disaster agency rather than a law enforcement unit. California maintains that this agency provides assistance during time of emergency and riot situations. Section 301(b)(6) provides that grants are authorized for:

> The organization, education and training of regular law enforcement officers, special law enforcement units, and law enforcement reserve units for the prevention, detection, and control of riot and other violent civil disorders, including the acquisition of riot control equipment.

Assistance during time of riot can take many forms, and it does not seem that the responsibilities placed upon the Office of Emergency Services are in the nature of "law enforcement" as required by Section 301(b)(6) and defined in Section 601(a). Therefore, the expenditures of this program should not be included in total State cost.

5. Military Department—Army National Guard, Air National Guard:

They provide an immediate resource to the increasing threat of civil disruption and support for civil authority in State and national disorders. These units are equipped and able to protect life and public safety. The primary function of these activities is not law enforcement; they are intended to provide a ready resource in emergencies of all sorts. Unlike the Office of Emergency Services, however, assistance given by the National Guard in times of riot would, in all probability, closely resemble law enforcement activity. Because such duties would arise only during the infrequent civil disturbance, problems of severability would preclude the realization of any meaningful or accurate figures.

In addition, it should be noted that LEAA, since its inception, has held consistently that its funds are not available directly to the National Guard for operational expenses. It can be argued that the act would authorize States to

purchase equipment to be used directly and in substantial part when the National Guard is engaged in the prevention and control of civil disorders. The use of this equipment in this manner would have a direct effect on "improving and strengthening law enforcement." However, the fact that Congress provides separate funds for the National Guard to use in the purchase of riot control equipment would appear to weaken the argument. It is important to note that this Office has seen no objection, in the past, to a State or unit of general local government purchasing such equipment and making it available to the National Guard on an "as needed" basis for riot control when it can be shown that the equipment is not available from the Army. This procedure would also avoid the severability problem noted above. For the reasons presented, the expenditures of the National Guard were properly excluded.

6. Department of Fish and Game–Enforcement of Law and Regulation Elements:

Section 830.3(e) of the California Penal Code provides that fish and game enforcement officers shall be designated as peace officers whose duties shall include the enforcement of the laws and regulations the parent agency is charged with enforcing, i.e., the fish and game laws. This unit is an example of an agency that is specialized in that it has limited subject matter jurisdiction and was therefore properly excluded for ratio determination purposes.

7. Department of Parks and Recreation–Management of State Park System:

Section 830.3(i) of the California Penal Code states:

> Police officers of a regional park district, appointed or employed pursuant to Section 5561 of the Public Resources Code, and officers and employees of the Department of Parks and Recreation designated by the director pursuant to Section 5008 of such code are peace officers provided that the primary duty of any such police officer shall be the enforcement of the law as such duties are set forth in Sections 5561 and 5008, respectively, of such code.

Section 5561 of the Public Resources Code states:

> The police appointed or employed by the board shall have, within the district for which they are appointed or employed, all the powers of police officers of municipal corporations except the power of serving and executing civil process.

Section 5008 of the Public Resources Code sets forth various specific duties assigned to the park peace officer and adds that he is authorized "to arrest persons for the commission of public offenses within the State park system." A State park peace officer has authority to make arrests for and to investigate all public offenses within the confines of the State park system; his jurisdiction is concurrent with that of the sheriff. (50 Op. Att'y. Gen. 64, (1967).) This agency is specialized in that it has limited geographical jurisdiction. Within this jurisdiction it has general law enforcement authority; therefore, the 1970-71 data should be adjusted to include this unit and it should be included in future ratio determinations.

8. Department of Navigation and Ocean Development–Law Enforcement Element:

Section 71.2 of the Harbors and Navigation Code, which deals with police powers of the Department of Navigation and Ocean Development, states:

> The department shall protect such small craft harbors under its jurisdiction from damage and preserve the peace therein. The director and such employees of the department as he may designate have the authority and powers conferred by law upon peace officers listed in Section 830.4 of the Penal Code for such harbors. The department may adopt such rules and regulations as may be necessary for the purposes of this section. A violation of such rules and regulations is a misdemeanor.

Since the purposes of this section are fulfilled by the enforcement of rules and regulations enacted by the department and no grant of general law enforcement authority is given, the peace officers are specialized both in terms of geography and subject matter, and the department was properly excluded.

9. California Horse Racing Board–Enforcement Element:

Section 830.3(h) of the California Penal Code provides that the secretary, chief investigator, and racetrack investigators of the California Horse Racing Board shall be designated as peace officers whose primary duty shall be to enforce the Horse Racing Law. The section also states, however, that:

> Any such peace officer is further authorized to enforce any penal provision of law while, in the course of his employment, he is in, on, or about any horse racing enclosure licensed pursuant to the Horse Racing Law.

Therefore, this unit would be eligible for funding since it is specialized only in that it has limited geographical jurisdiction within which it is authorized to exercise general law enforcement powers. Since it is a fundable activity, its expenditures should be included in establishing total State costs for ratio determination purposes. The expenditures for this activity have been included for 1970-71; they should also be included for 1971-72. No adjustment is necessary.

B. Local Level Expenditures

Traffic Control Engineering:

This is clearly not fundable as a law enforcement activity, as that term is defined above. A distinction can be easily drawn between traffic control engineering and "maintaining traffic safety." (See page 4, *Procedures*, under the heading Police Protection.) In order to approach as closely as possible the ideal method of establishing the variable pass-through ratio–to include only the expenditures of those agencies and activities eligible for funding–this unit should be excluded and all reasonable efforts should be made to delete expenditures for traffic control from the 1970-71 data. This is consistent with the agreement of the Attorney General and the Secretary of the Department of Transportation on funding of highway safety law enforcement efforts.

Legal Opinion No. 73-9—Minority Entrepreneurship—April 13, 1973

TO: Assistant Administrator
Office of Criminal Justice Assistance, LEAA

The stated policy of LEAA in regard to grantee procurement from small business and minority-owned business is as follows in the LEAA Guideline Manual M 7100, paragraph 49f(3):

> Positive efforts shall be made by the grantees to utilize small business and minority-owned business sources of supplies and services. Such efforts should allow these sources the maximum feasible opportunity to compete for contracts to be performed utilizing LEAA grant funds.

In addition, this paragraph is being amended to include the present policy by adding the following:

> Grantees may make set-asides for small business and minority-owned business, should break out work where feasible that could be readily handled by small business and minority firms and shall aggressively recruit small business and minority firms for bidders' lists.

Additional information on minority contracting is found in Chapter 3, pages 35 and 36, of the Grant Manager Procurement Handbook, HB 1700.6.

Paragraph 10(b) of the Financial Guide encourages the use of minority banks for cash deposits of funds.

The Contracts and Procurement Division can issue direct LEAA contracts via the Small Business Administration to minority firms on a sole source basis.

The above policy of the agency is clear and the responsibility to carry out this policy in any regional office would appear to be that of the Regional Administrator.

Legal Opinion No. 73-10—Dual Compensation—April 23, 1973

TO: Office of Audit, LEAA

This is in response to your request for an opinion as to whether off duty military personnel may be compensated with LEAA funds for work performed as instructors under a training grant to the Oakland Community College.

The Federal dual compensation statutes do not prohibit Federal personnel from receiving payment under a grant made to a State so long as their holding of such positions shall not in any manner interfere or conflict with the performance of their duties during their regular hours of duty in the military or as employees of the Federal Government.

The Comptroller General has held specifically that the Federal dual compensation statutes do not prohibit Federal personnel from accepting employment with a State or unit of local government that receives a Federal

grant 20 Comp. Gen. 179 (1940). However, the Comptroller General made his ruling subject to the limitations that no condition of the grant prohibits such employment. The condition in the Financial Guide is stated in absolute terms. Therefore, it is necessary to obtain a waiver of this provision.

Legal Opinion No. 73-11—Lobbying—May 2, 1973

TO: Office of the Governor
Tallahassee, Florida

This is in response to your letter of April 16, 1973, requesting an opinion as to whether the rules of the Florida Legislature that require a person to register as a lobbyist before he can appear before legislative committees or otherwise explain to members of the legislature proposed legislation dealing with organized crime would constitute a conflict with or violation of any Federal law or regulation.

18 U.S.C. 1913 prohibits lobbying with appropriated funds. However, this prohibition deals only with lobbying efforts to influence Congress. The only other applicable regulation would be Office of Management and Budget (OMB) Circular A-87, "Principles for determining costs applicable to grants and contracts with State and local governments." Attachment B of Circular A-87 makes legislative expenses unallowable. This has been interpreted to mean that funding of activities undertaken as part of the formal lawmaking process are unallowable. However, it would permit funding of study committees and commissions that undertake activities outside the formal processes of the legislature even though the committee or commission may make findings or recommendations, including proposed legislation, that ultimately enter the formal stages of legislation.

Although under the Florida State Legislature rules, a person must register as a lobbyist, this Office does not believe that his function could be considered lobbying in the ordinary meaning of the word in this specific instance. It certainly would not be the primary activity under the grant.

While LEAA has not promulgated any formal guidelines or regulations delineating acceptable limits of "lobbying" under a grant, LEAA's policy is to encourage legislation that would be beneficial toward criminal justice programs and projects. This authority is found in Section 301(b) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644), which authorizes LEAA to make grants to States for:

> Public protection, including the development . . . implementation . . . and purchase of methods . . . designed to improve and strengthen law enforcement and reduce crime.

Therefore, so long as an activity designed to influence the legislature does not promote a special interest but has as its purpose the interest of the general public in setting forth full consideration of its criminal laws and procedures

during the development process, such an activity would not be violative of any Federal laws or regulations.

Legal Opinion No. 73-12—Source of Funds for Section 407 Training Programs—May 30, 1973

TO: All LEAA Regional Administrators

Section 407 of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644) sets forth the authorization to develop and support regional and national training programs, workshops, and seminars to instruct State and local law enforcement personnel in improved methods of crime prevention and reduction and enforcement of the criminal law. Such training activities are designed to supplement and improve, rather than supplant, the training activities of the State and local governments.

Section 408(c) provides that the cost of training State and local personnel under this section shall be appropriated to LEAA for the purpose of such training.

The question whether training programs under Section 407 can be funded from sources other than Section 408(c) is answered in the affirmative, with, however, a cautionary note as to the extent to which discretionary funds should be used to supplement state and local training activities. This restriction (although it is not an absolute prohibition as gathered from sources other than Section 408(c)) is indicated by the legislative history of the 1971 amendments.

Background reports by Representative Emanuel Celler and Senator John L. McClellan to Section 407 showed that as of mid-1970, training projects were funded through States, local governments, and private organizations, utilizing 15 percent discretionary funds appropriated under Part C of the act. Both reports stated that:

> The proposed amendment would enable LEAA to support a continuing training program from funds appropriated for that specific purpose, so that large sums of discretionary funds will not be diverted. Senate Report No. 1253, 91st Cong., 2d Sess. 47 (1970).

Thus, it was the congressional intent that Section 408(c) be the primary specific source of funds for training programs under Section 407 and an inference therefrom can be made that it was also passed as a corrective measure to provide an alternative to depletion of large general discretionary funds useful for other purposes.

LEGAL OPINIONS

PERTAINING TO THE

LAW ENFORCEMENT ASSISTANCE ADMINISTRATION

JANUARY 1, 1969, TO JUNE 30, 1973

NOTE TO READER

The Legal Opinions contained in this section were issued by the Comptroller General of the United States and the Office of Legal Counsel of the United States Department of Justice. They are included in this volume because of their general applicability to the LEAA program and because of the controlling nature of the opinions which were issued by these offices on matters within their jurisdiction.

Also included in this section is a letter from the Chairman of the Senate Subcommittee which drafted the legislation establishing LEAA. This letter is included because it offers additional insight into one specific aspect of the legislation.

These opinions and letter appear in all respects as they did when they were issued. They have not been edited for content by this Office.

Decision—Office of Legal Counsel, U.S. Department of Justice—March 27, 1968

FROM: William H. Rehnquist
Assistant Attorney General
Office of Legal Counsel

TO: Gerald M. Caplan
General Counsel
Law Enforcement Assistance Administration

SUBJ: Use of Grant Funds

In your memorandum of February 18, you request our opinion as to whether a State planning agency may grant Part C funds (1) to State owned and operated educational institutions; (2) to other types of educational institutions; (3) to nonprofit organizations; and (4) to profitmaking organizations.

The answers to all four questions are in the affirmative, assuming that the grants are for purposes enumerated in Section 301(b), and are consistent with the guidelines for comprehensive State plans described in Section 303.

Section 303(2) provides that a State planning agency must make available to local governments at least 75 percent of all Federal funds granted to it under Part C. But the act imposes no limits on the possible range of persons or organizations to whom the agency may disburse the remaining 25 percent of its

Part C funds.[1] Nor does the act limit the forms of arrangement or agreement under which these funds may be disbursed. They may be paid out under contracts for goods or services or awarded as grants for activities in furtherance of the comprehensive plan.

For example, a State planning agency may make a grant to a public or private educational institution to facilitate the preparation of a report on "Public education relating to crime prevention" (Section 301(b)(3)). Or the agency may make a grant to a nonprofit organization to support "research and development" (Section 303(6)) for purposes of improving crimefighting methods and equipment (Section 301(b)(1)). There may be practical reasons for preferring a contract to a grant in such cases, but the act does not foreclose a choice between these alternatives.

On the other hand, it will rarely be appropriate, as a matter of policy if not of law, to make grants to profitmaking organizations. If it is decided to employ the resources of such an organization in furthering some of the goals of a comprehensive plan, the more appropriate method of making funds available to it for that purpose will be a contract which establishes a clear and enforceable quid pro quo.

Decision—Office of Legal Counsel, U.S. Department of Justice—August 30, 1968

FROM: Martin F. Richman
Acting Assistant Attorney General
Office of Legal Counsel

SUBJ: Authority of the Attorney General to make interim grants for riot control projects

Section 307(b) of Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (P.L. 90-351) provides that—

> Notwithstanding the provisions of Section 303 of this part [under which an approved comprehensive State law enforcement plan is generally a prerequisite for action grants], until August 31, 1968, the [Law Enforcement Assistance] Administration is authorized to make grants for programs and projects dealing with the prevention, detection, and control of riots and other violent civil disorders on the basis of applications describing in detail the programs, projects, and costs of the items for which the grants will be used, and the relationship of the programs and projects to the applicant's general program for the improvement of law enforcement.

[1] With respect to any particular program or project, such funds would, of course, have to be combined with funds provided from State sources. See Section 301(c).

Your memorandum assumes, correctly in our opinion, that a part of the 75 percent share earmarked for local governments could be disbursed instead under contracts or grants to other institutions or organizations, if local governments agreed to let the product of such contracts or grants stand in lieu of a direct distribution of funds to them.

On August 13, 1968, the Attorney General announced that grants totaling $4,350,000 would be available to States pursuant to this section. The announcement set a deadline of August 26 for the filing of applications for these grants. It now appears that recess appointments to the three-man Law Enforcement Assistance Administration will not be made prior to the August 31 deadline for making grants under Section 307(b). This possibility had been contemplated prior to the August 13 announcement, and the conclusion reached that the Attorney General has interim authority to make these grants. This memorandum is to record our analysis of the legislative history which supports the conclusion that, under these circumstances, the Attorney General has the authority to make Section 307(b) grants.[1]

Although Section 307(b) refers to grants by "the Administration," that wording does not preclude the valid making of such grants by the Attorney General where, as here, the initial three Administrators have not taken office and the intention of Congress in Section 307(b) would otherwise be frustrated. Implied temporary authority in the Attorney General to make Section 307(b) grants under these circumstances derives from the "general authority of the Attorney General" (in Section 101(a)) over the Administration and from reading together the legislative histories of the Safe Streets Act and the Justice Department Appropriations Act for 1969. Two Congressional themes seen in this combined legislative history are especially relevant here:

(1) Federal grant money for riot control was given top priority;
(2) in implementing the new grant programs, especially the riot control portion, time was of the essence.

Special concern with riot control was manifested throughout the Congressional debate on the Safe Streets Act. For example, the bill was amended on the House floor to provide that action grants must give "the highest priority . . . to programs and projects dealing with riots and violent civil disorders, and organized crime." (113 Cong. Rec. 10068, daily ed.) Also during House debate, the bill was amended to earmark $30,000,000 specifically for riot control programs. 113 Cong. Rec. 10091, daily ed. Concern in the Senate for prompt implementation of a riot control grant program was reflected in Section 307 of the bill as passed, with its temporary authority to make grants free of the comprehensive plan requirement that underlies the whole action grant program.

The budget request for the Department of Justice was amended following enactment of the Safe Streets Act to seek appropriation of almost the full amounts authorized by the Safe Streets Act, including the full $15,000,000 earmarked for riot control in the final version of that act. Emphasis was laid on prompt implementation of Section 307(b). The pertinent portion of the

[1] This conclusion is not inconsistent with our earlier memoranda to the Attorney General of June 26 and July 12, 1968, dealing respectively with the general powers of the Attorney General once Administrators are appointed, and with the question whether an Acting Administrator could be appointed. Neither memorandum referred to Section 307(b) or dealt with authority to exercise the particular power conferred by it in the circumstances here presented.

Department's "Justification-Law Enforcement Assistance Administration," which was submitted to the Senate Appropriations Committee, is as follows:

As indicated, the act permits the immediate award of funds for projects relating to the prevention, detection, and control of riots and violent civil disorders. It is not necessary for a State to complete its plan before these grants can be made. The ability of the Administration to mount the necessary program to provide such grants will be severely limited by the August 31 deadline date. Assuming, however, prompt action on this budget request and the channeling of such aid through State government for all but the largest localities, much of the $15 million allocation for riot prevention and control grants might be awarded through such a direct grant program—and the balance can be distributed [in an orderly manner] as state plans are completed. *Hearings, Senate Committee on Appropriations on State, Justice, Commerce and Related Agencies Appropriations, Fiscal Year 1969*, p. 720.

In the hearings on the Justice appropriations bill, the Attorney General stressed the need for prompt action on the funds sought for the Law Enforcement Assistance program. He declared that: "It is important that we have the opportunity to bring these resources to State and local law enforcement as quickly as possible." *Hearings, supra* at 756. The following colloquy indicates that his concern was shared by the Appropriations Committee:

ATTORNEY GENERAL CLARK. We are anxious, as I know you are, to secure the appropriation, particularly because we are so anxious to get started on this omnibus crime bill.
SENATOR McCLELLAN. I am not going to delay it. If we have to hold a night session, I will, to move it along. *Hearings, supra* at 780.

The same concern with the need for prompt action had been reflected earlier, when the House of Representatives agreed to approve the Senate-passed Safe Streets bill without a conference. The following statement by Congressman Minish is illustrative:

Each day of delay in coming to grips with the forces of lawlessness means a growing number of [crimes] against person and property. It means that our wives and children cannot walk in safety on our streets. It means a hardening of the mood of lawlessness—an attitude of mass disrespect for the law—that has become a major concern to right thinking people who wish to live in a civilized society in peace and harmony with their fellow citizens. 114 Cong. Rec. 4652, daily ed.

It is also noteworthy that the Department and the Congress were aware of the substantial staffing problems the new grant program would create. Back in June of 1967, Attorney General Clark had said in a letter to Senator McClellan—

The program under S. 917 will necessitate a substantial increase in staff now assigned to grant activity under the Law Enforcement Assistance Act. The Department is fully aware of the staffing problems confronting large new Federal programs. The process of identifying and bringing in qualified staff will probably continue through and require the full fiscal year [then referring to fiscal 1968] for completion. *Hearings, Subcommittee on Criminal Laws and Procedures, Senate Judiciary Committee, on S. 917 and Related Bills*, 90th Cong. 1st Sess., p. 834.

There is no evidence that Congress addressed itself explicitly to the question presented here. To be sure, Section 405(a)(1) authorizes the Attorney General, "until such time as the members of the Administration are appointed," to obligate funds for the continuation of ongoing projects under the Law Enforcement Assistance Act of 1965. But this does not imply a lack of temporary authority in the Attorney General to make Section 307(b) grants under the present circumstances. Congress necessarily recognized that funds for ongoing projects under the 1965 act might be needed at any time after the new act was passed, even within days after its enactment (depending on the timetables of particular projects approved under the 1965 act). In April 1968, when this provision and the counterpart of Section 307(b) were reported by the Senate Judiciary Committee, however, it was not foreseen that similar temporary authority would be necessary with respect to Section 307(b) grants. Indeed, Section 405(a)(1), if relevant at all to the present issue, demonstrates a Congressional intention that the Attorney General should have temporary authority to make grants in the law enforcement assistance program where practical considerations require it.

Both houses did not pass the Safe Streets Act until June 6, 1968, and the President approved it (after strong arguments had been made in the press and elsewhere for a veto) on June 19. Both Houses did not approve appropriations for the act until August 1, the day before a month-long recess began. Congress was apprised of the staffing problems implementation of the act would face. Yet Congress provided for speedy implementation of riot control grants by dispensing, for a limited time, with the requirement that action grants be made in accordance with an approved State plan.

Under these circumstances, considering the general structure of Title I and the importance Congress attached to riot control grants, it must be inferred that Congress intended the Attorney General to have temporary authority to make Section 307(b) grants if timely nomination and confirmation (or recess appointment) of Administrators proved to be impracticable.

Decision—Office of Legal Counsel, U.S. Department of Justice—August 26, 1968

TO: Donald C. Dietemann
c/o Assistant Attorney General
for Administration

FROM: Edward I. Selig
Office of Legal Counsel

SUBJ: Request for legal advice concerning funding operations of Law Enforcement Assistance Administration

Your memorandum to me of July 9, 1968, asked for legal advice on several questions of statutory interpretation, originally raised in a memorandum from

Mr. Ingersoll to Mr. Pellerzi of July 8. I understand that such advice is desired to assist a task force in planning and formulating recommendations for the funding operations of the Law Enforcement Assistance Administration. You will appreciate, accordingly, that the views expressed herein do not represent definitive positions of the Office of Legal Counsel.

The questions raised may be broken down as follows:

1. Section 203(c) of the act requires each State to make available to local governments at least 40 percent of all planning funds granted to the State. Who has the power to determine how this 40 percent shall be allocated and spent?

2. Under Section 303(a)(2) of the act, comprehensive State plans must provide that at least 75 percent of all action funds granted to a State will be made available to local governments. Who has the power to determine how this money will be allocated and spent?

3. Would there be any legal objection to a requirement, proposed by the Administration, that local governments be afforded the sole power to determine how funds subgranted to them under Sections 303(a)(2) and 304 will be spent? Such a requirement is apparently proposed in the Application Guide for State Planning Agency Grants (July 5 draft, at p. 12).

4. Would there by any legal objection to giving local governments an option to receive their share of action funds in the form of State-provided services? The Application Guide presents this option (July 5 draft, at pp. 12-13).

5. Section 202 prescribes a 6-month deadline for State planning grant applications, and Section 302 prescribes a subsequent 6-month deadline for submission of comprehensive State plans. If a State fails to meet either of these deadlines, is it thereafter barred from receiving planning or action money?

Each of these questions will be considered in turn. Your attention is directed particularly to the discussion of alternative interpretations at pages 5-5b, since these involve differing approaches that might be taken in the Application Guide for action grants that is now in preparation by the task force.

1. *Planning Funds.*

Section 203(c) provides that "The State planning agency shall make such arrangements *as such agency deems necessary* to provide that at least 50 per centum of all Federal funds granted to such agency under this part . . . will be available to units of general local government . . . to enable such units . . . to participate in the formulation of the comprehensive State plan . . ." (emphasis added). The underscored language indicates that State planning agencies have the primary power to decide how and on what conditions planning funds will be allocated to local governments. This conclusion is reinforced by the absence of any express statutory standard to which States must conform in allocating such funds.

It does not follow, however, that State planning agencies will have unlimited discretion in this matter. The duty of each agency to develop a comprehensive statewide plan that will encourage local initiative and reflect local needs (Section 303(a)(3)) may well imply that the agency must distribute planning funds in such a manner as to secure fair representation in the planning process to the various local governments throughout the State. The Administration

could write such a requirement into the Application Guide, as a condition on which planning funds will be awarded to the States.

In practice, an appropriate distribution of subgrant planning funds under Section 203(c) is likely to be assured by the composition of the State planning agency itself, which must be "representative of law enforcement agencies of the State and of the units of general local government within the State" (Section 203(a)).

2. *Action Funds.*

The act does not make clear what division of powers, if any, is to be observed between the Administration, State planning agencies, and local governments in determining how the 75 percent portion of all action funds mentioned in Section 303(a)(2) will be allocated to and spent by local governments. But since the Administration will control the flow of funds at their source and will apply the governing standards of Sections 301 and 303, it is reasonable to conclude that the Administration itself may exercise final powers of review, revision (if necessary), and approval over proposed subgrant allocations and expenditures, at least at the planning stage. These powers should be exercised only after careful consideration has been given to the views and proposals of State and local planners.[1]

Under the block grant approach of Title I, the grantmaking process consists of a primary and a secondary stage. In the primary stage, a State planning agency, in cooperation with local governments, prepares a comprehensive plan and submits it to the Administration for approval. The Administration may then fund "an approved comprehensive State plan (not more than one year in age) . . . ." (Section 303). The second stage of the process involves the further distribution to local governments, through subgrants from the State planning agency, of at least 75 percent of all funds granted to the agency for any fiscal year (Sections 303(a)(2) and 304). For purposes of the following analysis, these two stages should be borne distinctly in mind.

In the primary stage, the power of the Administration to approve or disapprove comprehensive State plans—and to grant or withhold funds accordingly—affords it an opportunity to pass upon all proposals for channeling funds on down to local governments in the second stage.

Section 301(b) authorizes the Administration to make grants to States having plans "approved by it" for activities that fall within one or more of the seven major categories listed in 301(b). The statute does not specify whether a plan must provide for activities in all seven categories, nor does it indicate the relative emphasis to be placed on the respective categories. The Administration has the power to review proposed resolutions of these questions from plan to plan, and hence to determine or redetermine, within statutory limits, the purposes for which subgrants to local governments will ultimately be spent.

[1] The legislative history of the block grant amendment to Title I tends to the conclusion that the views of State planning agencies must be given considerable weight in determining how subgrant funds are to be allocated and spent. See, e.g., 113 Cong. Rec. H 10075, (daily ed. Aug. 8, 1967) (remarks of Mr. Poff); *id.* at H 10078 (remarks of Mr. Ford); 114 Cong. Rec. S 6254, (daily ed. May 23, 1968) (remarks of Senator Tydings). However, the act itself does not require that the Administration consider those views as controlling.

Section 303(a)(3) further provides that each State plan shall "adequately take into account the needs and requests of the units of general local government in the State and encourage local initiative in the development of programs and projects for improvements in law enforcement," and shall provide for an appropriately balanced allocation of funds among such units. The Administration could reasonably take the position that fulfillment of these requirements—as well as of those stated in Section 301(b)—must be evidenced in the plan by a more or less detailed breakdown of proposed subgrants to localities, together with a statement of any conditions on which subgrants would be awarded. The Administration may insist that proposed allocations and expenditures of subgrant funds be based primarily upon assessments of local needs submitted by the local governments themselves. When a proposed State plan rejects or modifies any local request or assessment of needs, a statement setting forth the reasons for the rejection or modification could also be required.

Thus the Administration may review in detail the respective roles of local governments and State planning agencies in drawing up comprehensive plans, the purposes for which funds would be spent, and the proposed distribution of funds among the various units of local government within a State. In exercising these powers of review, the Administration may see to it that the needs and requests of local governments are given appropriate weight.

It is less clear what degree of control the Administration will have over the second stage of the process, where subgrants are made by State planning agencies to local governments. The answer to this question depends in part on whether the block grant approach of Title I is understood as requiring the Administration to make funds available to a State agency in a "block" or lump sum for subgrant purposes, *before* the agency receives subgrant applications from local governments under Section 304. Power to pass upon such applications is vested in State agencies under that section, and they are "authorized" thereunder—not compelled—to disburse funds to applicants. If the State agency has already received a lump sum for subgrant purposes before applications from local governments are submitted, then the Administration will have no direct control over the actual channeling of funds in the subgrant stage.

However, even if this interpretation of the statutory scheme for grants and subgrants were to be accepted (and the Administration is not compelled to accept it, as discussed below), the Administration could still exercise a large measure of indirect control over the subgrant process. As noted above, subgrants must be made in accordance with more or less detailed State plans approved by the Administration on an annual basis.[2] If a State agency awards or withholds a subgrant in violation of an established plan, or abuses its discretion in administering a subgrant program, the State may have difficulty in getting the Administration to approve any State plan for the following year.

[2] It should be further noted that the degree of discretion a State will have in administering a subgrant program will vary inversely with the degree to which the plan details the local projects to be funded and the proposed flow of funds. Within reasonable limits, the Administration has the power to determine the degree of such detail that must be developed in each proposed State plan.

The need to maintain a satisfactory working relationship with the Administration will prompt State planning agencies to administer subgrant programs fairly and in accordance with approved plans.

An alternative interpretation of the statutory requirements, favoring a considerable degree of direct control by the Administration over the subgrant process, is suggested by the language of Sections 301(c) and 303 authorizing the Administration to make multiple "grants" to a single State for various "programs and projects." Section 301(c) speaks of separate Federal grants for constructing physical facilities, training units to combat organized crime, and training units to control riots. A separate limit is established on the Federal share of the total cost that may be contributed for each of these purposes. It is clear that all three types of program or project may be included for subgrant funding in a single State plan. Section 303 expressly authorizes the Administration to make "grants. . . to a State planning agency," in part for the funding of specific "programs and projects" at the local government level.

In accordance with these provisions, the Administration may take the position that it will release portions of the 75 percent of action grants destined for local use, only *after* applications for subgrant funding of particular local programs or projects have been received by the State planning agency under Section 304 and have been forwarded to the Administration for original funding under Section 303.[2a] In this manner, the Administration may reserve to itself the ultimate power to review each local program or project at the time it is actually proposed for subgrant funding. The purpose of the review would be to assure that such proposals, in the form approved by the State agency, are consistent with the governing comprehensive plan, and particularly with local needs, requests, and initiatives as contemplated under Section 303(a)(3).

The presumably infrequent exercise of this reserved power would not undercut the role reserved to the State agency, under Section 304, to screen in detail and pass upon applications initially submitted by local governments before the agency submits them in turn to the Administration for funding. Moreover, the State agency will continue to have ongoing powers to monitor each local program or project, to disburse subgrant funds in installments as the need arises, and to resolve questions arising in the course of administering each subgrant program at the State level.

If this interpretation of the division of powers between the Administration and State planning agencies is to be adopted with respect to subgrant programs, it would be desirable that it be clearly spelled out and published for the understanding of all concerned. The Administration may wish to deal with this subject in its Application Guide for action grants.

Under either of the above alternatives, it is obvious that disagreements may arise between the Administration, State planning agencies, and local governments over the channeling and expenditure of subgrant funds. In such cases the Administration will have to consider the extent to which it can exercise the legal powers it has to disapprove features of proposed comprehensive State plans, or to disapprove local programs or projects proposed for individual

[2a] This interpretation would not defeat the block grant concept of Title I funding, but would largely confine it to the initial allocation of funds among the individual States in accordance with the formulas prescribed in Sections 205 and 306.

funding at the subgrant level, as the case may be, without running unreasonable risks of practical breakdown in the grantmaking process at the State level or of Congressional criticism that the block grant approach of the bill is being frustrated.

3. *Proposed Application Requirement for Determining How Action Money Will Be Spent.*

The Application Guide (July 5 draft, p. 12) contains the following interpretation of the requirement in Section 303(2) that at least 75 percent of all action funds granted to a State "will be available to" local governments:

> The Administration will interpret the phrase 'will be available to' to mean that the units of general local government or combinations of such units will determine how monies are spent for at least 75 percent of the funds available to the State planning agency . . . .

The discussion under Part 2 above indicates that the Administration may require State plans to conform to this interpretation, if it is qualified to permit State planning agencies to participate in the process of passing judgment upon expenditure proposals submitted by local governments. We would suggest that "ordinarily" be inserted before "determine" in the text of the quoted standard in order to assure to State planning agencies an opportunity to object to local proposals that may be unsound or out of keeping with Statewide priorities.

As a matter of law, this standard can most convincingly be justified by reference to the requirements of Section 303(a)(3) that each State plan shall "adequately take into account the needs and requests of the units of general local government in the State and encourage local initiative in the development of programs and projects for improvements in law enforcement . . . ." The Guide should make it clear that these requirements are conditions on which funds "will be available to" local governments under subparagraph (2). Construing subparagraphs (2) and (3) together, it is reasonable to conclude that plans for subgrant funding must ordinarily be based on local assessments of local needs. The Guide might therefore be amended, in relevant part, to read as follows:

> The Administration will interpret the phrase 'will be available to' to mean that the units of general local government or combinations of such units will ordinarily determine how monies are spent for at least 75 percent of the funds available to the State planning agency under Part C. As a rule, comprehensive State plans will provide for subgrants to local governments in response to their needs as determined by the local governments themselves in accordance with the requirements set forth in Section 303(a)(3).

This standard might further be elaborated by adding the following:

> When a local request or determination of need is rejected, excluded, or modified by a State agency in formulating a comprehensive plan, the agency shall submit along with the plan a statement of the reasons for such rejection, exclusion, or modification.

4. *State-Provided Services.*

The "availability" of action funds to local governments is further construed on page 12 of the Application Guide, as follows:

> The normal method of making funds available to units of local government would be by direct grant to such units or by other type of direct fund allocation or transfer.

> The cost of State-provided services to a local unit may also be charged as funds made available to local units, but only if the local unit agrees that services may be so charged. Units not accepting such service would not be charged for it, nor should their intended share of funds be reduced by any amount related to such service.

There does not appear to be any objection, as a matter of law, to giving such a free choice to local governments to take their share of action funds either in the form of direct grants or in the form of State-provided services.

In view of the possibility that services will be provided in lieu of direct grants, we would recommend that the first full paragraph on page 13 be amended to read as follows:

> Accounting procedures used by the State planning agency must clearly delineate expenditures so that it is clear which monies are going to, *or are being spent by the State on behalf of,* local units or combinations thereof (proposed amendment italicized).

5. *State Deadlines.*

Section 202 authorizes the Administration to make planning grants and provides that "Any State may make application to the Administration for such grants within six months of the date of enactment of this act." Section 302 further provides that State agencies "shall within six months after approval of a planning grant" submit to the Administration a comprehensive State plan.[3] If a State fails to meet either of these deadlines, "the Administration may make grants . . . to units of general local government or combinations of such units" (Section 305).

The only condition applicable to such grants is that local governments applying for them must submit copies of their applications to the Governor of their State, who will then have the opportunity to submit to the Administration within 60 days an evaluation of the project set forth in the application. Such evaluations are merely advisory, not binding on the Administration (although, as a matter of policy, they should probably be given considerable weight in deciding whether to fund a local project).[4]

However, the act does not provide, and the legislative history does not suggest, that failure of a State to meet a deadline will thereafter bar it from receiving planning or action funds. There is no warrant for construing the deadline requirements in so inflexible a manner. The more reasonable interpretation is that after an applicable deadline has passed, a State agency may still apply for planning and action grants, but may no longer enjoy a monopoly on available funds. The Administration will have considerable discretion in this matter. For example, it could await a delayed application from a State agency before releasing any planning funds. Or it could fund planning applications received directly from local governments. In either event, the Administration will be free to decide whether and on what terms to

[3] The variation between "may" and "shall" in the passages respectively quoted from Sections 202 and 302 does not appear to be significant in relation to the issue discussed here.

[4] Funds granted directly to local governments under Section 305 would be over and above the 75 percent minimum of all action grants to State planning agencies that must be subgranted in turn to local governments under Section 303(a)(2).

readmit a State into the planning process, if the State agency submits a post-deadline application. A State could be readmitted on the understanding that its plan would have to exclude certain localities or certain subjects already covered by prior arrangements between the Administration and local governments. Or the Administration could require all localities to subordinate their plans to those of a State agency for which funds are belatedly sought and awarded.

If the Administration does elect to fund a delayed planning application from a State, the Administration should not thereafter entertain competing applications from local governments until the State has failed to meet the second 6-month deadline for submission of a comprehensive State plan. In other words, readmission of a State into the planning process should be accompanied by restoration of the State's right under the Act to plan for the State as a whole, with such exceptions as may have been occasioned by the State's delay in applying for planning funds.

If a State agency misses the second deadline, the Administration might then be confronted with choices similar to those discussed above in connection with a failure to meet the first deadline. Action funds will not necessarily be channeled along the same lines as planning funds. That will largely depend on the extent of the commitments, if any, which the Administration may see fit to make to local governments after a State agency fails to meet a deadline, and on how the Administration decides to handle a delayed filing by a State agency for either planning or action funds after the applicable deadline has passed.[5]

Decision—Office of Legal Counsel, U.S. Department of Justice—May 21, 1969

TO: Charles H. Rogovin
Administrator, LEAA

FROM: William H. Rehnquist
Assistant Attorney General
Office of Legal Counsel

Authority of LEAA to make grants to individuals.

You have asked whether the National Institute of Law Enforcement and Criminal Justice is authorized to make grants to individuals pursuant to section 402(b) of the Omnibus Crime Control and Safe Streets Act of 1968.

It is our understanding that LEAA has recently announced a small grants program to encourage new ideas in methods of crime prevention and control.

[5] Under Section 303, the Administration may fund only approved comprehensive State plans that are not more than one year in age. But the act does not prescribe any deadline for submission by a State agency of a revised plan for the second and succeeding years of an action grant program. Nor does the act provide that the Administration may make grants to local governments in the event of a delay in the submission of a second or succeeding annual plan.

The deadline for the submission of proposals was April 15, 1969, and on June 15, fifty research grants in amounts not exceeding $5,000 will be awarded. Professional law enforcement personnel, lawyers, professors and other individuals were invited to apply for these grants.

After examining the statutory language and its legislative history, we have concluded that section 402(b) authorizes grants to individuals.

1. *The Statute.* Section 402(b) provides in part:

> (b) The Institute is authorized–
> (1) to make grants to, or enter into contracts with, public agencies, institutions of higher education, or private organizations to conduct research, demonstrations, or special projects pertaining to the purposes described in this title, including the development of new or improved approaches, techniques, systems, equipment, and devices to improve and strengthen law enforcement;
> (2) to make continuing studies and undertake programs of research to develop new or improved approaches, techniques, systems, equipment, and devices to improve and strengthen law enforcement, including, but not limited to, the effectiveness of projects or programs carried out under this title. . . .

Subsection 402(b)(1) obviously authorizes the Institute to make research grants to "private organizations." This term is not defined by the statute; nor does the legislative history shed much light on its intended scope. Subsection (b)(2) authorizes the Institute "to make continuing studies and undertake programs of research." The statute imposes no restrictions on the methods that the Institute can employ to undertake these programs. While subsection (b)(2) clearly enables the Institute to hire its own researchers as employees, there is certainly nothing on the face of the statute to indicate that this is the only way the Institute can "undertake programs of research." Thus, it would appear that the Institute could make grants to individuals pursuant to its authority under subsection (b)(2). On the other hand, it could be argued that Congress intended subsection (b)(1) to be the Institute's exclusive grant-making authority and that Congress intended to exclude individuals from receiving grants. The following discussion of the legislative history shows that Congress possessed neither of these intentions. Therefore, a broad reading of subsection (b)(2) is justified both by the sweeping language of the statute and by the legislative history.

The Institute could comply with a narrow reading of the statute either by treating the individual researcher receiving a grant as an employee covered by subsection (b)(2) or by organizing the individual researchers into a "private organization" contemplated by subsection (b)(1). Given the absence of any Congressional desire or statutory requirement to exclude grants to individuals, such action would seem unnecessary.

2. *Legislative history of research grants.* When the original "Safe Streets and Crime Control Act of 1967" was introduced in Congress on February 8, 1967, it established two methods to conduct research in addition to the possible use of law enforcement grants to States and units of local governments. First, section 302 of Title III authorized the Attorney General to make grants to, or enter into contracts with "institutions of higher education and other public agencies or private organizations" to conduct research, demonstrations or special projects. Second, section 303 authorized the Attorney General to make

grants to "institutions of higher education and other public agencies or private nonprofit organizations to establish national or regional institutes for research and education."

Minor changes were made in Title III of the bill, H.R. 5037, before it was reported out of the House Judiciary Committee on July 17, 1967. The accompanying House report stated that the national or regional institutes authorized by section 303 could conduct programs "by grant or contract with *individuals* or with other institutes or institutions of higher education or with public or private agencies or organizations." (Emphasis added.) H.R. Rep. 488, 90th Cong., 1st Sess., p. 13.

The concept of the National Institute of Law Enforcement and Criminal Justice was introduced on the floor of the House by Congressman McClory as a substitute for Title III of the committee bill. The McClory substitute created the National Institute and authorized it to perform the functions now described in essentially the same language in subsections 402(b)(2) through (b)(7) of the present law. In addition to these functions, the McClory substitute authorized the National Institute to set up regional institutes to provide programs of training, education and research in law enforcement. These regional institutes could be established by grants to or contracts with any public or private nonprofit agency, organization or institution. In describing the purpose of his substitute, Congressman McClory stated:

> The purpose of my amendment is not to change the bill so far as the expenditure of money is concerned except that it puts it under professional control and coordinates it within a single institute and under the control of a responsible director. Without my amendment, the Attorney General would have free rein to distribute the money wherever he wants to–and if so–when. 113 Cong. Rec. 21839 Aug. 8, 1967).

Most of the debate on the McClory substitute focused on whether the National Institute would duplicate functions already being performed by the FBI, particularly the FBI Training School. 113 Cong. Rec. 21190-92, 21836-42 (Aug. 3, 8, 1969). Congressman Pucinski stated that in light of the Federal Government's experience in poverty programs, he was concerned about giving the National Institute power to make contracts or grants with "private organizations which go into communities without the knowledge of the elected officials." He apparently was persuaded not to offer an amendment prohibiting such contracts by Congressman McClory who stated that the grants and contracts would primarily go to educational institutions. 113 Cong. Rec. 21838-39 (Aug. 8, 1967). The McClory substitute was adopted by the House by a vote of 101 to 85, and the entire bill was passed by a vote of 378 to 23. 113 Cong. Rec. 21842, 21860-61 (daily ed. Aug. 8, 1967.)

The House bill, H.R. 5037, was introduced in the Senate on August 9, 1967, and referred to the Judiciary Committee. On April 29, 1968, the committee reported out the companion bill, S. 917, with amendments. The committee bill gave the statute its present structure by transferring Title III to Part D of Title I. Sections 401 and 402 of the committee bill were passed by the Senate and became law without being changed.

In describing the functions of the Institute, subsections 402(b)(2) through (b)(7) of the committee bill (the present law) followed the McClory substitute and the House bill, with only minor changes not relevant for present purposes.

The Senate Judiciary Committee replaced the regional institute provision with subsection 402(b)(1) of the present law, which authorizes the National Institute itself to administer research grants. The committee report merely paraphrases the section and contains no explanation for the change. S. Rep. 1097, 90th Cong., 1st Sess. No comment on this change was found in the lengthy Senate debate on the bill. The Senate bill was substituted for H.R. 5037, passed by the Senate and later by the House.

It is apparent from the legislative history that Congress was very interested in who would control and administer research grants. Authority to administer these grants was originally placed in the Attorney General, then transferred to regional institutes set up by the National Institute, and finally given to the National Institute itself. On the other hand, Congress displayed no desire to place any restrictions on the type of recipients who could qualify for these grants. While the original bill did not expressly mention individuals in the list of eligible recipients, the accompanying House report read this section broadly by specifically stating that the Attorney General could make grants to individuals. While Congress later decided not to authorize the Attorney General to administer the research grants, there is nothing in the legislative history to indicate that Congress intended to change the interpretation made by the House report and prevent individuals from receiving such grants.

Since neither the statutory language of subsection (b)(1) nor its legislative history reveal any desire to place restrictions on the broader grant of authority in subsection (b)(2), the Institute can make grants to individuals pursuant to subsection (b)(2).

Decision—The Comptroller General of the United States—January 5, 1970

FROM: Assistant Comptroller General

TO: Charles H. Rogovin
Administrator
Law Enforcement Administration
Department of Justice

Pursuant to 31 U.S.C. 74, you requested our advance decision by letter dated November 12, 1969, on the legality of certain grants proposed to be made under Title I of the Omnibus Crime Control and Safe Streets Act of 1968, approved June 19, 1968, Pub. L. 90-351, 82 Stat. 197, 202. Specifically, you ask to be advised whether the discretionary 15 percent funds of Section 306 of Title I are available to the Law Enforcement Administration for the purpose of making grants for law enforcement improvement programs directly to units of general local government as well as to State planning agencies.

Section 306 reads in pertinent part as follows:

> Funds appropriated to make grants under this part for a fiscal year shall be allocated by the Administration among the States for use therein by the State planning agency or units of general local government, as the case may be. Of such funds, 85 per centum shall be allocated among the States according to their respective populations and 15 per centum thereof shall be allocated as the Administration may determine.

You correctly point out that narrowly construed, this provision would only allow allocation of the 15 percent portion to States while a broader construction would allow the grant of such funds directly to units of general local government as well as to States. In other words, the language is not so precise with respect to the question presented to preclude resort to its legislative history as an aid in its interpretation.

When reported by the respective committees, the Administration bills, H.R. 5037 and S. 917, 90th Congress, provided much broader discretion at the Federal level in the matter of allocations to State and local governments. Opponents to the Administration's approach voiced objection that priorities were not fixed, there was no formula to guarantee equitable allocation, absolute discretionary authority over distribution and allocation was vested in the Justice Department, and that these factors raised fear of a federally controlled police system. See H. Rept. No. 488, 90th Cong. 28 and S. Rept. No. 1097, 90th Cong. 227.

Somewhat similar language as that now appearing in Section 306 first appeared by way of an amendment offered by Congressman Cahill which was adopted by the House of Representatives during floor debate on H.R. 5037. See Cong. Rec. 21816, 21860 (August 8, 1967). Congressman Cahill and supporters of his amendment, explained that the *Cahill* amendment would shift primary control from the Federal to the State level. See 113 Cong. Rec. 21090-3, 21189 (August 2, 1967). There was concern that under the Administration bill States could be by-passed to the point that all grants could conceivably go to seven cities in seven States. See colloquy between Congressmen Poff, Celler, and MacGregor, 113 Cong. Rec. 21091 (August 2, 1967). Perhaps more realistically, Congressman Cahill argued that under the Administration bill the Department of Justice would be inundated with grant applications. See 113 Cong. Rec. 21092-3 (August 2, 1967). In all of the discussion on the *Cahill* amendment, the only remarks made which relate to the precise issue of whether or not the discretionary funds could be granted directly to units of local government were those of Congressman Cahill:

> So we hope that we can recommend to the House an improvement which will in essence still give the Attorney General of the United States the final authority for the approval or disapproval of a State law enforcement and criminal justice plan. *But he will be limited to 50 plans. These will be plans by individual States* made only after a State planning agency has investigated, evaluated, and made a determination as to what is best in that particular State to combat crime. (Emphasis added.) *Ibid.*

The following explanation of the Attorney General's discretionary authority by Congressman Cahill refers only to the making of additional grants to the States which have better plans:

> I would point out respectfully to the committee that the purposes for the expenditure of funds under the amendment are exactly the same as they are under the administration's bill. If the State fails to apply for grants again under the amendment, the local units of government can.

> Under this amendment, there is also a formula which is missing in the administration bill. The formula here for grants would be: 75 percent based upon population of the state; and 25 percent within the discretion of the Attorney General.
>
> Now why do we say that that should exist? For the simple reason that this bill seeks to produce new and innovative functions for the purpose of combating crime in our country. We recognize that one plan may be superior to another and while we think basically that all States should participate and should get funds, we also agree that if some are better than others—if they meet the national pattern and if they meet the national plan that the Attorney General should have this discretion. So that is in the amendment. (113 Cong. Rec. 21817 (August 8, 1967).)

These statements by Congressman Cahill coupled with the concern that under the Administration bill States could be by-passed and the Department of Justice would be unable to process the great number of applications, indicate an intention by the *Cahill* amendment supporters that under the amendment, while local governments could participate as recipients, all funds granted would have to be channeled through the States.

The Senate directed its consideration to the Administration bill S. 917 during the 2d session of the 90th Congress. As already pointed out the language here considered was not included in the bill reported to the Senate. Attempts in Committee to have such language added were voted down and, as in the House, the language was added by amendment during debate. Senator Dirksen was the sponsor of this language in the Senate. Senator Hruska spoke at some length about the *Dirksen* amendment prior to its introduction. Of particular importance to this consideration is the following language from the section-by-section analysis of the amendment which appended Senator Hruska's remarks.

> Section 306: Funds appropriated for grants under Part C [B] for any fiscal year shall be allocated by the Law Enforcement Administration among the states for use by the state planning agencies or units of general local government. Of the funds appropriated for purposes of Part B [C], 85 percent shall be allocated among the states according to their respective population. *The remaining 15 percent shall be allocated as the Law Enforcement Assistance Administration may determine. Grants could be made by the Administration either to States or units of general local government or combinations of either.* (Emphasis supplied.) 114 Cong. Rec. 12827 (May 10, 1968).

Senator Dirksen called his amendment to the floor with the following statement:

> Mr. President, for the information of the Senate, this is the so-called block grant amendment. It is not a bit prolix or complicated. It simply follows the action that was taken by the House of Representatives. 114 Cong. Rec. 14753 (May 23, 1968).

While it may be that it followed the form of the *Cahill* amendment, the foregoing quote from the section-by-section analysis and Senator Dirksen's comment,

> So the [categorical grant] system is outmoded, and to dump $500 million into the system with its fragmentation and its weaknesses is going to be a waste of the people's money. This has to be planned and the place to plan it is at the State level. That is the reason for this so-called block grant amendment. We still have some flexibility, namely 15 percent, but the emphasis and the focus is upon the State, where it ought to be... *Ibid.*

indicate an intention on the part of the amendment's supporters that the 15 percent allocation could go directly to local governments.

To the same point, one opponent of the *Dirksen* amendment, Senator Brooke, expressed the view that grants could go directly to local governments under the *Dirksen* amendment when he attempted to raise the discretionary figure from 15 to 33 1/3 percent. Specifically Senator Brooke stated:

> Considerations such as these have led me to devote much time to devising a suitably flexible system of grants to meet these diverse requirements. These factors are recognized in the text of amendment 715 by its provisions for most funds to be spent at the local level, even when channeled to the States as block grants. In addition the amendment offered by the distinguished minority leader reserves 15 percent of total funds under this program for allocation by the law enforcement administration at its discretion. This is an admirable attempt to build certain flexibility into the grant mechanism.
>
> However, in my studied opinion, somewhat more flexibility is desirable. I have been a law enforcement officer and I believe there may well be cases in which direct Federal grants to local units of government would be helpful.
>
> * * * * *
>
> To accomplish this, my amendment to the pending *Dirksen* amendment provides that 66 2/3 percent of the action funds should be allocated as block grants to the States, but that 33 1/3 percent of the funds would be reserved for allocation as the law enforcement administration shall decide.
>
> * * * * *
>
> Mr. President, I certainly agree with my distinguished minority leader that we want law enforcement at the local level, at the grassroots level, as he said. And that is exactly what my amendment proposes to do. The 85-15 formula, which the distinguished minority leader's amendment has devised, only gives 15 percent flexibility, which can be used either for the States or for the local municipalities, the local grassroot government. Under my proposed amendment, there would be 33 1/3 percent that could be used. 114 Cong. Rec. 14767 (May 23, 1968).

We are mindful of the fact that two opponents to the *Dirksen* amendment, Senators Tydings and Brewster, argued categorically that the amendment would prohibit direct grants to cities and that another opponent, Senator Muskie, found it extremely difficult to read the clear language of the *Dirksen* amendment as authorizing any direct Federal grants to local governments. 114 Cong. Rec. 14756, 14759 and 14764 (May 23, 1968). However, we agree with the point made in your submission that these remarks were made in an effort to defeat the *Dirksen* amendment and for that reason we do not feel that they should be determinative of the issue in the face of the clearly expressed position to the contrary by those supporting the *Dirksen* amendment or the block grant approach.

The *Dirksen* amendment was agreed to by the Senate on May 23, 1968, and the bill was passed on the same day. On the following day Senator Dirksen submitted additional materials, including the section-by-section analysis previously quoted from, which he felt "might be useful to the conferees when they sit down to iron out the differences between the two bodies." 114 Cong. Rec. 14908, 14911 (May 24, 1968). During consideration of a motion to ask for a

conference with the Senate, which was rejected by the House, 114 Cong. Rec. 16077 (June 5, 1968), Congressman Cahill stated:

> Let me say pragmatically that while I, as Members will recall, supported a block grant amendment, which is Title I, and while the Senate version does not satisfy me, I will accept it. It is not what I had hoped for.
>
> * * * * *
>
> If this bill goes to conference, there will be no block grants. 114 Cong. Rec. 16072 (June 5, 1968).

The resolution of the issue presented in your letter is difficult. Very clearly the plain language of Section 306 can be read either way and there is a direct conflict as to its meaning in the legislative history made on the floor of the House and Senate. The history of the *Cahill* amendment in the House–the body in which the language originated–indicates that direct grants may not be made under this section to units of local government. On the other hand, the more detailed history of the *Dirksen* amendment in the Senate indicates that direct grants may be made thereunder to units of local government. While the House accepted the language passed by the Senate without requesting a conference, there is no specific evidence that the House was aware of the different interpretation placed on Section 306 by the Senate.

We have found one reported case that involved such a conflict. In *Steiner* v. *Mitchell,* 350 U.S. 247, 254 (1956) the Supreme Court was confronted with ambiguous language with conflicting legislative histories in the House and Senate. The Court acknowledged this conflict and then ruled that the Senate discussion was more clear cut and, because the section in question originated in that body, the Senate history was more persuasive.

In the present consideration, while the language of Section 306 was derived from separate amendments in the House and Senate, for all practical purposes, it originated in the House. The Senate discussion, however, is more clear cut. With regard to the Court's reference to the originating body, we feel that it is a valid observation that in the *Steiner* case the Court was construing language that not only originated in the Senate but was in fact a committee amendment with an attending explanatory report. This fact is apparent in the Senate debate appended to the Court's decision. In the case at hand, there was rejection of this or comparable language by both the House and Senate committees and the only legislative history available is that contained in the floor debates on the language. We therefore feel that, independently of the originating body, the more relevant factor of persuasiveness in this case is where the more detailed history was made.

Accordingly, we accept the legislative history made in the Senate on the *Dirksen* amendment as controlling and hold that under Section 306 the Administration may make direct grants to units of local government from the 15 percent portion made available for allocation as the Law Enforcement Administration may determine.

Decision–The Comptroller General of the United States–September 30, 1970

FROM: Assistant Comptroller General

TO: Attorney General

Reference is made to letter of September 4, 1970, from Associate Administrators of the Law Enforcement Assistance Administration, Richard W. Velde and Clarence M. Coster, requesting our decision as to whether, under the circumstances described therein, the unexpended balance of grant funds, available for obligation in fiscal year 1970 and originally obligated pursuant to a grant which is now in default, is available in the current fiscal year to engage a new grantee to complete the unfinished project.

It is explained that the grant was awarded to the University of Wisconsin by the National Institute of Law Enforcement and Criminal Justice of the Law Enforcement Assistance Administration in accordance with provisions of Part D of Title I of the Omnibus Crime Control and Safe Streets Act of 1968, 82 Stat. 197, 42 U.S.C. Sections 3701 *et seq.* Subsequently, the faculty member designated in the grant as project director and principal investigator transferred to the faculty of Northwestern University. Without him, the University of Wisconsin is unable to complete the project and has advised the National Institute of Law Enforcement and Criminal Justice (Institute) that the grant will be relinquished effective August 31, 1970.

Also, it is stated that the need for completing the project continues to exist since it is part of the overall research program on human resources in law enforcement undertaken by the Institute. Moreover, the original project director is the only person presently available to complete the work inasmuch as he was instrumental in its creation, has carried it to its present status and knows its entire background. Consequently, from the standpoint of both time and expense, it is believed that it would be far better to have him continue the project than to begin anew with another principal investigator. Accordingly, the Institute now wishes to grant the remaining funds to Northwestern University so that he may complete the project.

The purpose of Part D of Title I of the Omnibus Crime Control and Safe Streets Act of 1968 is set out in Section 401 thereof as being to provide for and encourage training, education, research, and development for the purpose of improving law enforcement and developing new methods for the prevention and reduction of crime, and the detection and apprehension of criminals.

Section 402 established the Institute and authorized it to make grants to, or enter into contracts with, public agencies, institutions of higher education, or private organizations to conduct research, demonstrations, or special projects pertaining to the purposes described in Title D, including the development of new or improved approaches, techniques, systems, equipment, and devices to improve and strengthen law enforcement.

While the provisions of Part D give the Institute broad authority to carry out the law enforcement program, including authority to finance research, etc., either in the form of grants or by contracts, it seems clear the Congress

intended that the funds appropriated thereunder are to be used for specific purposes rather than for unconditional grants or gifts. This fact apparently is recognized in the grant agreement where it is provided in part that the applicant agrees that funds awarded shall be expended only for the purposes and activities covered by an approved plan and that the grant may be terminated in whole or in part by the Institute for failure to comply with the grant conditions. Consequently, and in accordance with our decision in 42 Comp. Gen. 289 (1962), we agree that the election by the Institute to provide financial assistance in the form of a grant rather than a contract does not change the essential relationship between the United States and the grantee in respect to the purposes and conditions of the funds granted, and that acceptance of the grant creates, in effect, a contractual relationship between the United States and the grantee. See, also, 41 Comp. Gen. 134, 137 (1961).

In view of such relationship created by the grant agreement it is stated to be the belief of the Institute that it now may award a new grant to complete the unfinished work and to charge the grant against the balance of the 1970 fiscal year appropriation in accordance with our decision set out in 34 Comp. Gen. 239 (1954).

The decision referred to above concerned a contract for exploratory drilling that originally was terminated because of the contractor's default. Concerning the fiscal year chargeable with a replacement contract under those circumstances we stated that—

> In cases where a contract performance period has extended beyond the expiration of the period of availability for obligation of a fiscal year appropriation, and where it has become necessary to terminate the contract because of the contractor's default, this Office has taken the position that the funds obligated under the original contract would be available for the purpose of engaging another contractor to complete the unfinished work, provided a need for the work, supplies, or services existed at the time of execution of the original contract and that it continued to exist up to the time of execution of the replacement contract. . . .

It is reported that the original grant to the University of Wisconsin was made in response to a bona fide need then existing and was executed prior to the expiration of the period of availability for obligation of 1970 fiscal year funds and, as previously stated, the need for completing the project continues to exist.

In view of these facts it is clear that if financial assistance for this project had been provided under a contract our decision set out in 34 Comp. Gen. 239 (1954) would be for application in this case. However, since as stated above, it is our view that the grant agreement created a contractual relationship between the United States and the grantee, we see no valid basis to hold that such decision should not be equally applicable to the grant agreement here involved.

Accordingly, the balance of the funds remaining from the amount originally granted to the University of Wisconsin may be used in funding a grant to Northwestern University to complete the unfinished project work.

Decision—The Comptroller General of the United States—April 26, 1971

FROM: Assistant Comptroller General

TO: Mr. Richard W. Velde
Associate Administrator
Law Enforcement Assistance Administration
U.S. Department of Justice

By letter dated February 22, 1971, you and Associate Administrator Coster requested our decision in the following matter.

Under Part C of Title I of the Omnibus Crime Control Act of 1968, Pub. L. 90-351, approved June 19, 1968, 82 Stat. 200, 42 U.S.C. 3731 *et seq.*, the Law Enforcement Assistance Administration (LEAA) makes annual population-based block grants to the States for law enforcement improvement programs. Each State is required to subgrant a percentage of these funds to cities and counties and the remainder may be spent by the State for statewide programs. All of these funds must be spent in accordance with a comprehensive statewide law enforcement plan developed by the State and approved annually by LEAA. These plans do not contain individual project or program specifications as such specifications are left to the discretion of the States within the general framework of the comprehensive plan and subject to the limitations and requirements of the act. LEAA also makes "discretionary" grants to States or directly to cities and counties. Block grants and discretionary grants are awarded on a matching basis; that is, the ultimate grantee must pay a specified part of the cost of funded programs.

Your Administration has thus far been required to award Part C funds before the end of the fiscal year for which they were appropriated. However, because of the necessary delays due to suballocation, subgranting and contracting States and cities have been permitted two additional fiscal years during which to expend funds. Thus, some of the States and cities still have unobligated or unspent funds awarded by LEAA in fiscal years 1969 and 1970.

Subsection 4(4) of the Omnibus Crime Control Act of 1970, Pub. L. 91-644, approved January 2, 1971, 84 Stat. 1892, amended subsection 301(d) of Pub. L. 90-351 so as to make clear that personnel compensation limitations heretofore prescribed shall only apply to restrict the use of grant funds for the payment of the salaries of police and other regular law enforcement personnel. It was the intention of this amendment that the use of block grant funds for the salaries of personnel whose primary responsibility is to promote assistance, maintenance, or auxiliary services or administrative support to the regular operational components of law enforcement agencies shall not be subject to the limitations of Section 301 of Pub. L. 90-351 that not more than one-third of any grant for law enforcement purposes may go for the compensation of personnel. See H. Rept. No. 91-1174, 11 and S. Rept. No. 91-1253, 45.

In addition to the personnel limitation amendment above described, subsection 4(3) of Pub. L. 91-644 amended Pub. L. 90-351 so as to allow up to a 75 Federal 25 nonfederal matching formula for law enforcement programs.

Before this amendment the matching formulas were dependent on the nature of the program funded and while most programs were subject to a 60-40 matching formula, there was authority to fund programs on 75-25 and 50-50 formulas as well.

In your submission you point out that while the effective date of neither of these amendments is specified, the legislative history of Pub. L. 91-644 makes it clear that the amendment to the matching ratios made by Section 4(3) applies to all fiscal year 1971 funds but not to funds granted from prior fiscal years' appropriations. The legislative history referred to are statements to this effect by the House and Senate managers on the Conference bill, i.e., the remarks of Chairman Celler, Mr. Poff, Mr. Rodino and Senator Hruska in the Congressional Record of December 17, 1970, H11889, H11892, and S20475 respectively. It is therefore your view that the amendment made by Section 4(4) must operate prospectively from January 2, 1971, the date the President signed Pub. L. 91-644.

You go on to state that if this conclusion is correct, it raises the question of whether the liberalized salary support provision applies to grant funds awarded by LEAA from the current fiscal year appropriation or may be construed to apply also to grant funds awarded by LEAA from prior fiscal years' appropriation but not yet obligated for specific programs and projects by the State. You believe that the latter construction may be adopted as: (1) this construction is consistent with the nature of the block grant since block grant funds are awarded by LEAA on a population basis pursuant to a general statewide plan (2) they are then obligated for specific programs and projects by the States and (3) specifications relating to matching ratios and salary payments are not introduced until the point of obligation by the States. You emphasize that the construction suggested will not increase the expenditures of the Federal Government, it will merely affect the purposes for which the States may spend a fixed amount of Federal dollars, and that you believe the Congress would prefer a construction of the 1970 act that facilitates rather than discourages the expenditure by the States of their full 1969 and 1970 block grants for the high priority purposes set out in the 1968 act.

Central to the question presented is whether the general rule against retroactive application of statutes—absent clear intent to the contrary—would preclude the application of the more liberal personnel compensation provisions of the 1970 Act to unspent 1970 and 1969 funds. We do not think such application pertains. It has been said that:

> It is chiefly where the enactment would prejudicially affect vested rights, or the legal character of past transactions, that the rule in question applies. Every statute, it has been said, which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect of transactions or considerations already past, must be presumed, out of respect to the Legislature, to be intended not to have a retrospective operation.

See *People* v. *Dilliard*, 298 N.Y.S. 296, 302 (1937).

By allowing the more liberal 1970 personnel restrictions to apply to 1969 and 1970 fiscal year funds not yet obligated by the States and local governments, none of the evils above described would result. The statement from the *Dilliard* case is particularly for application here because (1) the

Federal commitments have already been made and will not be increased; (2) no vested rights are taken away or impaired vis-a-vis the States and local governments because, as of this time, no specifications—including those concerned with personnel compensation—have been agreed to by the States and their local governments; and (3) the Federal Government cannot require the States and local governments to enter into specific programs and projects.

Accordingly, we would not object to the application of the more liberal 1970 personnel limitations to 1969 and 1970 grant funds yet to be obligated by the States and local governments.

Letter—Senate Subcommittee on the Judiciary—March 14, 1972

FROM: John L. McClellan

TO: Jerris Leonard
Administrator
Law Enforcement Assistance Administration
633 Indiana Avenue, N.W.
Washington, D.C.

I write to confirm the informal advice given to you some time ago by Mr. G. Robert Blakey, Chief Counsel of this Subcommittee, in reference to the intent of the Congress on the character of the so-called "hard match" requirement in the enactment of the Omnibus Crime Control Act of 1970.

You indicated in your letter to me of November 12, 1971, that your proposed implementing guidelines for the 1970 Act would permit the States to account for the required 40 percent cash match on the basis of "programs" set forth in the States' annual comprehensive plans, rather than on the basis of individual "projects." A State would be permitted, in other words, to have less than the required 40 percent cash match in one or more subgrant "projects" within defined "programs," so long as the deficit would be made up in other projects. The average cash match for all projects within each program, therefore, would always be at least 40 percent.

This interpretation of the 1970 act is consistent, in my judgment, not only with the language of the "hard match" amendment, but also with the intent of the Congress in enacting it. As you will recall, the "hard match" provision was added to the 1970 Act by the Senate; it was modified only slightly by the Conference Committee in connection with the reconciliation of several differing funding provisions, including the "buy-in" provision, which was in the House bill, but not in the Senate bill. As passed by the Senate, the bill provided that the matching formula for most LEAA-assisted programs and projects would be 70 percent Federal, 30 percent non-Federal. It also provided that, beginning in fiscal year 1973, at least 50 percent of the non-Federal share of the costs of any program or project would have to be in cash appropriated in the aggregate for the express purpose of the shared funding. The House-passed "buy-in" provision, on the other hand, would have required each State to provide at least one-fourth of the non-Federal funding of each local program

or project beginning in fiscal year 1971. The Conference Committee agreed to retain both the Senate "hard match" provision and the House "buy-in" provision, but with the following modifications:

First, the matching ratio was revised to 75 percent Federal, 25 percent non-Federal effective for fiscal year 1971.

Second, the "hard match" requirement was reduced to 40 percent in the aggregate, effective in fiscal 1973.

Third, the effective date of the "buy-in" was delayed to fiscal year 1973, and it was modified to permit the States to "buy in" on an aggregate basis, rather than on each individual local program or project.

It was my understanding of the Senate-House agreement that the "in the aggregate" language in both the "hard match" provision and the "buy-in" provision would permit the States a needed measure of flexibility. It was our intention, in short, to permit "hard match" and "buy-in" to be employed in selected projects on the basis of need, rather than to require that they be present in every individual project. In reaching this agreement, the Conference Committee was particularly impressed by the experience of the State of Illinois, which at that time already was providing State funding for local projects governed by the actual needs and financial conditions of its various cities.

For these reasons, I have no objection to your proposed method of implementing the "hard match" provision. It is, in my judgment, entirely consistent with the congressional intent as set out above. Indeed, by requiring that 40 percent "hard match" be contributed to every program set out in State plans, your guidelines will assure that new non-Federal money will be drawn into every major component of law enforcement in each State. At the same time, the States will retain considerable flexibility to allocate cash match among individual projects on the basis of need and the financial condition of the cities and counties. This is precisely what the Congress intended should occur. Consequently, I believe this is an appropriate implementation of the provision.

Decision—The Comptroller General of the United States—February 28, 1973

FROM: Comptroller General

TO: Jerris Leonard
Administrator
Law Enforcement Assistance Administration
United States Department of Justice
Washington, D.C. 20530

Reference is made to your letter of October 16, 1972, presenting for decision four questions concerning the legality of certain grants proposed to be made by the Law Enforcement Assistance Administration (hereinafter referred to as LEAA or as the Administration). The grants in question would be made

pursuant to Title I of the Omnibus Crime Control and Safe Streets Act of 1968, approved June 19, 1968, Pub. L. 90-351, 82 Stat. 197, as amended by the Omnibus Crime Control and Safe Streets Act of 1970, approved January 2, 1971, Pub. L. 91-644, 84 Stat. 1880, 42 U.S.C. 3701 *et seq.* The four questions presented all involve the application of the so-called "hard match" requirement of the 1968 act, as amended.

LEAA was established by the above-cited 1968 act, and was given authority to grant Federal funds for the purposes of strengthening and improving law enforcement. A matching requirement was established as a condition for grants of funds by LEAA and each grant was to be limited in amount to a certain specified percentage of the total cost of the law enforcement program being assisted. See section 301(c). Although the remainder of the cost of the program had to come from sources other than LEAA, the 1968 act specified neither the source nor the character of the required "match." In addition to changing the percentages of matching funds required, the 1970 act added the "hard match" requirement. Specifically, effective July 1, 1972:

> . . . at least 40 per centum of the non-Federal funding of the cost of any program or project to be funded by [a block grant under Section 301 or a discretionary grant under Section 306 of the act of 1968 as amended] . . . shall be of money appropriated in the aggregate, by State or individual unit of government, for the purpose of the shared funding of such programs or projects. (See 42 U.S.C. 3731(c), 3736.)

Your first question is whether so-called National Scope projects funded under Section 306 of the 1968 act, as amended, 42 U.S.C. 3736, require governmentally appropriated funds for "hard match" or whether funds from private sources can be used as "hard match" for these projects.

Your letter explains the National Scope projects as follows:

> The Administration in some instances uses discretionary funds allocated under Section 306 to assist national programs of assistance to all State and local law enforcement. These projects generally impact on particularized agencies within the law enforcement area, such as prosecutor offices, all State courts, or juvenile courts. They are called "National Scope" projects because they affect the nation as a whole as opposed to individual States, cities, or regions. The discretionary grant is made to a State Planning Agency (SPA), with the funds generally subgranted to a nongovernmental agency. The SPA is also handling the administration of the grant.
>
> Under the provisions of 306 at least 25 percent of the project cost must be from non-Federal sources. The grantee who receives a grant for a "National Scope" project is normally active in the law enforcement area and a part of the particularized agency group affected . . . .

You state that there is no clear indication from the legislation or its history how the "hard match" requirement is to affect National Scope projects. While it appears clear that Congress intended the Administration to continue to fund the National Scope projects which affect "combinations" of governmental units, you urge that to require governmentally appropriated funds in combination projects is an impossibility. In illustration, the Appellate Judges Conference with participants from many jurisdictions is discussed by you to the point that requiring the use of appropriated funds for matching would require each unit of government planning to send an appellate judge to pledge from locally appropriated funds a cash contribution to the National College of

State Judiciary before LEAA could consider funding the program. Such a procedure, you state, would be unworkable.

It would serve good purpose to present here a summary of the legislative history of the "hard match" requirement.

As already noted, the 1968 act placed no limitations on the manner in which that portion of the cost of an LEAA-assisted program not covered by the LEAA grant might be financed. Thus, the "match" might be from State, local or private sources, and might be in cash, or in the form of property or services. In 1970, Congress considered various proposed amendments to the 1968 act, ultimately resulting in the 1970 amendments which incorporate the "hard match" requirement. As related in your letter:

> ... The House passed the 1970 amendments first in H.R. 17825. This amended the 1968 bill to allow 90 percent of the cost of a project to be Federal funds rather than the requirement of 60 percent in the act. The Senate amendment was included in Senate Report No. 91-1253, which first added the Hard Match requirement. That committee report had a requirement that Federal funds could make up to 70 percent of the cost of a project and the requirement that at least 50 percent of the non-Federal portion be in money appropriated for the purposes of the program.
>
> The Senate Judiciary Committee Report accompanying the 1970 amendments, Senate Report No. 91-1253, contained the following explanation of the change to Section 306 (page 35):
>
> > The Committee has modified substantially the House amendment to Section 306 of the act dealing with discretionary grants. The changes are designed to spell out expressly the authority of LEAA to make discretionary grants and the limitations applicable to them. In general, the same limitations would be made applicable to block grants under Section 301 that are made applicable to discretionary grants. Thus, the personnel compensation limitations are made applicable, and the share of the cost of programs and projects that may be paid from Federal funds is limited to 70 percent, the limitation applicable to most block grant programs. The Administration could make 100 percent grants only to Indian tribes and other aboriginal groups, including Eskimos, as is the case with block grants, noted above. And at least one-half of the non-Federal funding for all discretionary programs and projects would have to be of specifically appropriated money, as distinguished from donated goods or services. The requirement of "appropriated," of course, has reference to governmental units, not private individuals or organizations.

The Senate Judiciary Committee Report also contained the following comment on the matching requirement:

> ... Experience under the LEAA program has indicated that the local matching requirement will become a serious problem for most States should it remain at its present rate of 40 percent for most programs. Lowering the requirement to 30 percent will afford substantial relief and will diminish the extent to which the States must rely on counting the value of donated goods and services, rather than money, to make up the non-Federal share of program costs. In this regard, the Committee has included a requirement that at least one-half of the non-Federal share of the cost of any program or project shall be money appropriated expressly for the shared funding of such program or project. This provision should work to guarantee that these new Federal funds will, in fact, draw new State and local funds into the criminal justice system and avoid the real danger that Federal funds will merely replace State and local funds in financing the present system. S. Rep. No. 91-1253, 31 (1970.)

Your letter further relates that:

> When the Judiciary Committee report was being debated, Senator McClellan, the Committee Chairman, submitted a sectional analysis of the bill, which included the following on Section 306 (116 Cong. Rec. 35692 (1970)):
>
> > The Committee bill modifies substantially the House amendment to Section 306 of the act dealing with discretionary grants. The changes are designed to spell out expressly the authority of LEAA to make discretionary grants and the limitations applicable to them. In general, the same limitations applicable to block grants under Section 301 are made applicable to discretionary grants. Thus, the personnel compensation limitations are made applicable, and the share of the cost of programs and projects that may be paid from Federal funds is limited to 70 percent, the limitation applicable to most block grant programs. The Administration could make 100 percent grants only to Indian tribes or other aboriginal groups, as is the case with block grants, noted above. And at least one-half of the non-Federal funding for all discretionary programs and projects would have to be of money, as distinguished from donated goods or services.
>
> Senator Hruska, the ranking minority member of the Judiciary Committee, made the following statement in his explanation of the bill (116 Cong. Rec. 35695 (1970)):
>
> > The Senate provision is more desirable than the House amendment, I believe, because it recognizes that States and units of local government have difficulty supplying the needed matching funds but at the same time recognizes the need for the States and units of local government to make a substantial financial commitment to action programs.
>
> The Senate then debated the two issues mentioned earlier, and amended Section 306 only to the extent of delaying the Hard Match requirement until July 1, 1972, and adding the phase of allowing the hard match to be met in the aggregate.

The House and Senate bills then went to conference and the conference adopted the "hard match" requirement of the Senate bill without substantive comment, except to indicate that the cash requirement was reduced to 40 percent. See pages 16 and 17, H.R. Rep. No. 91-1768 (1970). However, during consideration by the Senate and the House of the conference report, there was discussion on the floors of both chambers of the "hard match" requirement. In the Senate, Senator Hruska, one of the managers of the bill in conference, described the purpose of that requirement:

> ... The hard match would include any funds appropriated by a State or unit of local government which are specifically earmarked for matching LEAA action grants.
>
> LEAA experience in the past 2 years has found that the State and local share of action programs has frequently if not always been figured in donated property or services and it is hoped that the provision for hard match will stimulate the expenditure of new funds for law enforcement purposes. (116 Cong. Rec. 42149 (1970).)

In the House, Mr. Poff, also a conference manager, explained the action of the conference committee with respect to "hard match" as follows:

> The conference also adopted a provision which requires that beginning in fiscal year 1973, at least 40 percent of the Federal (sic) share of the funding of any program or project be from money expressly appropriated by the State or local government in the aggregate for such programs or projects—as opposed to donated services or property. This is the so-called hard match requirement and it applies equally to block grants and discretionary grants. If a State or local government appropriates money to participate

directly in an LEAA program, that is obviously a hard match. But what if the State or local government transfers personnel to participate in LEAA programs or projects? That is not a hard match. It can only be considered a hard match if the State or local government were to appropriate money to fill the vacancies created by the transfer.

The controlling purpose of the hard match provision is the desire to stimulate new State and local money for imaginative and innovative State and local anticrime programs. This purpose is already ensconced in Section 303(10) of the law. The hard match requirement puts teeth into that legislative purpose . . . . 116 Cong. Rec. 42197 (1970).

Section 303(10) of the 1968 act, referred to by Mr. Poff, provides that each State plan for participation in the LEAA action grant program shall:

> . . . set forth policies and procedures to assure that Federal funds made available under this title will be so used as not to supplant State or local funds, but to increase the amount of such funds that would in the absence of such Federal funds be made available for law enforcement.

The purpose of the "hard match" requirement is abundantly clear from the above-described legislative history; that being to assure that State and local governments not use Federal funds available under the act in order to supplant their own funds (Section 303(10)). It had been found that State and local governments had been in some instances matching LEAA funds with property or services which had not been acquired for the purpose of the grant program but rather had been transferred from other activities of these governments. By this means, States or localities participating in an LEAA-assisted law enforcement project avoided committing any new resources to the project. Requiring these governmental units to match at least a portion of their shares of the cost of a project with money appropriated for that purpose would thus "work to guarantee that these new Federal funds will, in fact, draw new State and local funds into the criminal justice system and avoid the real danger that Federal funds will merely replace State and local funds." S. Rep. No. 91-1253, 31 (1970).

In essence then, the Congressional purpose for "hard match" is to regulate the conditions of financial participation by State and local governments in LEAA programs; it is not, by the same token, to limit participation in those programs by private organizations. There is support in the language of the Senate Judiciary Committee Report previously cited for the conclusion that the "hard match" requirement was not intended to prevent the use in LEAA-sponsored National Scope projects of matching funds supplied from private sources. The specific language in the Report reads:

> . . . and at least one-half of the non-Federal funding for all discretionary programs and projects would have to be of specifically appropriated money, as distinguished from donated goods or services. *The requirement of "appropriated," of course, has reference to governmental units, not private individuals or organizations.* (S. Rep. No. 91-1253, 36.) (Emphasis supplied.)

To read the "hard match" requirement so as to preclude the use of private funds for "hard match" in National Scope projects would thus be in derogation of the overall purpose of the act and would also be inconsistent with the specific purpose for which the "hard match" requirement was added.

We conclude therefore that the "hard match" requirement is satisfied when 40 percent of the non-Federal funding of an LEAA-sponsored project is in the form of money rather than goods or services, and that the source of the cash may be either private or governmental. As we interpret the "hard match" requirement, the import of Section 306(a) of the act is essentially that 40 percent of non-Federal funding of a program or project shall be money rather than property or services. The further requirement in the statutory language that the money be appropriated for the purpose of the shared funding of the program or project, by its terms, applies only when the non-Federal money comes from a State or individual unit of government. When, on the other hand, "hard match" is to be provided in the form of donated money from a private source, the requirement of the "hard match" provision that non-Federal fundings be appropriated by governmental units for the purpose of the shared funding of the program is inapplicable, since the goal of that requirement—to insure the commitment of new funds by State and local governments—is not relevant when private funds are the source of the "hard match." Matching funds, whether governmental or donated, must still of course satisfy the statutory requirement that at least 40 percent thereof be money. Your first question is answered accordingly.

Your second question is whether funds received by cities from the Department of Housing and Urban Development under Title I of the Demonstration Cities and Metropolitan Development Act of 1966, approved November 3, 1966, Pub. L. 89-754, 80 Stat. 1255, may be used as "hard match" for LEAA projects.

You explain that:

> To aid in the solution of urban problems, Congress established the Model Cities program by passing the Demonstration Cities and Metropolitan Development Act of 1966. The purpose of the act is to (Section 101) "provide additional financial and technical assistance to enable cities of all sizes . . . to plan, develop and carry out locally prepared and scheduled comprehensive city demonstration projects containing new and imaginative proposals to rebuild or revitalize large slum and blighted areas . . . to reduce the incidence of crime and delinquency . . . and to accomplish these objectives through the most effective and economical concentration and coordination of Federal, State, and local public and private efforts to improve the quality of urban life." In its implementation of this act, Congress provided a novel feature in the authority of local government to use these funds in Section 105(d). It states that those funds "May be used and credited as part or all of the required non-Federal contribution to projects or activities assisted under a Federal grant-in-aid program . . .".
>
> In its sectional analysis of this section, the House report explains that (1966 U.S. Code, Cong. & Admin. News, p. 4045) ". . . such funds shall be credited toward the required non-Federal contribution to such projects or activities" and to participate in this program, the city must submit a "comprehensive city demonstration program" which must meet various criteria. . . .
>
> Prior to July 1, 1972, the Law Enforcement Assistance Administration funds were matched by "model cities" funds in programs where coexisting responsibility occurred. The 1970 amendments included the Hard Match requirement in Section 301(c). This sentence is exactly the same as that in [Section] 306 mentioned earlier, and requires that ". . . at least 40 per centum of the non-Federal share . . . shall be of money appropriated in the aggregate, by State or individual unit of government . . .".

Your Administration has "made an interim decision, pending clarification, that model cities funds may not be used as LEAA Hard Match." The specific question presented is therefore whether LEAA may, subsequent to July 1, 1972, continue to fund projects in conjunction with cities under Section 301 of the 1968 act, as amended, when some or all of the local matching funds required of these cities by Section 301(c) would consist of moneys granted to them under the Demonstration Cities Act.

As noted above, Section 105(d) of the Demonstration Cities Act explicitly allows funds granted thereunder to the cities to be "used and credited as part or all of the required non-Federal contribution to projects or activities, assisted under a Federal grant-in-aid program," subject to certain qualifications which apparently are not here relevant. LEAA programs under Section 301(c), as amended, are Federal grant-in-aid programs, as that term is defined by Section 112 of the Demonstration Cities Act. Prior to July 1, 1972, the effective date of the "hard match" provision, there was no question but that Model Cities funds might be used by cities to match LEAA grants. Since July 1, 1972, however, at least 40 percent of the non-Federal share of the funding must be "money appropriated" for the purpose of matching the grant. Since that date, whether Model Cities funds can be used by cities to match LEAA grants depends on a determination whether the allocation of Model Cities funds by the recipient cities as matching funds for LEAA-assisted projects constitutes an "appropriation" of such funds, within the meaning of Section 301(c), as amended.

Enclosed with the request for our decision on this question was a letter of October 10, 1972, to LEAA from the Assistant Secretary for Community Development of the Department of Housing and Urban Development (HUD) explaining the nature of the Model Cities program and the basic features of the funding process used therein. That letter reads, in pertinent part, as follows:

> The primary intent of Title I of the Demonstration Cities and Metropolitan Development Act of 1966 (Model Cities program) is to bring about a concentration and coordination of Federal, State, and local public and private efforts and resources in a broad, comprehensive attack on social, economic, and physical problems in selected slum and blighted areas. The idea is to demonstrate in these relatively few (147) yet broadly representative cities how blighted neighborhoods can be renewed both physically and in terms of the quality of life, through a concentration and coordination of Federal, State and local efforts and resources.
>
> * * * * *
>
> The statute provides for financial and technical assistance to be provided by HUD to the selected cities to enable those cities to plan, develop, and carry out comprehensive local programs to improve locally identified social, economic, and physical defects in the community. No such program could be truly *comprehensive* unless it addressed problems relating to criminal justice and each of the Model Cities comprehensive city demonstration programs contains a component dealing with criminal justice.
>
> The funding philosophy of the statute is, basically, quite simple, yet it is at the same time unique. The statute does not intend for the Model Cities program to be or to become another Federal categorical grant-in-aid program. *The idea is, instead, to use it as a vehicle to encourage and assist the selected cities to make use of other existing Federal, State, and local resources, but in a more efficient and effective manner.*

> *The principal source of Federal funding contemplated by the statute is not Model Cities supplemental funds, but Federal grant-in-aid funds from programs other than Model Cities programs—such as LEAA.* It was recognized that one reason why local units of government fail to seek and receive the full benefits of some Federal grant programs is that they cannot afford to put up the required "match" for these programs in every instance.
>
> Congress recognized that a major purpose of the Model Cities experiment (i.e., more effective use of Federal grant programs by cities) was likely to be defeated unless the participating cities were able to obtain grants from other programs such as LEAA. *Accordingly, both to encourage and assist the cities in this respect, Section 105(d) of the statute expressly provides that Model Cities supplemental funds can be used to supply the required "match" for other Federal grant-in-aid programs.*
>
> * * * * *
>
> Each of the 147 Model Cities receives an annual block grant from HUD. This money is not earmarked by HUD for any particular projects or program areas. It is granted to the cities to assist them in carrying out their own locally devised comprehensive city demonstration programs. These programs consist of numerous projects in any number of program areas, including criminal justice.
>
> * * * * *
>
> . . . Out of its block grant from HUD, each city determines for itself how the funds shall be allocated. The governing body of the city (i.e., city council) must take formal action to approve the city's comprehensive program and, where appropriate, any applications for assistance under the program. Thus, in the case where the comprehensive program includes criminal justice projects to be funded with LEAA funds and the "match" is to consist in whole or in part of Model Cities funds, these Model Cities funds are appropriated by the city council for that purpose. This action by the local governing body is a requirement of Section 103(a)(4) of our statute. (Emphasis supplied.)

Under the foregoing circumstances the express language of Section 105(d) of the Model Cities Act, that Model Cities funds "may be used and credited as part or all of the required non-Federal contribution to projects or activities, assisted under a Federal grant-in-aid program," is, we conclude, dispositive of your question. Accordingly, Model Cities funds allotted by the grantees thereof to LEAA grant projects may be considered "money appropriated" for the purposes of the "hard match" requirement of Section 301(c), as amended.

Your third question is whether, when State and local units of government receive LEAA funds, and in turn subgrant them to nongovernmental units for law enforcement projects, cash contributed by the nongovernmental units may be counted as "hard match" for these projects.

You explain that action grants to the States under Part C of Title I of the 1968 act, as amended:

> . . . must be spent for programs listed in Section 301(b). Generally, most of the funds spent in this manner go to local governmental units. [Section 303(2).] Of the portion which need not be granted to local units, an option exists for the State to make grants to private organizations. For programs related to Section 301(b)(9), and to some extent (3), there are nonprofit, nongovernmental units providing important public services to the community (i.e., YMCA's, church groups, charitable foundations, and others). Section 301(b)(9) reads as follows:
>
> (9) The development and operation of community-based delinquency prevention and correctional programs, emphasizing halfway houses and other

community-based rehabilitation centers for initial preconviction or postconviction referral of offenders; expanded probationary programs, including paraprofessional and volunteer participation; and community service centers for the guidance and supervision of potential repeat youthful offenders.

In this area, LEAA funds are subgranted, by the State, to the nongovernmental units, for improving and expanding the services that they offer. These nonprofit groups have some cash available for the projects that they are involved in. The congressional reports explained Section 301(b)(9) as follows Senate Report 91-1253, page 30: "The Committee has added a new subparagraph (9) to Section 301(b) authorizing the use of Part C funds for the development of community-based delinquency prevention and correctional programs as an alternative to institutional confinement. The funding of such programs under the present law is permissible, but it is hoped that express authority will provide an incentive for the States and cities to develop and fund such programs." Nothing more was said of the provision.

Grants under Section 301(b)(9) of the 1968 act, as amended, 42 U.S.C. 3731(b)(9), are governed by the "hard match" requirement incorporated in Section 301(c), 41 U.S.C. 3731(c). As indicated above, that requirement was enacted concurrently with, in words identical to, and for the same purposes as, the "hard match" requirement of Section 306 of the act, 41 U.S.C. 3736, and is therefore to be interpreted in the same way as Section 306. Our explanation above of the meaning of the "hard match" requirement of Section 306 with respect to discretionary grants is consequently dispositive of the question now raised concerning the meaning of the "hard match" requirement of Section 301(c) with respect to block grants. That is to say, the "hard match" requirement of Section 301 is met when at least 40 percent of the cost of the non-Federal share thereof is in money, whether from private or public sources.

In reaching this conclusion, we find it particularly persuasive that, as you point out, if the "hard match" requirement were interpreted so narrowly that only governmentally appropriated funds could satisfy it, the requirement could be met by private donors donating funds to a governmental unit which could then appropriate those same funds for the project. We do not believe that Congress intended that the "hard match" requirement be met by such a cumbersome procedure and our holding herein avoids the need to resort to such procedure.

Finally, you ask whether funds appropriated by the Congress for expenses necessary for the administration of the Territory of American Samoa can be used by that territory to meet the "hard match" requirements of the 1970 act.

You explain that:

The Administration is authorized to fund Law Enforcement projects in territories by the definition of States in Section 601(c). We are currently funding projects in Puerto Rico, Guam, Virgin Islands and American Samoa. Because of the unique character of funding structures, the problem of using Federal territorial funds as Hard Match has presented a problem only in American Samoa.

The statutory authority governing American Samoa is 48 U.S.C. 1661. Subject to this authority, the Secretary of Interior is responsible for the Administration of the territory. The current appropriation for the territory is found in P.L. 92-369, 1972 U.S. Code, Cong. and Admin. News, p. 3303. This law appropriates funds "for expenses necessary for the Administration of territories . . . including expenses of the office of the Governor of American Samoa . . . compensation and expenses of the judiciary in American Samoa as authorized by law (48 U.S.C. 1661(c)); and grants to American Samoa, in addition to local revenues for support of local governmental functions . . .". The Secretary of Interior promulgated regulations which describe the operation of the territory. These regulations are found in Department of Interior Manual 575 DM 1-3, dated October 8, 1971.

This manual describes the territorial procedure as follows, 575 DM 1-3.3A: "The legislature has appropriation authority with respect to local revenues and authority to review and make recommendations with respect to the budget submitted to the United States Congress for grant funds."

As indicated above, funds appropriated to the Department of the Interior to be granted by that Department to American Samoa are to be used by the government of American Samoa for support of local governmental functions as a supplement to local revenues. Under the circumstances these grants may be considered unconditional grants and when paid over to American Samoa and commingled with local revenues lose their character as Federal funds. See B-131569, June 11, 1957, and B-173589, September 30, 1971. Such funds may therefore be used by the territorial government to provide "hard match" for LEAA grants, since improvement of law enforcement is unquestionably a "local government function."

Decision—The Comptroller General of the United States—October 16, 1973

FROM: Comptroller General

TO: Attorney General

We have reviewed the Law Enforcement Assistance Administration's (LEAA) audit of the Iowa Crime Commission at the request of Congressman Edward Mezvinsky. LEAA's audit noted that the Commission's failure to exercise prudent fiscal management of Federal grant-in-aid funds resulted in a violation of the letter-of-credit method of financing Federal grant-in-aid programs because two subgrantees apparently received subgrants in advance of need, banked the funds, and earned interest on them. LEAA required the subgrantees to return to the Federal Government the interest earned on the funds advanced to them by the Commission.

LEAA officials told us their basis for requiring the subgrantees to return such interest to the Federal Government was the Department of Justice's interpretation of Section 203 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4213).

On the basis of our interpretation of Section 203, we believe that political subdivisions receiving Federal grants-in-aid through State governments are entitled to retain moneys received as interest earned on such Federal funds. Accordingly, we recommend that you direct LEAA to recognize that local units of government should not be held accountable for such interest.

The basis for our conclusion and recommendation follows.

Section 203 provides:

Heads of Federal departments and agencies responsible for administering grant-in-aid programs shall schedule the transfer of grant-in-aid funds consistent with program

purposes and applicable Treasury regulations, so as to minimize the time elapsing between the transfer of such funds from the United States Treasury and the disbursement thereof by a State, whether such disbursement occurs prior to or subsequent to such transfer of funds. *States shall not be held accountable for interest earned on grant-in-aid funds, pending their disbursement for program purposes.* (Emphasis supplied.)

The term "State" is defined by Section 102 of the act (42 U.S.C. 4201(2)) as:

> . . . any of the several States of the United States, the District of Columbia, Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State, *but does not include the governments of the political subdivisions of the State.* (Emphasis supplied.)

From information available to us, it appears that various Federal agencies have differing opinions as to whether they can require local units of government (subgrantees) to refund interest earned on Federal grant-in-aid funds advanced to a State for subsequent award to subgrantees. In a memorandum dated November 15, 1971, from the former Assistant Attorney General, Office of Legal Counsel to the Administrator, Law Enforcement Assistance Administration (Justice memorandum), the view is taken that local units of government are responsible for repaying interest earned on Federal grants-in-aid prior to their disbursement of the funds. Pointing out that prior to the enactment of Section 203, both States and political subdivisions were required to repay any interest earned, the former Assistant Attorney General states:

> Perhaps the most persuasive argument against a plan to hold a State accountable for interest earned is the categorical provision in Section 203 stating "States shall not be held accountable for interest earned on grant-in-aid funds, pending their disbursement for program purposes." We do not find a contradiction to that clear statement in the Act nor in its legislative history. And the most persuasive argument for holding the heads of Federal departments and agencies responsible for minimizing the time elapsing between the transfer of funds from the United States Treasury and the disbursement of the funds by a State so as to prevent buildups is the directive in the first sentence of Section 203 which places that responsibility on the "heads of Federal departments and agencies."
>
> A conclusion is not as clear with respect to applicability of the waiver of interest accountability when a subgrant or direct categorical grant of funds is to cities or local units. Section 203 speaks only of relief to "States," a term which under the definitions of the act does not embrace a "political subdivision," a "unit of general local government," or a "special purpose unit of local government." Moreover, the general rule prior to the Intergovernmental Cooperation Act, as set forth in decisions of the Comptroller General, was to require recipients of Federal grants to return to the Treasury and interest earned on grants prior to their use unless Congress specifically provided otherwise. Thus, despite the Congressional intention to discontinue "future application" of the interest accountability "principle" (H. Rept. No. 1845, 90th Cong., Aug. 2, 1968) the specific mention of the States in Section 203 without any express legislative relief to the cities and other local units leaves unchanged the general rule calling for continued accountability by the latter, whether funds are received directly or by subgrant from a State. Although we are not aware of any reason for the distinction in Section 203 between "States" and "political subdivisions," it nevertheless exists, and accordingly we think that as a matter of law the distinction must be maintained.

> We would add only that this conclusion with respect to units other than States does not affect the obligation imposed by the act upon the Federal agencies and departments to schedule the transfer of grant funds so as to minimize the time between transfer and disbursement, thus preventing buildups in the cities and local units as well as in the States.

(Reprinted in "The Block Grant Programs of the Law Enforcement Assistance Administration (Part 2)," Hearings before a Subcommittee of the Committee on Government Operations, House of Representatives, October 5, 6, and 7, 1971, at p. 716.)

On the other hand, we are in possession of a memorandum dated February 19, 1969, from the Assistant General Counsel for Education, Department of Health, Education, and Welfare (HEW) to the Assistant Commissioner for Administration (HEW memorandum), in which the contrary position is taken. That memorandum reviews the rationale of the position that local units of government are responsible to return any interest earned to the Federal agency involved and states:

> Our principal reason for rejecting this view is the language of Section 203 itself. It quite literally instructs us not to hold a State agency accountable for interest earned on grant funds *pending their disbursement.* There is no exception to this instruction for funds that earn interest pending their disbursement by a local educational agency, or any other agency.
>
> To depart from this plain reading of Section 203 would require some clear indication of a different legislative intent in its enactment. No such indication is apparent. On the contrary, as the floor manager of the House bill, Mr. Reuss, pointed out—
>
> > The first substantive title—Title II—calls for improved administration of grants-in-aid to the States . . . In addition it would relieve the States from unnecessary and outmoded accounting procedures now in effect and the maintenance of separate bank accounts while protecting the right of the executive branch and the Comptroller General to audit those accounts.
> >
> > Relief from "unnecessary . . . accounting procedures" is consistent with suspension of the rule requiring the States to account for interest earned on grant funds, regardless of what agency of the State may be in possession of those funds at the time that such interest accrues. The effect of excluding political subdivisions from the term "State" must be understood merely to withhold interest forgiveness in programs in which a local educational agency is directly accountable to the Federal Government, as for example, the program of grants to local educational agencies for supplementary educational centers and services authorized by Section 304 of ESEA.

Both the Justice memorandum and the HEW memorandum agree that local governments are required to return to the Federal Government interest earned on advances of grant-in-aid funds awarded directly to them. Prior decisions of this Office have so held (see, for example, 42 Comp. Gen. 289 (1962)), and Section 203 of the Act, by excluding political subdivisions from the definition of States, would not affect this view.

There is nothing, however, in the act itself or its legislative history which covers the situation in which the grant is made to the State with the intent that such funds be passed on to political subdivisions for program purposes.

The purposes to be met and the need for Section 203 is explained in the Senate Report which accompanied S. 698, 90th Congress, the derivative source of the Intergovernmental Cooperation Act of 1968, as follows:

> SCHEDULING OF FEDERAL TRANSFERS TO THE STATES
>
> Section 203 requires Federal agencies and departments to schedule their transfers of grant funds, consistent with program purposes and Treasury regulations, in a manner that will minimize the time between the Treasury transfer and the disbursement by the State.
>
> Furthermore, the section provides that States shall not be held accountable for the interest earned on the grant funds, pending their disbursement for program purposes.
>
> This section establishes a procedure to discourage the advancement of Federal funds for longer periods of time than necessary. The Department of the Treasury has already moved administratively to achieve this objective in its Departmental Circular No. 1075, issued May 28, 1964. Under this circular, a letter of credit procedure has been established which maintains funds in the Treasury until needed by recipients. Advances are limited to the minimum allowances that are needed and are timed to coincide with actual cost and program requirements. This section is designed to place this administrative practice on a legislative basis and to extend it to cover disbursements which occur both prior and subsequent to the transfer of funds. It is further intended that States will not draw grant funds in advance of program needs.
>
> Decisions of the Comptroller General of the United States have in the past required that recipients of Federal grants return to the Treasury any interest earned on such grants prior to their use, unless Congress has specifically precluded such a requirement. The new techniques, such as the letter of credit and sight draft procedures now used by the Treasury, should minimize the amount of grants advanced, and thus it should not be necessary to continue to hold States accountable for interest or other income earned prior to disbursement. (S. Rept. No. 1456, 90th Cong. 15.)

The issue was also briefly considered and discussed in Chapter VIII of House Report 92-1072, 92d Congress, dated May 18, 1972, entitled "Block Grant Programs of the Law Enforcement Assistance Administration," pp. 78-86.

It appears from the aforequoted legislative history that in order to minimize the amount of grant funds advanced prior to their use and hence the amount of interest paid by the Federal Government and earned by the grantees, Section 203 of the act was enacted to require that funds granted to the States must be transferred in a manner which will minimize the time elapsing between the transfer of such funds and their ultimate disbursement. The primary responsibility for timing transfers was placed with the heads of the Federal agency or department concerned with the States also having a responsibility to assure that funds are not drawn in advance of program needs. (See Chapter VIII, House Report 92-1072, *supra*.) The Congress apparently added the last sentence of Section 203 in anticipation that by minimizing the lag time, the interest earned would be minimal and that there would be no need to require the States to maintain burdensome accounting procedures to account for any interest earned.

Section 203 exempts States from accountability for interest earned on grant-in-aid funds received by them and makes no differentiation between grants which the States will disburse themselves and grants involving funds which will be subgranted by the States. Moreover, we have found nothing in the legislative history of Section 203 or in subsequent hearings which makes

such a differentiation. Thus, it seems clear to us that States are not to be held accountable for interest earned on any grant-in-aid funds pending their disbursement, whether or not the States intend, or are required by the terms of the grant, to subgrant these funds. To hold otherwise would, of course, require the States to assume the burden of accounting for the presumably relatively small amounts of interest which would be earned on these funds in contravention of the legislative intent behind the last sentence in Section 203. Accordingly, we believe political subdivisions receiving Federal grants-in-aid through State governments are entitled to retain monies received as interest earned on such Federal funds.

We appreciate the cooperation your staff provided us during this review.

Index

☆ U.S. GOVERNMENT PRINTING OFFICE: 1976 O - 210-839 (1918)

END