ADVISORY OPINION 1975-110

Scope and Applicability of §611

This advisory opinion is issued pursuant to 2 U.S.C.§437f in response to a request submitted by Congressman David C. Treen. The request was published on December 12, 1975, in the Federal Register (40 FR 57349). Interested parties were then given an opportunity to comment. No comments were received.

Congressman Treen's request poses four questions regarding the scope and application of 18 U.S.C. §611:

"(1) Does Section 611 prohibit corporate contributions by Federal contractors to candidates for state and local elections?

"(2) Are construction contracts covered by Section 611?

"(3) If answer to (2) is yes, is a person holding a Federal-aid construction contract with a non-Federal agency considered a Federal Contractor' under Section 611?

"(4) Is a competitively bid project covered by Section 611, the same as a negotiated contract?"

As the first question is not actually asked on behalf of Congressman Treen, who is neither a state nor a local candidate, it is not properly the subject of an advisory opinion. See 2 U.S.C. §437f(a). However, the commission notes that this question was addressed in a previous advisory opinion AO 1975-99 (40 FR 60162, December 31, 1975), in which the commission concluded that the prohibitory language of 18 U.S.C. §611 extends only to Federal elections.

With regard to the second question the Commission is of the view that construction contracts are covered by §611, provided they are "with the United States or any department or agency thereof." The language of §611 applies to "any contract . . . for the rendition of personal services or furnishing any material, supplies, or equipment." (Emphasis added.) Construction contracts plainly involve the furnishing of material, supplies, and equipment and are thus within the reach of this provision.

Conversely, with regard to the third question, the Commission concludes that where an individual contracts with a non-Federal agency, he does not become subject to the prohibition of §611 even if the agency receives Federal aid.

As already noted, §611 plainly does not apply to non-Federal contractors. The fact that the agency involved receives Federal monies does not alter this conclusion.

The basic contractual relationship is still between a non-Federal agency and the contracting party, with the Federal government at most playing a tangential, remote role; since there is no nexus between the contracting party and the Federal government, the §611 prohibitions are not triggered. Indeed, the situation is analogous to that of doctors who receive payments under the medicaid and medicare programs. The Conference Report stated:

> Under so-called Medicaid programs, it is true doctors may have specific contractual agreements to render medical services, but such agreements are with State agencies and not with the Federal Government. Medicaid Programs are administered by State agencies using Federal funds. The House Committee did not believe that section 611 prohibiting political contributions by government contractors has any application to doctors rendering medical services pursuant to a contract with a State agency. H. Rep. No. 93-1438, p. 68.

As for the Congressman's final question, the Commission is of the view that for the purposes of the §611 prohibitions, there is no distinction between a negotiated contract and a competitively bid contract. This conclusion follows from the language of §611 which refers to "any contract". Since the word contract is used in a general rather than a limited sense, there is no basis in the statutory language for the differentiation suggested in the request. If a more limited meaning had been intended, it is logical to assume that Congress would have incorporated it into the statute.

This advisory opinion is issued only on an interim basis pending the promulgation by the Commission of rules and regulations or policy statements of general applicability.