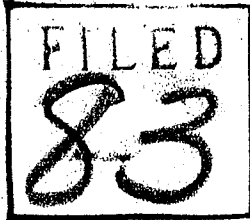


CIVIL DEFENSE: Authorization of state to request advance  
COUNTIES : of funds from federal government for cost  
COUNTY BUDGET LAW: of civil defense equipment.  
POLITICAL SUBDIVISIONS:



March 25, 1955

Honorable Marvin W. Smith  
Director, Civil Defense Agency  
Jefferson Building  
Jefferson City, Missouri

Dear Mr. Smith:

This is in response to your opinion request dated February 21, 1955, which reads as follows:

"Pursuant to our telephone conversation regarding 'ADVANCE OF FUNDS' from Federal Civil Defense Administration to Missouri on approved project applications for the FCDA share of the contracts.

"Your opinion is requested as to whether Missouri (Mo.CDA) qualifies for an advance under provisions of the instructions, as outlined in the Contributions Manual, (M25-1 revised, October 1954, page 3-1, Section 3.2, Paragraph (a) sub-paragraph (1) and (2) and within the intent of Paragraph (b). Also see page 104, Section 1701.8"

The sections of the Federal Civil Defense Administration Manual, M25-1, Revised, October, 1954, to which you refer, read as follows:

Sec. 3.1. "This chapter sets forth procedures concerning (1) advances of funds by FCDA to States for items to be procured by the States, (2) reimbursement by FCDA to States for items procured by the States and (3) payment to FCDA by the States for items procured by the Federal Government."

Honorable Marvin W. Smith

Sec. 3.2. "a. Under either of the two conditions outlined below, advances of funds may be made to States to be applied to the Federal share of the cost of State-procured items:

(1) When the State law requires funds on deposit, in addition to its own, available for obligation and expenditure to cover the estimated cost of equipment; or

(2) When the State is precluded from expending State funds in excess of the State's share of the estimated cost of the equipment subject to reimbursement by the Federal Government.

"b. The Federal Civil Defense Administration, (if requested by the State, with the approval of the Regional Administrator concerned) may consider the provisions of paragraph 3.2a fulfilled and accept the certification of the State that the local law of the political subdivision concerned, adopted in accordance with the constitution and laws of the State, meets the requirement of subparagraph 3.2a (2), and it therefore may be considered to be a proper limitation on the State's authority. This does not mean that an advance will be made directly to the political subdivision. FCDA deals only with the States, and holds the State responsible for certification, payment and enforcement of the terms and conditions upon which contributions are made. Consequently, this construction of the requirements of paragraph 3.2a does not constitute an elimination of the requirements of subparagraph 3.2c. In this connection, FCDA will interpose no objection to the State Treasurer, in turn, making an advance to the political subdivision

Honorable Marvin W. Smith

concerned. This constitutes a waiver of the second clause of subparagraph 3.2c (2), and is a matter of discretion with the State Treasurer, to be arranged with the political subdivision subsequent to the waiver by this Headquarters."

Sections 1701.1-8, page 1-4 of the Contributions Manual, read substantially the same as the above-quoted sections.

The question presented has many facets and is additionally confused and complicated by reference to "State law" and "State funds" in the above-quoted sections of the Contributions Manual. Although in a very few instances the state itself may make a project application for federal contribution under the Matching Funds Program, the vast majority of the cases, if not all at the present time, involve situations where a political subdivision files a project application and pays half the cost of the project from its own funds. These funds are forwarded by the political subdivision to the State Treasurer who holds them as trustee. Neither the funds forwarded by the political subdivision nor those received from the federal government in cases of this type go into the state treasury or become in fact state funds (See opinion Attorney General directed to Arthur S. McDaniel under date of April 26, 1954, copy enclosed).

The federal government, however, does not deal directly with the political subdivision involved, but does so only through the state and holds the state responsible for all such transactions. Apparently, so far as the federal government is concerned, all funds deposited by the political subdivision with the State Treasurer for the purpose of matching funds to be contributed by the federal government are "State funds" within the meaning of the above-quoted sections of the Contributions Manual. For purposes of determining whether the state law is such that advances may be made to the state within the provisions of Section 3.2a (1), (2), the federal government has recognized this situation and has provided in Section 3.2b, supra, that the local law of the political subdivision will be accepted as "State law" within the meaning of Section 3.2a.

Therefore, it is necessary to consider separately whether there is some law applicable to the state which would entitle it to request advances of funds upon a project application of its own and whether there is some local or state law applicable to

Honorable Marvin W. Smith

each of the various political subdivisions in question which, in like token, would justify the state in doing so on their behalf.

There is no statute of this state applicable either to the state or a political subdivision expressly requiring that there must be funds on deposit, in addition to its own, available for obligation and expenditure to cover the estimated cost of equipment. As far as the state is concerned, in its own project applications it would be governed by the appropriation made to the Civil Defense Agency of Missouri. The present appropriation act, found at page 54 of Laws of Missouri, 1953, is very broad and would authorize the Civil Defense Agency to expend funds for the full purchase price of equipment under a project application and then be reimbursed under the Matching Funds Program. The Civil Defense Agency could not, however, obligate itself for an amount in excess of its appropriation for the biennium. If an expenditure for equipment in an amount in excess of its share of the cost of equipment would obligate the state beyond the Civil Defense Agency appropriation for the biennium, then it could be said that it is precluded from doing so and the state would be authorized to request an advance under Section 3.2a (2) of the Contributions Manual.

"Political subdivision" in the Civil Defense law is defined in Section 44.010(6), RSMo Cum. Supp., 1953, as follows:

"(6) 'Political subdivision' means any county or city, town, village or any fire district created by law."

Although it has been held by this office that a county is authorized to expend funds for civil defense (See opinion Attorney General directed to Forrest Smith dated January 16, 1942, copy enclosed), it has also been held many times that a county cannot exceed a budgeted item of expenditure (for example see opinion Attorney General directed to W. H. Holmes dated July 20, 1951, copy enclosed).

The ordinary and natural thing for a county court to do in preparing its budget would be to include an item sufficient to

Honorable Marvin W. Smith

cover its share of the cost of civil defense equipment as a project application. If so, it would be precluded from expending anything in excess of that budgeted amount for that purpose and would be entitled to request an advance under Section 3.2a (2), supra.

Cities, towns, villages and fire districts would have to be considered as individual cases. We cannot possibly know whether in any given city, for example, there is an ordinance or charter provision which would preclude it from expending funds in excess of its share of the cost of equipment subject to reimbursement by the federal government. If there is such a local provision or if the political subdivision does not have the available funds, then the state would be authorized to ask for an advance. As project applications are presented to your office and advance of funds requested, it will be incumbent upon your office to ascertain in each case whether such a local provision or condition exists before requesting an advance of funds.

#### CONCLUSION

It is the opinion of this office that the State Civil Defense Agency in its own behalf would be authorized to request an advance of funds from the federal government under Section 3.2a (2), Federal Civil Defense Administration Manual, M25-1, Revised, October, 1954, if, because of limited appropriation and lack of available funds for that purpose, it is precluded from expending more than its share of the cost of equipment under a particular project application.

It is the further opinion of this office that the State Civil Defense Agency on behalf of counties making application for federal funds would be authorized to request an advance of funds from the federal government if the county is precluded from expending more than its share of the cost of civil defense equipment because only that amount was budgeted. As to cities, towns, villages and fire districts, each case would have to be

Honorable Marvin W. Smith

considered separately and individually. If there is a local provision, e. g., ordinance, charter provision, etc., or local situation, e. g., lack of available funds, which would preclude the city, town, village or fire district from expending more than its share of the cost of civil defense equipment, then, and in that event, the state would be authorized to request an advance of federal funds under Section 3.2a (2) Federal Civil Defense Administration Manual, supra.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John W. English.

Yours very truly,

JOHN W. DALTON  
Attorney General

JWI:ml:lc