

U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR  
WASHINGTON, D.C.

DATE: December 9, 1988  
CASE NO. 84-CTA-228

IN THE MATTER OF

DEPARTMENT OF LABOR,

COMPLAINANT,

v.

STATE OF FLORIDA DEPARTMENT OF  
LABOR AND EMPLOYMENT SECURITY,

RESPONDENT.

BEFORE: THE SECRETARY OF LABOR

FINAL DECISION AND ORDER

This case arises under the Comprehensive Employment and Training Act (CETA). 29 U.S.C. §§ 801-999 (Supp. V 1981). <sup>1/</sup> The dispute involves the question of the Department of Labor's authority to recover interest on a debt owed by a state government.

BACKGROUND

On July 22, 1986, Administrative Law Judge (ALJ) Daniel Lee Stewart affirmed the Grant Officer's disallowance of \$6,555 of costs incurred by subgrantees of the State of Florida Department of Labor and Employment Security (FDOLES), under subgrants made pursuant to the state's CETA grant. In

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<sup>1/</sup> Effective October 13, 1982, CETA was replaced by the Job Training Partnership Act. 29 U.S.C. §§ 1501-1781 (1982). However, CETA continues to govern administrative or judicial proceedings pending on October 13, 1982, or begun between October 13, 1982, and September 30, 1984. 29 U.S.C. § 1591(e).

addition, the ALJ ruled that the Department of Labor (DOL) was not entitled to recover interest on the disallowed costs. <sup>2/</sup> On August 11, 1986, the Grant Officer filed a statement of exceptions challenging only the ALJ's ruling that DOL lacked authority to recover interest on the debt. On August 29, 1986, the Secretary asserted jurisdiction and stayed the ALJ's decision. The parties were invited to submit briefs in the case. FDOLES' Initial Brief addressed the issue of the DOL's authority to recover interest on debts owed by state governments to the Federal government and raised an additional issue regarding the equitable consideration of requiring a CETA grantee to repay the disallowed expenditures of its subgrantees. <sup>3/</sup> The Grant Officer's Initial Brief addressed the government's right to levy an interest charge on state CETA grantees and his Reply Brief challenged the timeliness of FDOLES' raising the issue of equitable consideration for the first time before the Secretary in its Initial Brief.

#### DISCUSSION

The pertinent provision of the Debt Collection Act of 1982, now codified at 31 U.S.C. § 3717(a)(1) (1982), amending the Federal Claims Collection Act of 1966, 31 U.S.C. § 952,

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<sup>2/</sup> In the Matter of Department of Labor v. State of Florida Department of Labor and Employment Security, Case No. 84-CTA-228. Decision and Order of the Administrative Law Judge, issued July 22, 1986.

<sup>3/</sup> Initial Brief of the State of Florida for Review of an Order of the U.S. Department of Labor's Administrative Law Judge, served October 29, 1986, at 9-11.

requires the head of an executive agency, such as the Secretary of Labor, to charge a minimum annual rate of interest on an outstanding debt owed by a person to the United States Government. <sup>4/</sup> Enactment of the Debt Collection Act reflected Congress' concern at the failure of many Federal agencies to collect debts owing to the Federal government, and when such debts were collected, the exacting of below market interest rates on the overdue debts. <sup>5/</sup>

The term "**person**" in § 3717(a)(1) originally was defined as not including any agency of the United States or any state or local government. <sup>6/</sup> Subsequent language changes were not

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<sup>4/</sup> The head of an executive or legislative agency shall charge a minimum annual rate of interest on an outstanding debt on a United States Government claim owed by a person that is **equal** to the average investment rate for the Treasury tax and loan accounts for the 12-month period ending on September 30 of each year, rounded to the nearest whole percentage point. The Secretary of Treasury shall publish the rate before November 1 of that year. The rate is effective on the first day of the next calendar quarter.

31 **U.S.C.** § 3717(a)(1) (emphasis supplied).

<sup>5/</sup> S. Rep. No. 378, 97th Cong., 2d Sess., 1, 3, 17, 28, reprinted in 1982 U.S. Code Cong. & Admin. News 3377, 3379, 3393, 3404, 3405.

<sup>6/</sup> The Debt Collection Act of 1982, Pub. L. No. 97-365, § 11, 96 Stat. 1749, 1756 (1982).

intended to change the substantive meaning of the statute, but were enacted for the sake of clarity and conformity. 7/

**FDOLES** contends that exclusion of **"State** government" from the definition of the word **"person"** prohibits the imposition of an interest charge on its outstanding debt to the Department of Labor. While the statute exempts state government agencies from the mandatory imposition of interest charges, I find that it does not abrogate the Federal government's common law right to assess interest against entities not covered by the Act. The effect of the exemption for states from the requirement that interest be charged has been construed by the Comptroller General, Comptroller General's Decision, B-212222, issued August 23, 1983; by the Comptroller General and the Attorney General in pertinent regulations at 4 **C.F.R.** § 102.13(i)(1) and (2) (1988); 8/ and

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7/ **"In** Section 3716 and 3717 of this title, 'person' does not include an agency of the United States Government, of a State government, or of a unit of general local **government."** 31 U.S.C. § 3701(c) (1982).

8/ 4 C.F.R. § 102.13, Interest, penalties, and administrative costs, states in part:

(i) **Exemptions.** (1) The provisions of 31 U.S.C. 3717 do not apply: (i) To debts owed by any State or local government; ....

(2) However, agencies are authorized to assess interest and related charges on debts which are not subject to 31 U.S.C. 3717 to the extent authorized under the common law or other applicable statutory authority.

by this Department in regulations at 29 C.F.R. § 20.51(a)(1), and (b) (1988). 9/

The Supreme Court has recognized for more than a century the common law right of a creditor to be compensated by interest payments for the loss of use of funds by defaulting debtors. Youna v. Godbe, 82 U.S. (15 Wall) 562, (1872) (Interest due on a debt to a private citizen despite the absence of a statutory right). And the Court has enunciated the right of the Federal government to collect interest on debts owed by a state, although it declined, in the face of the state law expressly forbidding the imposition of interest by private parties, to extend this right to an individual who was a ward of the Federal government. Board of Commissioners of Jackson County v. United States, 308 U.S. 343, 352 (1939).

**FDOLES** cites decisions by the United States Courts of Appeals for two circuits which have addressed the issue of a federal agency's right to impose an interest charge on overdue debts owed by states following enactment of the amended Debt Collection Act. In Perales v. United States, 751 **F.2d** 95 (2d Cir. **1984**), the court affirmed the district court's decision

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9/ 29 C.F.R. § 20.51, Exemptions, states in part:

(a) The provisions of 31 U.S.C. 3717 do not apply:

(1) To debts owed by any State or local government:  
 . . . . .

(b) Agencies are authorized to assess interest and related charges on debts which are not subject to 31 U.S.C. 3717 to the extent authorized under the common law or other applicable statutory authority.

that the Department of Agriculture was not authorized to charge interest on debts between the Department and state agencies arising out of the food stamp program. In granting summary judgment for New York, the district court had held "invalid"

FNS' [Food and Nutrition Service of the U.S. Department of Agriculture] policy of assessing late payment interest against state agencies, .... especially so in light of the fact that the Federal Claims Collection Act, which set forth congressional policy for the collection and settlement of debts by federal agencies, was expressly made inapplicable against state agencies by the Debt Collection Act of 1982.

Perales v. United States, 598 F. Supp. 19, 24 (S.D.N.Y. 1984).

In Commonwealth of Pennsylvania Department of Public Welfare v. United States, 781 F.2d 334 (3d Cir. 1986), reh'g and reh'g en banc denied, the court also denied the right of FNS to charge late payment interest on debts incurred by a state agency under the Food Stamp Act. However, the United States Court of Appeals for the Sixth Circuit, while considering the impact of the Debt Collection Act of 1982 (DCA) on the Federal Claims Collection Act, held that the Department of Labor could impose an interest charge on recouped misspent CETA grant funds. County of St. Clair, Michigan v. United States Department of Labor: Rita Jacobs,

No. 83-3546, slip op. at 3 (6th Cir. Dec. 7, 1984) (per curiam) (LEXIS, Genfed library, Supcir file). 10/

Subsequent to the Perales and Pennsylvania Department of Welfare decisions, the Supreme Court again affirmed the right of the Federal government to impose interest charges on a defaulted contractual debt owed by a state. West Virrcfinia v. United States, 479 U.S. 305 (1987). While finding that the DCA had no applicability to the case before it because the claim at issue was made under a contract executed before October 25, 1982, 31 U.S.C. § 3717(g)(2), 479 U.S. at 312, n.6, the Court noted that "[p]rejudgment interest serves to compensate for the loss of use of money due as damages from the time the claim accrues until judgment is entered, thereby achieving full compensation for the injury those damages are intended to redress." 479 U.S. at 310, n.2. The Court declined to opine regarding the effect of the Debt Collection Act on Federal common law governing when States must pay interest. 479 U.S. at 312, n.5. 11/

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10/ I am, of course, cognizant of the general disfavor accorded the use of unpublished decisions. See e.g. 6th Cir. R. 24(b); 11th Cir. R. 36-1 I.O.P. 3. Since the court of appeals decision in County of St. Clair, Michigan, construed the DCA in the context of misspent CETA grant funds, and it is the only court case found addressing the two statutes together, I believe it cannot be ignored and that reference to it in this decision is in keeping with the spirit of the courts of appeals' rules. A copy of the St. Clair opinion is appended.

11/ In a 1987 case, Arkansas v. Block, 825 F.2d 1254 (8th Cir.), reh'g denied, the court of appeals followed Perales and Pennsylvania Department of Public Welfare in determining that the Department of Agriculture lacked authority to assess

Counsel for the Grant Officer contends that the Second and Third Circuits are in error in their construction of the DCA. The Grant Officer points out that while the DCA mandates the collection of interest against private debtors, it does not speak about or abolish the collection of interest against public entities. Here, the Grant Officer asserts, interest assessments against state governments have not been foreclosed or expressly prohibited by the DCA, rather such interest assessments merely have been excluded from mandatory coverage. This circumstance, it is argued, does not warrant a legal conclusion that the DCA preempted the field regarding recovery of interest from states by the Federal government. Grant Officer's Brief to the Secretary of Labor at 14-18.

Since the case before me arises in the Eleventh Circuit, and under a different statute, I am not bound by the courts' decisions in Perales and Pennsylvania Department of Public Welfare, and upon consideration, I decline to follow them here. The Federal government's common law right to recoup lost economic opportunity through an interest provision on overdue debts is too well founded to cede without express direction from Congress or the Court.

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11/ (footnote continued)

interest on a state's unpaid penalties imposed under the food stamp regulations. The Eighth Circuit panel distinguished the Fourth Circuit's analysis in United States v. West Virginia, 764 F.2d 1028 (1985), aff'd 479 U.S.305 (1987), on the basis that West Virginia's debt predated the effect of the Debt Collection Act. The Eighth Circuit did not address the Supreme Court's affirmance of the Fourth Circuit's decision.

I find the Grant Officer's analysis persuasive. The **DCA** leaves to the discretion of agency heads the question of charging interest on obligations of state and local governments. As noted, supra at 3, the legislative history of the Debt Collection Act reflects Congress' concern over the failure of many agencies to collect debts at all, and their practice of charging interest below market rates if it was assessed at all. S. Rep. No. 378, 97th Cong., 2d Sess., 3-4, reprinted in 1982 U.S. Code Cong. & Admin. News 3377, 3379-80. This history shows no intention by Congress to relieve states entirely from the payment of interest.

Moreover, this construction of the DCA accords with that of the Department of Justice and the General Accounting Office in the regulations implementing the Act. 4 C.F.R. § 102.13(i)(2). Those agencies rejected the argument that the Debt Collection Act totally preempts the common law and that the Act's exemptions therefore amount to prohibitions. 49 Fed. Reg. 8,891 (1984). The promulgation of those provisions said that **"the** common law right to charge interest continues to exist [but] the limits, procedures, and other requirements of the Debt Collection Act do not apply to those debts that are exempt from the interest provision of the act . . . ." Id. at 8,894.

In Rodsers v. United States, 332 U.S. 371 (1947), the Court distinguished between financial obligations which arise from penalties or punishment for criminal activities and those

which arise from a purely contractual basis. The Court determined that in situations such as Rodaers, where the financial obligation was in the nature of a fine for **non-cooperation** with the Agricultural Adjustment Act, that no interest shall bear. But, the Court reasoned, when there is a breach of an obligation and actual money damages are suffered by reason of the breach, the aggrieved party should be fairly compensated for the loss. 371 U.S. at 373.

The misspending of program funds by **FDOLES'** subgrantees is in direct contravention of Congress' intention regarding the CETA **funds'** appropriation and obligation. The loss suffered by the intended CETA beneficiaries occasioned by the misexpenditures, is direct and measurable, and the public is equitably entitled to the interest on such funds. The interest is not in the form of a punishment or deterrent but rather compensation for misused funds.

In its brief submitted after jurisdiction was asserted, FDOLES attempts to raise a challenge to the **ALJ's** determination that "equitable purposes are served by requiring repayment" of the \$6,555. FDOLES did not challenge this ruling by filing exceptions as provided in the Department's regulations, 20 C.F.R. § 676.92(f) **(1988)**, and the regulation states expressly that "[a]ny exception not specifically urged shall be deemed to have been waived." Accordingly, this

challenge to the ALJ's equitable analysis is not before me. 12/

The ALJ's determination that the Department of Labor is not entitled to interest on disallowed costs is REVERSED. The Florida Department of Labor and Employment Security is directed to repay to the Department the sum of \$6,555 with interest in accordance with the Grant Officer's Final Determination in this case.

SO ORDERED.




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Secretary of Labor

Washington, D.C.

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12/ Bad this issue been timely and properly appealed, FDOLES's arguments would be neither compelling nor persuasive. The funds were disallowed because the State failed to ensure that its subgrantees maintain and produce adequate spending records. It is not punitive to require the repayment of funds when adequate records supporting the expenditure of those funds cannot be produced for an audit, and a grantee's responsibility is not mitigated through its use of community based organizations as subgrantees. It is well established that a grantee's responsibility includes the maintenance of adequate records for they are the only indicia that public funds were lawfully spent. Montsomerv County, Md. v. Department of Labor, 757 F.2d 1510 (4th Cir. 1985).

Neither does case law compel consideration of the equities in a case when grant funds have been misspent. Quechan Indian Tribe (Quechan Tribal Council) v. United States Department of Labor, Case No. 80-BCA/CETA-97, Secretary's Final Decision and Order, issued February 4, 1988, slip op. at 4-6, citing Bennett v. New Jersey, 470 U.S. 632 (1985); Bennett v. Kentucky Department of Education, 470 U.S. 656 (1985); State of California Department of Education v. Bennett, 829 F.2d 795 (9th Cir. 1987).

No. 83-3546

DEC 7 1984

**UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

JOHN P. HEHMAN, Clerk

COUNTY OF ST. CLAIR, MICHIGAN,

Petitioner,

v.

**UNITED STATES DEPARTMENT OF  
LABOR; RITA JACOBS,**

Respondents.

ON **PETITION** FOR REVIEW  
OF A DECISION OF THE  
SECRETARY OF THE UNITED  
STATES DEPARTMENT OF  
LABOR.

**NOT RECOMMENDED FOR FULL-TEXT PUBLICATION**

Sixth Circuit Rule 24 limits citation to specific situations. Please see Rule 24 before citing in a proceeding in a court in the Sixth Circuit. If cited, a copy must be served on other parties and the Court. This notice is to be prominently displayed if this decision is reproduced.

**Before:** LIVELY, Chief Judge; **ENGEL**, Circuit Judge; and **WEICK**, Senior circuit Judge.

PER **CURIAM**. The County of St. Clair, Michigan (County) petitions for review of a decision of the United States Department of Labor ordering repayment of certain Comprehensive Employment and Training Act (CETA) funds allegedly misspent by the County. The County claims that the decision below was not supported by substantial evidence and should be set aside for good cause.

The County was a prime sponsor for the disbursement of funds under CETA, 29 U.S.C. § 801, et seq, throughout the duration of the CETA program, handling up to 900 CETA participants at times. Ms. Rita Jacobs was employed by the County as an independent monitor of its CETA programs. On March 26, 1980, Ms. Jacobs filed a complaint with the Department of Labor alleging CETA violations by the County. A Labor Department grant officer conducted an investigation and made a determination against the County. The County requested and was granted a formal hearing before Administrative Law Judge Melvin Warshaw (ALJ) to review the dispute.

In a decision issued June 2, 1983, the ALJ found that the County had improperly spent CETA funds to subsidize the employment of (1) two teachers in parochial schools,

(2) a woman who did not meet the program's financial or employment need requirements, and (3) a woman whose husband was on the County's Board of Commissioners. The ALJ ordered the County to repay the Department of Labor the amount of the misspent funds and, additionally, interest on that amount. Finally, the ALJ found that certain CETA participants may have been underpaid when they were employed at **"outstationed"** locations; however, the ALJ concluded that the evidence in the record concerning actual wages and hours of the underpaid employees was insufficient. The **ALJ**, therefore, remanded the **"outstationed"** employee issue to the grant officer for additional fact-finding. The Secretary of Labor did not act on the **ALJ's** decision and order. Thus, under 20 C.F.R. **§ 676.91(f) (1984)**, the **ALJ's** decision became the final action of the Department. The County petitions **for** a review of that action.

The Secretary has moved here to dismiss the County's petition on the **grounds** that the **ALJ's** decision did not finally resolve all issues. We conclude that we have jurisdiction over those portions of the ALJ's order which go to the merits of the first three issues described above. However, we find that we do not have jurisdiction over the **"outstationed"** employee claim because that issue has not been **finally** resolved; it awaits further consideration by the grant officer upon remand by the ALJ. Yet, in our judgment this does not preclude a finding *of* finality with regard to the first three **issues**; as to those issues, *the ALJ's* decision has become the final action of the Secretary and is appropriately before us for review.

On the merits, the County argues that the **ALJ's** findings of fact concerning the **misspent** funds were not supported by substantial evidence and that good cause exists to set aside the **ALJ's** order. The County also claims that the order to pay interest was in violation of 31 U.S.C. S 3701.

A careful review of the record and of the parties' briefs satisfies us that there **is substantial** evidence to support the Secretary's decision as to each of the challenged

claims. While in each case the question was close, it must be observed **that** there was at least competent evidence to support the violations **found**.

In its brief, the County appears to tacitly acknowledge the existence of the violations; nonetheless, it points to language in the Act which arguably empowers our court to remand the case to the Secretary for new or different findings of fact **"for good cause shown,"** 29 U.S.C. § 819(b). The County argues that the **ALJ's** decision should be reversed **"for good cause"** because in each of the challenged cases the County misspent the CETA funds, if at all, inadvertently and in good faith. The County contends that under such circumstances, an order to repay those funds which have been irrevocably spent is inequitable.

While some of the County's arguments have a limited appeal **for** the reasons stated in its brief, we conclude that they are not sufficient to constitute "good cause" in view of the Secretary's responsibility to monitor dispersal of CETA funds and to carry out the Congressional mandate concerning supervision of their expenditures. Congress has committed the enforcement of violations which are supported by substantial evidence to agency discretion. Even if the good cause provision authorizes us to grant relief where there is substantial evidence to support the Secretary's decision, it does not compel us to alter that decision merely because we disagree with the result the Secretary reached.

Likewise, we remain unpersuaded that the Department was without power to order the payment of interest merely because the Federal Claims Collection Act, as amended by the Debt Collection Act of 1982, 31 U.S.C. S 3701, **et. seq.**, appears to include a unit of local government among those defined as **"person"** in the definitional provisions of the Act, 31 **U.S.C. S 3701(e)**.

To the extent that the **ALJ's** remand of the **"outstationed"** employee issue to the grant officer has been placed in issue in these proceedings, that portion of the **County's** petition is not subject to review as a final order of the Secretary and is

dismissed as interlocutory. See **Newpark Shipbuilding & Repair, Inc. v. Roundtree**, 723 F.2d 399, 406 (5th Cir. 1984), cert. denied, 105 S. Ct. 88 (1984).

The remainder of the petition of the County of St. Clair is DENIED.

CERTIFICATE OF SERVICE

Case Name: In the Matter of Department of Labor v. State of Florida Department of Labor and Employment and Security

Case No. : 84-CTA-228

Document : Secretary's Final Decision and Order

A copy of the above-referenced document was sent to the following persons on DEC 9 1988.

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