VOLUME NO. 38 OPINION NO. 102

FEDERAL FUNDING - State law vs. federal law;
LEGISLATURE - Appropriations, limits on federal funds;
STATE AGENCIES - Appropriations, limits on federal funds;
STATE AGENCIES - Budget amendment, use of federal funds;
UNITED STATES CONSTITUTION - Article VI, clause 2;

1979 MONTANA LAWS - House Bill 483.

HELD: The expenditure authorized by budget amendment No. 0534 does not violate the provisions of the general appropriation bill for the Department of Health.

29 August 1980

John W. Bartlett, Deputy Director
Department of Health and
Environmental Sciences
Cogswell Building
Helena, Montana 59601

Dear Mr. Bartlett:

You have requested my opinion as to whether the expenditure of $54,325, authorized by budget amendment No. 0534, violates the provisions of House Bill 483, 1979 Montana Laws.

House Bill 483, the general appropriation bill for the Department of Health, provides in relevant part:

DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

2,527,946 14,903,883 2,568,719 14,836,348

Other appropriated funds include $118,000 each year received under authority of P.L. 93-641, which may be expended only if granted or contracted to local health departments.

P.L. 93-641 (42 U.S.C. § 300k, et seq.), commonly known as the National Health Planning and Resources Development Act of 1974, was passed by Congress to assure the development of a national health policy that insures effective state health regulatory programs and area health planning programs. See 1974 U.S. Code Cong. and Admin. News at 7842, et seq. The operational plan (OP-17) of fiscal year 1980 for the Health Planning Bureau within the department contemplated the use of $369,115 of P.L. 93-641 funds. As noted above, House Bill 483 designated $118,000 of those funds to be used for local health departments.

Federal regulations promulgated under P.L. 93-641 prohibit the Health Planning Bureau from contracting for the use of those funds with any third party without prior approval from the HEW regional office in Denver. See Public Health Services Grant Administration Manual, chapter 1-430-15(B); see also 42 C.F.R., part 123(c). By letter dated December 17, 1979, the chief of the health planning branch for the HEW regional office in Denver advised the Department that the regional office would no longer approve the use of P.L. 93-641 funds for local health program purposes. (Copy is attached to your request.) Consequently, only $30,000 of the $118,000 appropriation for local health programs has been spent. By letter dated March 11, 1980, the Department notified the HEW regional office that it was returning to the federal government the remaining $88,000, as provisions of state law (House Bill 483) precluded the State from spending those funds under the policy announced by the regional office.

Following the adoption of House Bill 483, the federal government promulgated final rules for the uncompensated services and community service programs. 42 C.F.R. part 124 was amended by new subparts (F) and (G). The new rules allow states to use P.L. 93-641 money to help with administration of the uncompensated care program under the Hill-Burton Act. In a letter dated February 27, 1980, the HEW Region VIII office authorized the Department to use up to $54,325 for administration of that program. This agreement was formalized on April 17, 1980. The Department requested a budget amendment and on May 9, 1980 a budget amendment authorized the Department to spend the $54,325.

Your question is whether the above series of events violated the provisions of House Bill 483, requiring $118,000 to be spent for local health programs. It is my opinion that the procedure did not violate the provisions of House Bill 483.

The Legislature authorized the health planning bureau to spend $369,115 of P.L. 93-641 funds. Of that amount $118,000 was to be spent for local health planning programs. However, pursuant to the federal regulations listed above, the HEW regional office refused to approve the expenditure of $88,000 of that money for local programs. Where federal laws and regulations expressly conflict with the provisions of state law, the federal law prevails by operation of the Supremacy Clause of the United States Constitution. (Article VI, clause 2, U.S. Constitution). See Perez v. Campbell, 42 U.S. 637 (1971); Jones v. Rath Packing Company, 430 U.S. 519 (1977).

The provisions of this particular act requiring the State to follow certain procedures, irrespective of state law, were specifically upheld in State of North Carolina ex rel. Morrow v. Califano, 445 F. Supp. 532, affirmed 435 U.S. 962 (1977). Since federal law prohibits the State from spending those P.L. 93-641 funds for local health programs without regional approval from HEW, the Department's reversion of the $88,000 to the federal government was entirely proper and required by federal law.

The availability of federal funds for the uncompensated care program was not contemplated by the Legislature in its consideration of House Bill 483. That program was a new program, the regulations not having been adopted until after passage and approval of House Bill 483. Section 17-3-108, MCA, requires an approved budget amendment before a state agency may expend federal assistance funds. The power to approve budget amendments for newly available federal funds rests with the executive. State ex rel. Judge v. Leg. Finance Comm., 168 Mont. 470, 477, 543 P.2d 1317 (1975). In this case the executive branch authorized the budget amendment.

Had the Department been allowed to spend all $118,000 of the P.L. 93-641 funds for local programs and then also applied for a budget amendment to spend the newly authorized funds under the uncompensated care program, there would be no question as to the propriety of the budget amendment. The fact that the Department was forced to revert $88,000 in unspent P.L. 93-641 funds does not change the legal nature of the budget amendment and does not violate the provisions of House Bill 483.

THEREFORE, IT IS MY OPINION:

> The expenditure authorized by budget amendment No. 0534 does not violate the provisions of the general appropriation bill for the Department of Health.

Very truly yours,

MIKE GREELY
Attorney General