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The Honorable Edward M. Kennedy  
United States Senate

Dear Senator Kennedy:

Reference is made to your letter of August 23, 1974, asking our opinion concerning the availability for grants of the \$100,000 appropriation contained in the Second Supplemental Appropriations Act, 1973, act of July 1, 1973, Pub. L. 93-50, 87 Stat. 106, "to carry out the Family Practice of Medicine Act of 1970 (S. 3418, Ninety-first Congress)," should the court decision validating the Family Practice of Medicine Act of 1970 become final and no longer subject to appeal.

As you are well aware, former President Richard M. Nixon pocket vetoed S. 3418, 91st Cong., 2d Sess. (1970), during the Christmas recess of 1970. You successfully challenged the veto in Kennedy v. Sampson, 364 F. Supp. 1075 (D.D.C. 1973), and such decision was affirmed in Kennedy v. Sampson, Nos. 73-2121 and 73-2122 (D.C. Cir., August 14, 1974). Both courts held that the use of the pocket veto in that instance was invalid and the Family Practice of Medicine Act became a validly enacted law of the United States without the signature of the President. We understand that no appeal has been taken to the United States Supreme Court, but the time for filing an appeal thereto has not yet expired.

Section 762 of Part D of title VII of the Public Health Service Act, as amended by S. 3418, 91st Congress, provides:

"(a) For the purpose of making grants to carry out the purposes of this part, there are authorized to be appropriated \$50,000,000 for the fiscal year ending June 30, 1971, \$75,000,000 for the fiscal year ending June 30, 1972, and \$100,000,000 for the fiscal year ending June 30, 1973.

"(b) Sums appropriated pursuant to subsection (a) for any fiscal year shall remain available for the purpose for which appropriated until the close of the fiscal year which immediately follows such year."

Despite the pocket veto of the bill by former President Nixon, the Congress included an appropriation to implement the bill in the

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Supplemental Appropriations Act, 1972, act of December 15, 1971, Pub. L. 92-184, 85 Stat. 631, in the following language:

"\* \* \* \$100,000 shall be used to carry out programs in the family practice of medicine, as authorized by the Family Practice of Medicine Act of 1970 (S. 3418, Ninety-first Congress)."

Since the availability of this \$100,000 was governed by the language of subsection 762(b), supra, which restricted its use to fiscal years 1972 and 1973, without question this appropriation has expired, even though the funds were apparently never allocated. See S. Rep. No. 160, 93d Cong., 1st Sess. 48-49 (1973) quoted, in part, below.

In contrast, however, in the Second Supplemental Appropriations Act, 1973, supra, the appropriating language was changed to the following:

"For an additional amount for 'Health manpower' to remain available until expended to carry out the Family Practice of Medicine Act of 1970 (S. 3418, Ninety-first Congress), \$100,000." (Emphasis added.)

Since the foregoing is the later expression of Congress on the matter, it supersedes the authorization restriction of subsection 762(b), supra, whereby funds were to remain available only until the close of the fiscal year which immediately follows the year for which the funds were appropriated. See B-180517, March 22, 1974, 53 Comp. Gen. 695 (1974). The apparent intent was to assure that funds remain available to implement the Family Practice of Medicine Act, should it be validated, beyond fiscal year 1974. The explicit language in S. Rep. No. 160, 93d Cong., 1st Sess. 48-49 (1973), accompanying H.R. 7477, 93d Cong., 1st Sess. (1973), stated:

"The Committee recommends \$100,000 to fund the provisions of the Family Practice of Medicine Act.

"There is no dispute that the most serious shortages within the private practice of medicine is that of general or family practitioners. Without exception, public witnesses who have appeared before the Committee over the years have emphasized these needs and many requested early implementation of the Family Practice of Medicine Act, overwhelmingly passed by the Congress during the 91st session. Last year, the Congress included the modest sum

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of \$100,000 in the 1972 Supplemental Appropriations Act to be allocated under the provisions of the Family Practice of Medicine Act. Unfortunately, these funds were not allocated. The Committee is again recommending a modest sum to implement the provisions of this Act. The Committee views this amount as a first installment and would be receptive to a budget request for greatly increased funding for the item. Because of the impending expiration of the authorization legislation, the Committee has included language which allows the funds to remain available until expended. (Emphasis added.)

Although H.R. 7447 was vetoed by former President Nixon on June 27, 1973 (120 Cong. Rec. H5486 (Daily ed. June 27, 1973); H. Doc. No. 125, 93d Cong., 1st Sess. (1973)), House Report No. 350, 93d Cong., 1st Sess. (1973), accompanying the successor bill H.R. 9055, 93d Cong., 1st Sess. (1973), which became the Second Supplemental Appropriations Act, 1973, supra, states, at 3:

"The new bill [H.R. 9055] submitted by the Committee otherwise [other than changes made with respect to funding to support combat activities by U.S. forces in Cambodia or Laos] contains the identical sums and provisions for the various items of the several departments and agencies as the bill vetoed by the President [H.R. 7447]. Under consideration would have to be withdrawn and repositioned into the general fund of the Treasury.

While the \$100,000 appropriated in the Second Supplemental Appropriations Act, 1973, supra, is "to remain available until expended" and despite the restriction of subsection 762(b), supra, that appropriation is still subject to statutory provisions generally applicable to no-year appropriations. Pertinent here is section 6 of the act of July 25, 1956, ch. 727, 70 Stat. 649, 31 U.S.C. 706, which provides:

"The unobligated balances of appropriations which are not limited to a definite period of time shall be withdrawn in the manner provided in section 1(a)(2) of this Act [31 U.S.C. 701(a)(2)] whenever the head of the agency concerned shall determine that the purposes for which the appropriation was made has been fulfilled; or in any event, whenever disbursements have not been made against the appropriation for two full consecutive fiscal years: Provided, That amounts of appropriations not limited to a definite period of time which are withdrawn pursuant to this section or were heretofore withdrawn from the appropriation account by administrative action may be restored

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to the applicable appropriation account for the payment of obligations and for the settlement of accounts." (Emphasis added.)

Section 1(a)(2) of the act of July 25, 1956, supra, as amended, 11 U.S.C. 701(a)(2) provides:

"Upon the expiration of the period of availability for obligation, the unobligated balance shall be withdrawn and, if the appropriation was derived in whole or in part from the general fund, shall revert to such fund, but if the appropriation was derived solely from a special or trust fund, shall revert, unless otherwise provided by law, to the fund from which derived: Provided, That when it is determined necessary by the head of the agency concerned that a portion of the unobligated balance withdrawn is required to liquidate obligations and effect adjustments, such portion of the unobligated balance may be restored to the appropriate accounts." (Emphasis added.)

The apparent purpose of section 6 of the act of July 25, 1956, is the closing of inactive appropriations not limited to a definite period of time." 39 Comp. Gen. 244, 245 (1959). Consequently, if no disbursements are made against the appropriated \$100,000 for "two full consecutive fiscal years," the appropriation under consideration would have to be withdrawn and redeposited into the general fund of the Treasury.

In view of the potential for continuance of the litigation and the time which could be consumed thereby, there are two additional points that should be considered concerning this matter. Specifically, before funds could be obligated for grants, regulations apparently would have to be promulgated pursuant to subsection 763(b) of Part D of title VII of the Public Health Service Act, as amended by the Family Practice of Medicine Act, and an Advisory Council on Family Medicine would have to be appointed and operational pursuant to subsections 765(a), 767(a) and 767(d) thereof. Thus, if an appeal is perfected by November 14--the date we understand to be the last date for an appeal to the Supreme Court--in all likelihood the above-cited statutory requirements will probably not be met regardless of the ultimate outcome. On the other hand, if an appeal is not perfected, there would be some 7-1/2 months in which to meet the statutory requirements and award grants.

Meanwhile, on the basis of current judicial determination, to the extent that these funds are not being released for expenditure there appears to exist an impoundment of budget authority reportable to the Congress and the Comptroller General under the Impoundment Control Act of 1974, Public Law 93-344. We are inquiring into this and if necessary we will make a report to the Congress under section 1015(a) of the Act.

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We trust that what is contained herein is of assistance to you concerning this matter.

Sincerely yours,

R.F. KELLER

Deputy  
Comptroller General  
of the United States

APPROPRIATIONS

Office of the Director of Medicine  
Federal Veterinary

WORDS AND PHRASES

Federal Veterinary

- Employee, who traveled to...