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Governor's Justice Commission

Honorable Israel Packel
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The purpose of this memorandum is to acquaint you with legal obligations imposed by the Omnibus Crime Control and Safe Streets Act of 1968 and, hopefully, to provide insight on some of the important problems of the Commission, including the Philadelphia and Allegheny Regional Planning Councils.

My personal observation is that this federal grant program is poorly understood at all levels of government. I am afraid that too few people have read the legislative history of the Omnibus Crime Control and Safe Streets Act which appears beginning on page 2112 of the U.S. Code Congressional and Administrative News, (1968). This ignorance of legislative intent (or perhaps in some cases, a desire to circumvent it) is at the root of most of our problems.

The key feature of the program is the block grant concept, under which the Federal government each fiscal year allocates a block of funds for each state. Pennsylvania's block of funds is sub-awarded by the Governor's Justice Commission to local governments and State agencies for programs and projects consistent with State policies and priorities as detailed in the State's annual Comprehensive Plan and further developed at the monthly meetings of the Commission.

The block grant concept was strongly debated in Congress. It appeared in the House version of the Act, but at first was excluded from the Senate version. Senator Hugh Scott was one of those individuals who fought for inclusion of the block grant concept in the Senate Bill. The individual opinions of Senator Scott and also Messrs. Dirksen, Hruska and Thurmond (appearing in the aforementioned history) help to explain why a majority of Congress viewed the block grant approach as absolutely essential for improving the criminal justice system at the State and local level.

On pages 2275-2279 of the aforementioned legislative history, Senators Scott, Dirksen, Hruska and Thurmond noted that Congress "did not pass a local police forces bill, but a law enforcement and criminal justice bill. Criminal justice is a system covering law enforcement, court

judgments and corrections. Better protection for every individual American necessitates coordinated and simultaneous improvement in the system, and not just a single-shot effort to improve some local police forces". Id. at 2277. They were of the opinion that "if creative federalism is to become workable federalism, then it must move away from direct project grants to local governments that bypass state financial and technical assistance related to the solution of the same problem". See Id. at 2278. They noted that "most direct grants that by-pass the states are project oriented, stop-gap measures, which never approach the level of comprehensive program orientation and fail to provide measurable evidence that problems are actually being solved". Id. They also leaned to the view that most local governments have a greater chance to share in federal aid when it is processed through a state agency. "When they [the local governments] must deal directly with Washington, the premium is on the new act of 'Grantsmanship'. Certainly, large cities with several full-time Grantsmanship officers would prefer direct relations with Washington. However, our national concern should be problem solving, with workable programs to meet local needs. The state will always be the primary administrative unit that can see that funds are going where they are needed, not where the Grantsmen are operating." Id.

Significantly, on signing the new Revenue Sharing Act four years later in October 1972, President Nixon indicated his hope that future revenue sharing would take the form of the block grant concept as developed by the Omnibus Crime Control and Safe Streets program. If this is to be the future for grant-in-aid programs, we must undertake to solve the problems which hinder proper functioning of the Safe Streets program. This, in turn, requires a clear understanding of the obligations of all concerned.

In order for a state to be eligible to receive block grant funds under the Omnibus Crime Control and Safe Streets Act, the Governor must create or designate a State Planning Agency. This agency must be subject to his jurisdiction. (Section 203(a)). The Governor's Justice Commission is presently that agency for Pennsylvania. Basically two types of block grants are received by the Governor's Justice Commission: Planning Grants (Part B) and Action Grants (Part C).

Section 201 of the Act states: "It is the purpose of this part [Part B- Planning Grants] to encourage states and units of local government to prepare and adopt comprehensive law enforcement plans based upon their evaluation of state and local problems of law enforcement."

Sixty percent of the available monies under Part B are to be utilized by the State to establish and maintain the State Planning Agency. (Section 203(a)).

The State Planning Agency is required to:

- "(1) develop a comprehensive statewide plan for improvement of law enforcement throughout the State;
- (2) define, develop, and correlate programs and projects for the State and the units of general local government in the State or combination of states or units [of general local governments] for improvement of law enforcement; and
- (3) establish priorities for the improvement in law enforcement throughout the State". (Section 203(b)).

Forty percent of the Part B Planning Grant monies must be made available by the State Planning Agency to units of general local government or combinations of such units to enable such units and combinations of such units to participate in the formulation of the comprehensive State plan required under this part. (Section 203(c)).

Action Grants funded by Part C monies are made by the Governor's Justice Commission to encourage State agencies and units of general local government to carry out programs and projects to improve and strengthen law enforcement. (Section 301(a)). The Governor's Justice Commission receives a Part C block grant each year to fund such projects and programs on the basis of the annual Comprehensive Statewide Plan which must be submitted to the Law Enforcement Assistance Administration (L.E.A.A.) for approval. (Section 301(b)). Up until the present year, the Omnibus Crime Control and Safe Streets Act has required that at least 75 percent of the monies granted to the State under Part C be made available to units of general local government or combinations thereof. (Section 303(2)).

I believe that if Pennsylvania's performance were to be objectively evaluated against the intent and requirements of the Omnibus Crime Control and Safe Streets Act, such evaluation would probably conclude that there has been little "planning" at the local level and, likewise, little has been done by the State Planning Agency (Governor's Justice Commission) to set priorities and coordinate law enforcement projects throughout the State.

All of our problems must be viewed in both legal and historical context. The recent disputes in Philadelphia involving Mayor Rizzo and in Allegheny County between Sheriff Coon and the County Commissioners cannot be isolated from that context.

On the whole, subgrants awarded to State agencies by the Commission have generally been consistent with inputs by those agencies into the Comprehensive Plan. On the other hand, history demonstrates that the awarding of subgrants for local projects deviates strikingly from inputs received from some of the eight regional planning councils.

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This dichotomy of funding performance by the Commission can be traced to the fact that "planning" is meaningless unless those who have legal responsibility for criminal justice functions are committed to following the Plan or unless those who prepare the Plan have authority to impose it on those responsible individuals. The latter proposition is politically and otherwise impossible and undesirable. The vast difference between regional inputs and local programs receiving subgrants demonstrates the absence of the former.

Please note that the Omnibus Crime Control and Safe Streets Act of 1968 says nothing about "regional planning councils" per se, but speaks of planning by "units of general local government or combinations thereof". Since the total amount of Part B Planning Monies which the Commonwealth receives is relatively small (presently about 2 1/2 million), the Shafer Administration decided that the best way to maximize the effect of local planning monies was to create regional planning councils which would be responsible for criminal justice planning for the units of general local government within those regions. Many other states came to the same conclusion and L.E.A.A. recognized these regional planning councils as being "combinations of units of general local government" for the purpose of Part B of the Act. Our eight regional planning councils were set up geographically within the Governor's human service regions, although Philadelphia and Allegheny County were extracted out as separate regions because of the size of those units of government and their special crime and law enforcement problems.

Without apparent federal guidelines, appointments were made to the Regional Planning Councils and the Crime Commission's* Advisory Council (the latter council has been abolished) by Governor Shafer. The formula for representation on each regional planning council was as follows:

- "(1) At least one member from each county in the region
- (2) One member from each minor civil division with a population of 50,000 or more
- (3) Additional membership proportional to county population

One-third of the membership of each Regional Planning Council are the elected heads of units of county and local government or their designated

* Note Governor Shafer's Executive Order of July 31, 1968 designated the Pennsylvania Crime Commission as the State Planning Agency for the purpose of the Safe Streets Program. Later Executive Orders took this function away from the Crime Commission and created the Governor's Justice Commission for such purpose. By these Executive Orders, members of the Crime Commission serve as members of the Governor's Justice Commission.

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be representative of the law enforcement agencies, units of general local government, and public agencies maintaining programs to reduce and control crime". This requirement still does not answer the question of who is to make appointments to regional planning councils, although it does in essence provide a formula for their composition, which is further amplified by L.E.A.A. Guideline Manual M 4100.1.

To Section 203(c) is added the requirement that in allocating planning funds intended for local planning, "the State Planning Agency shall assure that major cities and major counties within the State receive planning funds to develop comprehensive plans and coordinate functions at the local level". As reported in the U.S. Code Congressional and Administrative News, p. 5813 (1970), this requirement "added language to assure that planning money 'pass through' beyond the regional level". It notes that as of the date of the committee report, 45 states had established regional planning units of which 29 had permitted only regional planning councils (not the units of local government) to receive Part B planning funds. The committee report notes that under the amendment to Section 203(c), this practice would not be permitted in the future.

Municipalities presently receiving major city/major county Part B planning fund allocations are Allegheny County, Delaware County, Montgomery County, and the City of Pittsburgh. Of \$185,786 planning monies allocated to the Philadelphia Regional Planning Council for fiscal year 1972-73 by the Commission, only \$10,408 has been sub-awarded by the Council to the City (about 5%). This one subaward was to fund one City planner whose responsibilities are to review the Philadelphia Regional Planning Council's annual plan for impact on the City's budget and to review individual sub-grant applications from City agencies for compliance with City fiscal policies. Considering the original reason for establishing regional planning councils and the fact that Philadelphia is the only municipality existing within the geographic confines of the Philadelphia Regional Planning Council, a continuation of the planning functions of that Council for Philadelphia is difficult to justify.

Realistically speaking, the problem with the program is that most local government officials are reluctant to turn their authority for local law enforcement planning and policy making over to a council appointed by the Governor, regardless of political affiliations. They guard their preogatives jealously. On the other hand, these officials are eager to receive L.E.A.A. monies which some have been led to expect as a matter of right as a form of special revenue sharing.

So, in essence, while these regional planning councils make regional plans and pronouncements, local government applications are made not on the basis of what the councils want, but what the local officials want.

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← What has really hurt the program has been the inability of the Governor's Justice Commission (i.e. its chairmen and other commissioners) to take its proper place as assigned by the Act to lead the reform of the criminal justice system. This failure has been caused by two important and interrelated reasons. →

① All subgrant applications are presently approved by the Commissioners. The Commissioners generally meet only once a month and almost all their time is consumed in considering subgrant applications. Little time, if any, is spent considering questions of policy and priorities. Any policy decisions which do come about are generally made on an ad hoc basis during the consideration of specific grants. This after-the-fact approach to comprehensive planning hurts the program and only serves to confuse prospective local applicants.

② Furthermore, some regional planning councils have failed to keep established deadlines for submittal of regional inputs. Too often these inputs are deficient or do not meet federal guidelines and must be sent back to the regions by staff in Harrisburg for corrections. By the time the Harrisburg staff can put together a draft of the statewide Comprehensive Plan for review by the Commissioners, there is no chance for the Commissioners to take exceptions to the Plan without jeopardizing the federal submission date.

The Commissioners are thus put in the position of approving a plan with which they are unfamiliar. In this situation they have fallen back on the policy that since local officials know their local problems best, the Commission should normally approve their subgrant applications.

Since the local government applications often have not been provided for in the regional council inputs, Plan amendments have been necessary. A 1970 Plan Amendment was accepted by L.E.A.A. without comment. However, when a major 1971 Plan Amendment was filed with L.E.A.A., the federal authorities refused to accept it, unless we provided sufficient justification for the changes in funding levels. How does one tell the federal authorities that a Plan amendment is necessary because regional planning is not taken seriously and the Commission will not take the councils to task? Suffice it to say that an explanation was concocted which satisfied L.E.A.A. and allowed the Commission to continue moving subgrant funds. ← H

Finally, I should like to point out that the Congressional hearings in Washington by the Monagan Committee in 1971 have had a profound effect on the agency - especially Harrisburg staff/regional planning council relations. These hearings were extremely critical of L.E.A.A.'s failure to provide guidelines for use of the block grant monies. Testimony at these hearings revealed many improper uses of such funds by state and

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local governments. As a result L.E.A.A. became defensive. A rapid flow of regulations poured from Washington. Regional planning councils having experienced a great deal of autonomy, some members of the councils began to resent intrusion into this private domain by Harrisburg "bureaucracy". Such action on their part is no more than frustration directed not at the source of the grievance, but at the most convenient target.

I hope I have made the problems and issues clear. My Godfrey will be presenting certain suggestions on how the operations of the Commission might be improved. Please feel free to call on me for additional information.

RBP/lak

Cc: Mr. Godfrey