



U.S. Department
of Transportation
National Highway
Traffic Safety
Administration

Memorandum

Subject: Proposed Iowa Use of Incentive
Grant Funds under Section 163

Date: NOV 14 2003

From: John Donelson
Acting Assistant Chief Counsel

Reply to
Attn. of:

To: Marlene Markison
Associate Administrator for ICOR

Your office has requested, through Romell Cooks, Regional Administrator for Region VII, a legal opinion regarding Iowa's proposed use of incentive grant funds under 23 U.S.C. § 163 (Section 163). This issue arose because Iowa indicated in its fiscal notes for Senate File 439 (SF 439), that it anticipated using Section 163 incentive grant funds to finance State Patrol Trooper salaries. *See Notes on Bills and Amendments for Amendment to Justice Systems Appropriations FY 2004*, page 22. The fiscal notes further provided that, if the incentive grant funds were not received in FY 2003, the State would be forced to lay off approximately twenty full-time State Patrol Troopers. Ms. Cooks asks whether the contemplated use of the incentive grant funds would be in conflict with NHTSA's supplanting guidelines.

On April 24, 2003, Iowa enacted a conforming 0.08 BAC law, rendering the State eligible for an incentive grant under Section 163. Thereafter, the State submitted the required program plan to NHTSA's Region VII offices indicating its proposed use for the Section 163 incentive grant funds. According to the language in Iowa's Section 163 incentive grant application, the State proposed to use its FY 2003 incentive grant funds (\$1,597,512) to finance a safety belt and impaired driving enforcement project under both 23 U.S.C. 402 (Section 402) and 23 U.S.C. 410 (Section 410). Subsequently, Iowa informed the Region VII office that it intended to obligate its Section 163 incentive grant funds under the Section 402 program only.

Iowa proposes to obligate its FY 2003 Section 163 incentive grant funds to finance a new safety belt and impaired driving enforcement program that would target the forty sites with the greatest impaired driving problems in the State. The enforcement program would redirect fourteen field troopers toward 100 percent safety belt and impaired driving enforcement activities. These activities would be conducted at identified high-risk locales and defined high crash risk areas. In addition to the fourteen full-time field troopers, the enforcement program would supplement its efforts by using directed overtime enforcement with local



police departments and sheriffs' offices and by purchasing additional enforcement equipment such as radars, video cameras, and preliminary breath testers. Iowa estimates that this enforcement program would increase statewide alcohol enforcement activity by at least twenty percent and improve total State safety belt enforcement by at least twelve percent, thereby generating more than 2,500 alcohol contacts and 5,000 safety belt actions.

You have raised concerns about this redirection of enforcement activities because the State plans to use Federal funds to cover salaries that were previously financed through State appropriations. In particular, you questioned whether the agency's long-standing policy against supplanting would prohibit the State from designating its grant funds in this manner. NHTSA defines supplanting as "replacing routine and/or existing State or local expenditures with the use of Federal grant funds and/or using Federal grant funds for costs of activities that constitute general expenses required to carry out the overall responsibilities of State, local, or Federally-recognized Indian tribal governments." See *Highway Safety Grant Funding Policy for Field-Administered Grants*, NHTSA, February 2002. A prohibition against funding general State government expenses also exists in Circular A-87 of the Office of Management and Budget.

Based on our review of this matter, we conclude that, in this instance, Iowa's proposed use of the grant funds would not violate NHTSA's supplanting policy or the OMB circular. Iowa's budgetary constraints may force the State to lay off twenty field troopers. This reduction, however, is minor in comparison to the total number of field troopers employed by the State and, in our view, falls within reasonably expected fluctuations in State staffing levels for troopers. More importantly, the activities normally conducted by the Iowa State Patrol are different than the activities proposed under Iowa's new safety belt and impaired driving enforcement project. Under the proposed program, field troopers would devote 100 percent of their time to safety belt and impaired driving enforcement initiatives. Currently, Iowa estimates that field troopers are able to allocate about 25 percent of their time to such enforcement activities. Accordingly, this office is satisfied that Iowa's potential reduction in troopers and the proposed safety belt and impaired driving enforcement project do not involve a shifting of funds to cover the general expenses of the State. Thus, we see no legal impediment to Iowa's proposed designation of Section 163 grant funds under Section 402.

Before concluding, we wish to point out that future reductions in field trooper staffing levels, or any other State functions related to traffic safety, could have the unintended consequence of decreasing the State's overall level of spending on traffic safety programs. Iowa should note that such a decrease could threaten its eligibility for continued funding under other highway safety grant programs (e.g., Section 405, Section 410) that require a State to maintain a minimum level of aggregate spending on traffic safety programs.

If you have any questions or need additional assistance regarding this matter, please feel free to contact me at 6-1834.

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Run Date: 10/08/2003
Run Time: 18:41:28

FEDERAL HIGHWAY
U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
FEDERAL-AID PROJECT AGREEMENT

Report: FMISD05A
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STATE: IOWA

PROJECT NO: BAC3(001)

STATE PROJ. NO: 2500BAC3001

THE STATE, THROUGH ITS HIGHWAY AGENCY, HAVING COMPLIED, OR HEREBY AGREEING TO COMPLY, WITH THE APPLICABLE TERMS AND CONDITIONS SET FORTH IN (1) TITLE 23, U.S. CODE, HIGHWAYS, (2) THE REGULATIONS ISSUED PURSUANT THERETO AND (3) THE POLICIES AND PROCEDURES PROMULGATED BY THE FEDERAL HIGHWAY ADMINISTRATION RELATIVE TO THE ABOVE DESIGNATED PROJECT, AND THE FEDERAL HIGHWAY ADMINISTRATION HAVING AUTHORIZED CERTAIN WORK TO PROCEED AS EVIDENCED BY THE DATE ENTERED OPPOSITE THE SPECIFIC ITEM OF WORK, FEDERAL FUNDS ARE OBLIGATED FOR THE PROJECT NOT TO EXCEED THE AMOUNT SHOWN HEREIN. THE BALANCE OF THE ESTIMATED TOTAL COST BEING AN OBLIGATION OF THE STATE. SUCH OBLIGATION OF FEDERAL FUNDS EXTENDS ONLY TO PROJECT COSTS INCURRED BY THE STATE AFTER THE FEDERAL HIGHWAY ADMINISTRATION AUTHORIZATION TO PROCEED WITH THE PROJECT INVOLVING SUCH COSTS. THE STATE AGREES THAT AS A CONDITION OF THE FEDERAL FUNDS OBLIGATED, IT ACCEPTS AND WILL COMPLY WITH THE AGREEMENT PROVISIONS SET FORTH IN 23 CFR 630.112; AND ITS SIGNATURE CONSTITUTES THE MAKING OF THE CERTIFICATIONS.

PROJECT DESCRIPTION: Section 163, Safety Incentives To Prevent Operation Of Motor Vehicles By Intoxicated Persons (0.08 BAC)

CLASSIFICATION OF PHASE OF WORK
TO BE PUT UNDER AGREEMENT

EFFECTIVE DATE
OF AUTHORIZATION

HIGHWAY PLANNING & RESEARCH
PRELIMINARY ENGINEERING
RIGHT-OF-WAY
CONSTRUCTION
MCSAP
OTHER

09/22/2003

PROGRAM CODE	URBAN/ WITH	TOTAL COST	FEDERAL SHARE	FEDERAL FUNDS UNDER AGREEMENT	ADVANCED CONST. FUNDS
QNH0		\$1,418,056.00	100.00%	\$1,418,056.00	\$0.00
TOTAL		\$1,418,056.00		\$1,418,056.00	

ESTIMATED TOTAL COST: \$1,418,056.00
TOTAL AUTHORIZED FOR PROJECT: \$1,418,056.00

IOWA DEPARTMENT OF TRANSPORTATION

AVAILABLE FUNDS CERTIFIED BY:	JOHN W. SMITH	DATE:	09/22/2003
APPROVED AND AUTHORIZED BY:	JOHN W. SMITH	DATE:	09/22/2003
AGRM7/MODIFY REQUESTED BY:	JOHN W. SMITH	DATE:	09/22/2003

FEDERAL HIGHWAY ADMINISTRATION

PROJECT INFORMATION REVIEWED BY:	JERRY L. ROCHE	DATE:	08/22/2003
APPROVAL RECOMMENDED BY:	JERRY L. ROCHE	DATE:	08/22/2003
APPROVED AND AUTHORIZED BY:	MAX G. GROGG	DATE:	09/22/2003

STATE REMARKS: Project No. ITS-BAC3(1)-25-00

DIVISION REMARKS: These funds will go to the Iowa Governor's Traffic Safety Bureau for alcohol enforcement initiatives and will be administered in cooperation with NHTSA. Recommended for approval by Jerry Roche on 08/22/2003.

The Governor's Traffic Safety Bureau (GTSB) reports that of the \$1,418,056, \$777,000 will be transferred to the Department of Public Safety and \$641,056 will be passed through to local law enforcement.