



OFFICE OF THE
GENERAL COUNSEL

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20201

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MEMORANDUM

TO: Mr. Robert Owen
Special Assistant to the Attorney
General, Department of Justice

FROM: Marilyn G. Rose, Office of General
Counsel, D/HEW *MGRose*

SUBJECT: Columbus Branch of NAACP, et. al. v. James S. Rhodes, et. al.
Civil Action No. 67-53 (DCSD-Ohio)

On February 25, 1965, the Ohio State University filed an application for a construction grant under the Health Professions Educational Assistance Act of 1963 (P.L. 88-129; 42 U.S.C. 293) with the Division of Research Grants, Public Health Service. The application is known on the records of the Public Health Service as Number 1J02-84-00136-01.

The application as revised, a copy of which is attached hereto and marked Appendix A, was presented for approval to the National Advisory Council on Education for Health Professions, Public Health Service, on April 30, 1965. The application provides, inter alia, an assurance of compliance with Presidential Executive Orders 11114 and 10925 with respect to non-discrimination in employment on said construction project. Said Executive Orders were superseded by Executive Order 11246.

By letter dated July 22, 1965, a copy of which is attached hereto and marked Appendix B, the applicant was informed that the application was approved by the Council.

By letter dated January 27, 1966, a copy of which is attached hereto and marked Appendix C, the applicant was informed that the grant was made, inter alia to compliance with Title VI of the Civil Rights Act of 1964. A copy of HEW Form 441 containing an assurance of compliance with said Act is attached hereto and marked Appendix D.

In February 1966, the applicant requested from and was given by Public Health Service an extension of time until December 1966 to obtain bids on and award the construction contracts. In November 1966, the applicant requested and was given another extension until March 1, 1967. The applicant was subsequently given another extension until April 1, 1967.

On February 24, 1967, the Division of Hospital and Medical Facilities, Region V, Public Health Service, located in Chicago, Illinois, was informed, by a hand-delivered copy of a Statement of Resolution that the Board of Trustees of Ohio State University, had awarded the contract to the lowest bidder and that the Board of Trustees had effected said award by vote on February 23 and 24, 1967.

Upon information and belief, the bidders have been informed of the acceptance of their bids in writing and have executed their portion of and returned to Ohio State University the construction contracts.

On February 27, 1967, the Plaintiffs filed the instant action. On that same date a telegram was sent to Defendant John Gardner, Secretary, U. S. Department of Health, Education, and Welfare, charging that the contractors and craft unions do not provide equal employment opportunity for Negroes on the project to be constructed under this grant and informing him that the instant proceeding was being instituted. A copy of that telegram is attached hereto and marked Appendix E.

✓ On March 3, 1967, in response to that telegram, Harold T. Hunton, Department Deputy Contracts Compliance Officer, Office of the Secretary, Office of Civil Rights, sent a telegram to the Office of the Governor, State of Ohio, Commissioner, State Department of Public Works for Ohio, and the Ohio State University, urging that the State of Ohio not execute the construction contracts until general and principal contractors have submitted in writing and the U. S. Department of Health, Education and Welfare had approved affirmative action plans for equal employment opportunity as required by Executive Order 11246. The telegram also informed the addressees that execution without compliance may imperil availability of grant funds and that further information would be conveyed at the pre-award conference scheduled for Monday, March 6, 1967, at the Ohio State University. A copy of that telegram is attached hereto and marked as Appendix F.

✓ On March 6, 1967, Mr. Ted Sennett, Civil Rights Representative, Region V, U. S. Department of Health, Education and Welfare, explained to officials of the Ohio State University, the Government of Ohio, and the contractors, the guidelines for an affirmative action program. A copy of the guidelines is attached hereto and marked as Appendix G.

Subsequent to that conference, a letter has been sent to the Ohio State University incorporating the understanding of the officials representing the U. S. Department of Health, Education, and Welfare, to the effect that final Department approval for the construction grant is contingent upon receipt from the five prime contractors of a detailed workable plan for affirmative action and that the University will defer signing of the contract until this condition has been met on behalf of the five prime contractors. A copy of that letter is attached hereto and marked Appendix II.

Pursuant to the Regulations of the Department of Health, Education, and Welfare which pertain to this program (42 CFR, Part 57.108), funds are payable in five installments as follows:

- 25% payable at the completion of 25% of the project;
- 25% payable at the completion of 50% of the project;
- 25% payable at the completion of 75% of the project;
- 20% payable at the completion of 90% of the project;
- 5% payable at the completion of the project.

If the project would begin as scheduled, 25% of the project will be completed approximately in August or September 1967.