

STATE OF TENNESSEE

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Opinion No. 04-130

Tennessee Health Services and Development Agency — Applicability of Title VI of the Civil Rights Act of 1964

QUESTIONS

1. Whether the Tennessee Health Services and Development Agency (HSDA) is a program or activity receiving federal financial assistance within the meaning of Title VI of the Civil Rights Act of 1964.
2. What actions should the HSDA take to ensure compliance with Title VI?

OPINIONS

1. Because the HSDA does not receive federal funds directly or indirectly, the HSDA is not a program or activity receiving federal financial assistance within the meaning of Title VI of the Civil Rights Act of 1964.
2. Compliance with Title VI is not required under the circumstances given.

ANALYSIS

You provided information on the Tennessee Health Services and Development Agency's (HSDA) funding. HSDA administers the certificate of need (CON) process under Tenn. Code Ann. §§ 68-11-1601, *et seq.* (The Tennessee Health Services and Planning Act of 2002). A CON is a permit for the establishment or modification of a health care institution, facility or service, purchase of major medical equipment, or establishment of certain services at a designated location. The CON program assures that health care projects are accomplished in an orderly, economical manner, consistent with the development of adequate and effective healthcare for the people of Tennessee. These duties were previously performed by the Tennessee Health Facilities Commission. The HSDA is funded by CON application fees and charges for other miscellaneous services related to the CON process. HSDA states that it does not receive any federal financial assistance. The Comptroller

agrees that HDSA receives no direct federal financial aid. *See* Performance Audit of Health Services and Development Agency and State Health Planning and Advisory Board, May 2004, page 26.¹

In his recent performance audit report of the HSDA, the Comptroller seems to suggest that the HSDA could be covered by Title VI and should be complying with that law. The Comptroller states in the May 2004 report at page 26 (Appendix “Title VI Information”) as follows:

The Health Services and Development Agency does not receive any direct federal financial assistance. However, the agency is responsible for regulating the health-care industry through the certificate of need program and receives fees from health-care institutions applying for certificates of need. Those health-care institutions may be the recipients of federal financial assistance.

The agency . . . [does] not report to any federal agency concerning Title VI and [has] not prepared a Title VI plan. (The agency has, however, prepared Affirmative Action plans.) According to the agency’s General Counsel, [this] entity has [not] received any Title VI complaints.² If the agency . . . did receive a complaint, the General Counsel would handle the complaint process.

The Civil Rights Act of 1964 was enacted to prohibit race discrimination and applies in all programs receiving federal funds. *See Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 286 (1998). Title VI, 42 U.S.C. § 2000d , reads as follows:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Title VI is a much-litigated federal statute. We focus in this opinion on the concept of “receiving Federal financial assistance.” The question is whether HDSA falls under Title VI, *i.e.*, “receives federal financial assistance,” when it receives no direct federal aid but regulates entities which may receive federal aid and uses fees paid by these entities to fund the agency. We believe this connection too remote to constitute receipt of federal funds sufficient to place the HDSA under Title VI.

¹ <http://www.comptroller.state.tn.us/sa/reports/pa04026.pdf>.

² Because the Comptroller’s report covered both the HSDA and another entity, this sentence originally read as follows: “According to the agency’s General Counsel, neither entity has received any Title VI complaints.”

The United States Supreme Court has addressed the issue of indirect federal financial aid. In *Grove City Coll. v. Bell*, 465 U.S. 555, 563-70 (1984), the Supreme Court held that a college receives federal financial assistance when it enrolls students who receive federal funds earmarked for educational expenses. The Court found “no hint” that Title IX (modeled on Title VI) distinguishes “between direct institutional assistance and aid received by a school through its students.” *Id.* at 564.

In *U.S. Dep’t of Transp. v. Paralyzed Veterans of America*, 477 U.S. 597, 608 (1986), the Supreme Court held that “airlines are not recipients of federal funds received by airport operators for airport construction projects, even when the funds are used for projects especially beneficial to the airlines.” In a more recent case, the Supreme Court decided that the National Collegiate Athletic Association (NCAA) is not subject to Title IX requirements on the ground it receives dues from its members which receive federal financial assistance. *NCAA v. Smith*, 525 U.S. 459, 462 (1999).

Under the circumstances described, we believe the HDSA’s situation is similar to the cases cited above, but the connection between the HDSA and any federal financial situation is even more remote than in those cases. From the Comptroller’s report, we know that not only does HDSA not receive federal funds but also that there is no information which indicates any indirect receipt of such funds. For these reasons, we conclude that HDSA is not subject to Title VI.

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