

DEPARTMENTAL GRANT APPEALS BOARD

The Department of Health, Education, and Welfare

SUBJECT: Wayne State University                      DATE: December 12, 1975  
Detroit, Michigan  
Docket No. 21  
Grant Nos. AM-05384-09 and -10  
                    GM-11520-07  
                    NB-07519-03  
Decision No. 12

DECISION

Wayne State University has received many Federal grants, including many research and training grants from the National Institutes of Health (NIH). The grants now in question are grants numbers AM-05384-09 and 10, GM-11520-07 and NB-07519-03. These were research grants which have been well performed and renewed several times and have been highly productive. To perform the research the University gathered a competent staff of associates and assistants, including several holding doctorates and several well qualified pre-doctoral students.

Compensation for the staff members was clearly a proper expense of the research grants. The difficulty arises because the grantee referred to the compensation arrangement as research fellowships and to the payments as stipends. NIH disallowed payments amounting to \$49,148 on these grants.

DISCUSSION

The distinction between training (at high levels) and research is hard to draw. Since separate funds are authorized for the two purposes, efforts have appropriately been made on a government-wide basis, for example in GMB Circular A-21, SJ and in PHS Grants for Research Projects Policy Statement (as revised July 1, 1967, page 27), to avoid additional blurring of this line. These rules could be stated, however, with greater clarity and applied with more emphasis on underlying reality.

The University's treatment of the matter unfortunately contributed to confusion. In an apparent effort to obtain tax exemption for its payments to researchers, it called the

payments fellowship stipends, excluded them from its regular payroll, used office forms that were ordinarily not used for employment compensation, with legends denying the employee relationship and there are instances where similar confusions occurred without justifications offered in this case.

NIH Financial Advisory Services Board correctly noted (Letter dated April 23, 1974, Appeal Attachment #1, p.3) that "the question has always been whether the intent of the questioned payments was primarily for work or training." We conclude that the intent was primarily for work.

In its response to the appeal the agency noted: "It is quite obvious that the individuals' whose employment is being questioned did perform extensive, detailed and highly skilled services for the grantee institution which then was reimbursed for its services from National Institutes of Health grant funds. In short, the individuals did perform a service for the grants involved." In a later filing it is true the agency sought to qualify this concession but the original statement seems to us plainly correct and the later qualification forensically motivated.

Several of the researchers held doctorates and were not candidates for further degrees. They were employed on understandings which reflected that their compensation was subject to increase depending on the value of their contribution.

Pre-doctoral researchers were offered fellowships with lower compensations. Letters to these reflect the importance of the researcher's credentials and stress the contributions to be made.

There was no attempt to disguise what was being done. The University's purpose was adequately expressed. Several reports of expenditures flagged the payment of stipends and in at least one case, an award now in question was expressly made after consideration of the prior ROE (AM-05384-10).

Defense Contract Audit Agency reported on grantee's accounting records and financial operating procedures for the year ending June 30, 1969. This is the year preceeding the year in which the disallowances occurred. The auditors concluded that:

"...c. In our opinion, grantee's policies and procedures for recording and reporting costs of performing DHEW research and training grants are proper and adequate.

d. Grantee's management practices affecting the reasonableness of grant costs are considered to be generally adequate.

e. Grantee's financial statements fairly represent costs incurred in grant performance..."

The next year, for which the disallowance occurred, involved no substantive change in the arrangements with researchers.

The University's intent in this matter was fully explained to NIH in connection with another grant not involved here, National Cancer Institute Grant CA 03772, involving a roughly parallel problem. The principal investigator there is also principal investigator under one of the grants now appealed. After discussion, the grantee was specifically advised: "Since the students 'employed' on grant CA 03772 are performing work which contributes to the research and since the services they are performing are required of all candidates for the Ph.D. degree in Chemistry, the tax free salaries paid these students are legitimately chargeable to the grant" and "Since the students being paid from this grant are receiving remuneration for services rendered, these expenditures are allowable charges against this grant." (Attachments 29, 34 of the appeal). This action was taken in part by Thomas Reynolds, then in Extramural Activities, National Cancer Institute, National Institutes of Health, and now Executive Secretary of the Board. The Board is aware of Mr. Reynolds' participation in this related matter, and as a matter of caution special care has been taken in this case to exclude him from the decisional process (see preamble to the Board's Charter 40 FR 33936, column 2).

The agency disallowance is based primarily on a reading of OMB Circular A-21 and the PHS Policy Statement for Grants for Research Projects (revised July 1, 1967) and incidentally on a reading of IRS Code §117, all of which seems to us misplaced. The PHS Policy Statement, for example, forbids stipends for fellows and trainees and states that such stipends are "Not allowable when the purpose of the payment is for training." This rule negatively makes clear that stipends if otherwise allowable may be paid when the purpose of the payment is not for training but for research, as is the case here.

Similarly the program relies on inferences from the wording of §117(b) of the IRS Code, but this subsection deals with qualifications to §117(a). §117(a) provides that gross income does not include any amount received as a scholarship at an educational institution or as a fellowship grant. Under the terms of §117(b), even if it were proper basis for the characterization of the relationship for grant purposes, the facts of this case take it out of the 117(b) limitation and leaves 117(a) applicable, which is the University's position.

DECISION

Under the circumstances of the case, which include lack of concealment from the program, prior audits without adverse comment, express approval of the University's treatment of the matter in one instance which was reasonably construed as a general approval, and the basic fact that the intent of the payments was to support the high quality research that was being done, rather than to supply student training assistance, the intent of the OMB and PHS rules against stipends was not violated. The appeal is sustained.

The University is cautioned, however, that for the future its records should be kept in such manner as to minimize the confusion it has created here.

We also wish to note that the University's appeal papers include, in addition to much relevant material, over 1000 pages of material of at best a remote evidentiary bearing. This sort of presentation impedes rather than facilitates the effort of the Board to supply prompt consideration of grant appeals. The Board's charter calls for presentation of a full statement and the pertinent facts, but does not call for indiscriminating poundage.

/s/ Bernice L. Bernstein

/s/ David V. Dukes

/s/ Malcolm S. Mason Panel Chair