



U. S. Department of Justice

Office of Legal Counsel

Office of the
Assistant Attorney General

Washington, D.C. 20530

October 19, 1993

Robert G. Damus
Acting General Counsel
Executive Office of the President
Office of Management and Budget
Washington, D.C. 20003

Dear Mr. Damus:

The Attorney General has opined that under the Antideficiency Act an agency whose appropriations have lapsed must cease operations until Congress authorizes further funding. In particular, an affected agency may not incur pay obligations to its employees except such obligations as are necessary to bring about an orderly termination of the agency's functions, are otherwise authorized by law, or are necessary to protect life and property in an emergency. See "Applicability of the Antideficiency Act Upon A Lapse in an Agency's Appropriation," 4A Op. O.L.C. 16 (1980); "Authority for the Continuance of Government Functions During a Temporary Lapse in Appropriations," 5 Op. O.L.C. 1 (1981) (1981 Opinion).

We believe that these opinions were correct when written and remain so today. Their general import, as summarized by the General Accounting Office, is that the Antideficiency Act requires an agency experiencing a lapse of appropriations "to lock up and go home," albeit with the important possible exceptions described in the 1981 Opinion. See General Accounting Office, Principles of Federal Appropriations Law 6-94 (2d ed. 1991). The 1990 amendment of 31 U.S.C. § 1342 does not detract from the Attorney General's earlier analyses; if anything, the amendment clarified that the Antideficiency Act's exception for emergencies is narrow and must be applied only when a threat to life or property is imminent.

Please let us know if we may be of further assistance.

Sincerely,

Walter Dellinger
Assistant Attorney General