

## MEMORANDUM

To: T. Jeremy Gunn  
From: Dennis J. Quinn  
Date: May 31, 1995

**Re: Agency Compliance with the JFK Act**

---

At your request, I have attempted to research legal options available to the Board in the event Federal Agencies fail to comply with pertinent provisions of the JFK Act.

I spent several hours at the DOJ library, but I found little black letter law relating to how agencies resolve disputes among themselves. I also spoke to several government attorneys<sup>1</sup> who deal with these issues. They were very helpful, but all agreed there was not much out there on the topic. They all also promised to get back to me if they found anything that might be useful.

### I. Powers

Section 7(j) of the JFK Act grants the Review Board certain specific powers, including the authority to:

(A) direct Government offices to complete identification aids and organize assassination records;

(C)(ii) direct a Government office to make available to the Review Board, and if necessary investigate the facts surrounding, additional information, records, or testimony from individuals, which the Review Board has reason to believe is required to fulfill its function and responsibilities under this Act.

### II. Enforcement

The statutory language cited above presents a broad allocation of power of one agency over

---

<sup>1</sup> These attorneys include: Steven Katz, Senior Counsel, Merit Systems Protection Board; Gary Edles, General Counsel, Administrative Conference of the U.S.; Nick Inzeo, Deputy Legal Counsel, EEOC; Brian Dettelbach, Minority Counsel, Senate Committee on Governmental Affairs.

other agencies. Unfortunately, there is no corresponding enforcement provisions in the JFK Act.

Normally, agencies will use the Federal Courts to enforce their administrative orders, subpoenas, etc. But most agencies regulate private businesses or individuals, not other Federal Agencies. In the normal course of events, agencies do not sue other agencies. There are two practical reasons for this:

**A. DOJ Representation** -- Unless otherwise authorized by statute, the control of all litigation to which the United States, an agency or officer thereof is a party, is reserved to the Department of Justice, under the direction of the Attorney General. 28 U.S.C. Sec 516.<sup>2</sup> Clearly, DOJ will not be able to represent two agencies involved in litigation against each other.

**B. Executive Branch** -- All executive branch agencies<sup>3</sup>, being part of the same branch of government, report to one Chief Executive, namely, the President. Theoretically, they should be able to resolve their differences without resort to the courts. All the lawyers I spoke to stessed this concept.

This is not to say that agencies do not have disputes, or that they never get the courts involved. Agencies can sue other agencies, but **only** if they have specific statutory authority to do so. I am told that such authority is limited, and as a practical matter these agencies tend to settle such disputes without litigation. Most of the lawyers I spoke with were not familiar with examples of one agency actually suing another. Examples of agencies that have some sort of authority over other agencies include EEOC, Merit Systems Protection Board, and OMB. Once again, the JFK Act provides no such authority to the Review Board.

---

<sup>2</sup> Some independent regulatory agencies, such as the Interstate Commerce Commission, have statutory authority to initiate and maintain litigation in its own name, without participation of the Attorney General. The JFK Act has no such provision.

<sup>3</sup> There are "Independent Establishments" that exist just outside the executive branch. While the Review Board is an independent agency, it is still part of the executive branch. See, Senate Report 102-328 at p.19.