NAS:RKB:EFL

cc: Mr. Schlei
Mrs. Copeland
Mr. Berg
Files

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Honorable Dowell H. Anders
General Counsel
Bureau of Public Roads
1717 H Street
Washington, D. C.

out 9-16-64

Dear Mr. Anders:

In connection with its preparation of regulations to be issued under Title VI of the Civil Rights Act of 1964, your staff has asked us whether it would be appropriate to protect from discrimination on account of race, color or national origin the contractors and subcontractors on Federal-aid highway projects and those who seek to obtain such contracts and subcontracts.

Whether or not a class of persons is within the ambit of protection of Title VI depends on the extent to which discrimination with respect to such persons would hamper the achievement of one or more of the purposes of the assistance program involved. We would hesitate to conclude that as a general rule persons who obtain or seek to obtain procurement-type contracts from recipients of Federal financial assistance are within the category of participants in or beneficiaries of a Federal assistance program within the meaning of section 601 of the Act, even though such contracts are financed with funds obtained from the Federal Government. However, in the case of the Federal-aid highway system Congress has specifically expressed an interest in the procurement practices of the States receiving Federal aid. Thus, 23 U.S.C. 112 requires that the States let their highway construction contracts by competitive bidding unless some other method is approved by the Secretary of Commerce. Certainly, one of the purposes of such a requirement is to open participation in the construction program on as broad a basis as possible, and such a purpose is inconsistent

with discrimination in the letting of contracts. Even more significant is 23 U.S.C. 304, which provides:

> "§ 304. Participation by small business enterprises. It is declared to be in the national interest to encourage and develop the actual and potential capacity of small business and to utilize this important segment of our economy to the fullest practicable extent in construction of the Federal-aid highway systems, including the Interstate System. In order to carry out that intent and encourage full and free competition, the Secretary should assist, insofar as feasible, small business enterprises in obtaining contracts in connection with the prosecution of the highway program."

Here we find both a recognition by Congress that the contracts generated by the highway program are a benefit to the contractors and subcontractors who obtain them and a concern by Congress that these benefits be fairly apportioned. On the basis of the above considerations we do not hesitate to conclude that discrimination on account of race, color, or national origin in the letting of contracts and subcontracts under the Federal-aid highway program is an appropriate subject for regulation under Title VI of the Civil Rights Act.

Sincerely yours,

Norbert A. Schlei
Assistant Attorney General
Office of Legal Counsel