



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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Dear Mr. Terry:

In accordance with your letters of April 2 and May 6, 1971, and discussions with you, the General Accounting Office inquired into the involvement of the Office of Education, Department of Health, Education, and Welfare (HEW), in the development of an information system called the College Suggestor.

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The College Suggestor is an information retrieval system for use by students and guidance counselors to quickly locate the names of colleges and universities having characteristics which the student believes are important in his selection of a college to attend. The characteristics in the system include curriculum, tuition, location, and student enrollment.

BACKGROUND

The College Suggestor was developed by Northwestern University, Evanston, Illinois, during the period July 1965 through March 1969 and was financed with funds provided by the Office of Education under contracts covering two separate phases of its development. The first phase, which began July 1, 1965, dealt with the development of a prototype, and the second phase, which began May 1, 1967, was for an evaluation of the prototype. The amount of the contract for the first phase was \$55,077 and for the second phase \$48,053. To accomplish the second phase, 300 College Suggestors were field tested in five Chicago metropolitan area high schools to determine the importance of the characteristics in the system and its effectiveness as a means for information retrieval.

Early in the 1960's, Chronicle Guidance Publications, Inc. of Moravia, New York, developed and marketed the College View-Deck which is a system that performs the same function as the College Suggestor. When Chronicle learned that the Office of Education was developing the College Suggestor, it requested your predecessor, Representative Samuel Stratton, on January 5, 1966, to inquire into the matter. Chronicle's position was that it could not compete and should not have to compete with a

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B-164031(1)

Government agency and that there was no need for the Office of Education to conduct research in an area that Chronicle had already researched.

HEW informed Representative Stratton that the College Suggestor was being developed to identify and validate the factors important in the college selection process--not to build a device to compete with Chronicle. HEW also stated that the information obtained in connection with the development of the College Suggestor would be made available to the public for use by any interested party, including Chronicle.

Early in 1971, Information Resources Press, a division of Herner and Company, Washington, D.C., published an information system also called the College Suggestor which now competes with the College View-Deck. The following item appeared in the December 18, 1970, issue of "Higher Education and National Affairs" published by the American Council on Education:

"A Washington-based company has announced it has begun marketing 'the college suggestor,' a desk-top device tested by Northwestern University under a research grant from the U.S. Office of Education. The company, Information Resources Press, a division of Herner and company, said the unit, being marketed for \$40, 'is a refinement of the original Northwestern version.'"

On March 25, 1971, during a meeting with representatives of our Office, you expressed concern that the competition may have arisen from ideas which your constituent shared with the Office of Education and that Herner and Company may have obtained an unfair advantage during the development of its system through assistance from past or present employees of the Office of Education. You questioned whether the publication of the College Suggestor by Herner and Company was an infringement of copyrights which Chronicle may have on the College View-Deck.

Our examination into the development of the College Suggestor included a review of the contracts with Northwestern

B-164031(1)

University and pertinent files of the Office of Education except for the contract file which the Office of Education could not locate, discussions with HEW officials, a review of the records of the Copyright Office and the Patent Office, a review of applicable laws and regulations, and a study of the characteristics in each system. We obtained the backgrounds of the officers of Herner and Company from an independent credit-rating agency. We also reviewed the documentation supporting HEW's statement to you that "***no former or present employee of the Office of Education had, or has, any connection with Herner and Company."

OFFICE OF EDUCATION'S INVOLVEMENT

Your letter of April 2, 1971, stated that your constituent had met with representatives of the Office of Education and had described the College View-Deck in depth and that thereafter the Office of Education contracted with Northwestern University which, through the development of the College Suggestor, provided the means for competition. The conference you referred to was held in May 1964.

Although no documentation was available on the College Suggestor's origin, information in the project officer's file indicated that the development of the College Suggestor started at least as far back as December 1963. A letter dated January 11, 1966, from your constituent to Representative Stratton stated that the Office of Education did not become aware of Chronicle's College View-Deck until the system was exhibited at a conference in San Francisco in March 1964.

An Office of Education report dated June 12, 1964, stated that the Office of Education was searching for sources early in 1964 to further develop its College Suggestor and, during this search, learned of Chronicle's system. This report by the Associate Commissioner for Educational Research and Development to the Commissioner of Education stated that the Office of Education considered Chronicle as a potential developer for the College Suggestor but was of the belief

B-164031(1)

that (1) the College View-Deck was too costly and did not have enough college characteristics and (2) an arrangement with a commercial concern was not desirable.

In June 1964 the Office of Education made arrangements to have the Educational Testing Service of Princeton, New Jersey, further develop the College Suggestor with funds available under the Cooperative Research Act (20 U.S.C. 331). Because this act then provided that only colleges, universities, and State educational agencies were eligible for Federal funds for educational research, the Office of Education advised the Educational Testing Service to find and work with a sponsoring university.

The Educational Testing Service selected Northwestern University to develop the College Suggestor. On November 2, 1964, Northwestern submitted a proposal and subsequently became the prime contractor for developing the device. Northwestern employed the Educational Testing Service as a subcontractor for the first-phase work at a cost of \$27,333. Northwestern did not subcontract during the second phase but employed Educational Testing Service's project director as a consultant.

According to an Office of Education official, who was formerly project officer for the College Suggestor project, the Northwestern proposal was the only one submitted and was treated as an unsolicited proposal or one submitted to the Government but not at the request or initiation of the procuring agency. The project officer has told us that such proposals are funded only if merited and that other sources are not asked to submit proposals to develop the idea as described in an unsolicited proposal because the idea is the property of the originator.

In our opinion, Northwestern's proposal should have been treated as a solicited proposal. Documentation in the project officer's file clearly shows that the idea for Northwestern's proposal was being developed by the Office of Education about a year before Northwestern's involvement and that Office

B-164031(1)

of Education officials requested the proposal and furnished guidance to Northwestern during its preparation.

Because the Office of Education requested the proposal and the Federal Procurement Regulations (41 CFR 1-3.101(d)) require competition for solicited procurements whenever possible, we believe that the Office of Education should have requested more than one proposal to ensure the benefit of full and free competition. The manner in which the contract was handled does not, however, provide a legal basis to challenge the right of Herner and Company to publish the College Suggestor.

We cannot comment on whether Federal funds should have been used to develop the College Suggestor because adequate details on the project's justification were not in the project officer's file and because the Office of Education was unable to find the official contract file which may have contained the justification.

RELATIONSHIP BETWEEN OFFICE OF EDUCATION
AND HERNER AND COMPANY

We have located no evidence that past or present employees of the Office of Education assisted or were in any way involved in the development of Herner's College Suggestor. Furthermore, the Office of Education specified from the beginning of its contracts with Northwestern that all information developed with Government funds would be made available for public use. The Office of Education did not depart from this policy, even though urged to do so by Northwestern.

Northwestern furnished the information pertaining to both phases of the development of the College Suggestor to the Office of Education which made the information available to the public on January 27, 1967, and July 30, 1969, respectively. The information included data on the characteristics of the colleges in the College Suggestor system.

Herner and Company had a right to, and apparently did, use a portion of the data that Northwestern developed.

B-164031(1)

Certain aspects of Herner's system, however, differ from the Northwestern-developed College Suggestor. For example, several of the college characteristics in Herner's system are not in Northwestern's system. Also Herner's system includes a larger number of colleges and universities than Northwestern's system.

Another difference between the two systems is their design. The Northwestern system has one deck of 220 8-1/2" x 10-3/4" plastic cards; whereas Herner's system has four decks, each containing 97 IBM-size cardboard cards. These differences tend to support the acknowledgement in the instructional booklet for Herner's College Suggestor that Herner's system evolved out of but departs in several basic aspects from the College Suggestor developed for the Office of Education by Northwestern University.

Herner and Company may have an advantage over others who have used or may use the information developed by Northwestern. An inventor from the Washington, D.C., area was employed by Northwestern as a consultant to assist in Northwestern's development of the College Suggestor. An employee from Herner and Company informed the Office of Education in March 1971 that the inventor had also helped him and that he and the inventor were the only two persons who had worked on developing Herner's system.

Our review of the contract and pertinent laws and regulations revealed no provision which would have prohibited any member of Northwestern's research staff, its subcontractor, or any of its consultants from helping a private company to commercially develop a college suggestor either before or after the time that the information developed with Federal funds was released to the public. HEW's Office of General Counsel informed us that no such legal restrictions existed and that, in the absence of such restrictions, the inventor was free to help Herner and Company develop its College Suggestor.

COPYRIGHT INFRINGEMENT

Copyright infringement is a legal matter that should be decided by the courts; therefore, we believe that it would not be appropriate for us to state an opinion as to whether the marketing of the College Suggestor infringed on any copyright that Chronicle may have on the College View-Deck. The following information, however, may be useful to you and your constituent.

Chronicle may not have adequate copyright protection. It has registered or is in the process of registering copyrights on various revisions of the College View-Deck, but the Copyright Office has no records that the original components of the College View-Deck were registered. An official of the Copyright Office has told us that a copyright on a revised work applies only to the revised material. Also, under the provisions as set forth in the United States Code (17 U.S.C. 13), no action for copyright infringement will be maintained unless copies of the published work are registered in the prescribed manner.

The courts vary regarding what constitutes copyright infringement. Some courts have held that a substantial copying must take place to result in an infringement. Other courts have ruled that the copying need not be word for word but must be so similar as to constitute an unfair use. A copyright does not protect the idea or the art described in the copyrighted material but only the expression of the idea. Anyone may develop and write about the same idea providing he does not substantially copy the copyrighted material.

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B-164031(1)

HEW, the Office of Education, and others mentioned herein have not been given an opportunity to formally comment on the matters discussed in this report.

Sincerely yours,


Acting Comptroller General
of the United States

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The Honorable John H. Terry
House of Representatives