

Judge Says Phillips Illegally Heads Poverty Agency

By JOHN HERBERS

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WASHINGTON, June 11—A Federal judge ruled today that Howard J. Phillips was serving illegally as acting director of the Office of Economic Opportunity and enjoined him from taking further action as head of the agency.

The ruling, by District Judge William B. Jones, was a victory for Congress in its constitutional battle for power with the White House and in its efforts to save antipoverty programs that the Nixon Administration has decided to scuttle.

Four Senators filed suit March 14 seeking the removal of Mr. Phillips on grounds that he was serving illegally in the absence of confirmation by the Senate.

President Nixon named Mr. Phillips acting director Jan. 30 but never submitted his name to the Senate for confirmation as director. The President planned to disband the agency by July 1, spinning off some of the O.E.O. programs to other departments and phasing out others.

A spokesman for Mr. Phillips said he would have no comment on the ruling until Government attorneys had a chance to study the opinion.

Appointment Held Invalid

The O.E.O. was created by legislation in 1964 as the main agency for carrying out President Johnson's "war on poverty." The law requires that the director, his deputy and five assistant directors be appointed by the President and confirmed by the Senate. There is no provision for an acting director to serve without Senate confirmation.

"The failure of the Congress to provide legislation for an acting director must be regarded as intentional," Judge Jones wrote. "The court holds that in the absence of such legislation or legislation vesting a temporary power of appointment in the President, the constitutional process of nomination and confirmation must be followed.

"Therefore," he continued, "the court finds that the defendant Phillips was not appointed lawfully to his post as acting director of O.F.O. An injunction will issue to restrain him from taking any actions as acting director of O.E.O."

It was not clear whether Mr. Phillips would be barred immediately from serving as head of the agency. The Government could ask for a stay of the order pending appeal of the ruling.

On April 11, Judge Jones, ruling in another suit, enjoined Mr. Phillips from dismantling the agency in the current fiscal year, which ends June 30, when the O. E. O. legislation expires. The Government decided not to appeal that ruling. Congress is considering legislation to renew the agency's programs. Since the April 11 ruling, Mr. Phillips has turned his energies to opposing legislation that would continue the agency.

Dispute Over Authority

The Washington Star-News said today that Mr. Phillips had assigned employees, whose normal job is to review grants to the poor, to writing speeches for the use of conservative members of Congress attacking "the massive inefficiency, waste and bureaucratic nightmare of

the Office of Economic Opportunity."

The poverty agency has provided one of the major testing grounds for the efforts of Congress to restore some of the authority it has lost to the Presidency in recent years. The current O.E.O. law prohibits either transferring or dismantling the programs, yet the Nixon Administration has proceeded with its plan on grounds that it has ample authority under other laws to justify its actions.

As to the director, Government attorneys argued before the court that the President was entitled to keep Mr. Phillips as acting director because the agency was not under the departments, which are subject to Congressional authority, but under the executive office of the President.

Judge Jones indicated in his ruling that he was breaking some new legal ground. He did not accept the arguments of head would come under the law limiting temporary appoint-

ments for department heads and others to 30 days. He constitutional grounds.

"The constitutional provision governing the appointment of Federal officials is clear in its mandate," he said. "Unless Congress has vested the power of appointment of an officer in the President, the courts, or a department head, he may be appointed only with the advice and consent of the Senate, unless that body is in recess."

Interpreting this provision has arisen," he added, "there are several sources which favor that interpretation."

Senators who initiated the suit were Harrison A. Williams Jr. of New Jersey, chairman of the Senate Labor and Public Welfare Committee, which handles O.E.O. legislation; Claiborne Pell of Rhode Island, Walter F. Mondale of Minnesota and William D. Hathaway of Maine, all Democrats.