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OEO Chief's Tenure Ruled Illegal

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Acting Office of Economic Opportunity Director Howard J. Phillips has been holding that job "unlawfully and illegally" since his appointment by President Nixon four and one-half months ago, a federal judge ruled here yesterday.

U.S. District Judge William B. Jones, who ordered in April that the Nixon administration halt the dismemberment of the OEO, went on to block Phillips from taking any further actions as acting head of the OEO.

Yesterday's ruling did not indicate what its effect would be on previous actions by Phil-

lips, but persons familiar with the case said it left the way clear for further suits to be filed against any regulations he has already issued.

An OEO spokesman said last night that the agency had not yet seen a copy of Judge Jones' opinion and therefore had no comment.

The ruling came in a suit filed by four senators asking that Phillips be removed from office because he has not been appointed permanent director by the President or confirmed by the Senate. Three of the four senators who could be reached last night expressed elation at the result.

Judge Jones ruled that the President's power concerning

interim appointments, "if it exists at all, exists only in emergency situations.

"No claim has been made that the appointment of Phillips was necessitated by any emergency situation and the court finds that there was none," Judge Jones ruled.

Phillips was named by President Nixon to supervise the dismantling of the antipoverty agency in January. At that time, the President told Congress in a budget message that he was requesting no additional funding of OEO.

Since taking office, Phillips had taken money that Congress appropriated to continue

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HOWARD PHILLIPS
... actions blocked

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antipoverty programs and used it instead to begin dismantling the program, actions that were ruled illegal by Judge Jones in his April decision.

The senators who brought the suit — Harrison A. Williams Jr. (D-N.J.), Clairborne Pell (D-R.I.), Walter F. Mondale (D-Minn.) and William D. Hathaway (D-Maine) — are members of the Senate Labor and Public Welfare Committee, which would have the authority to approve or deny Phillips' permanent appointment to the OEO post.

However, he was never nominated for former director Philip Sanchez.

"No provision is made anywhere in the Economic Opportunity Act of 1964 . . . for the appointment of an Acting Director," the judge ruled.

Government attorneys argued that the President has the right to appoint U.S. officials without Senate confirmation, based on constitutional language that he should "take care that the laws be faithfully executed."

A presidential power to appoint officers temporarily in the face of statutes requiring their appointment to be confirmed by the Senate . . . would avoid the nomination and confirmation process of officials in its entirety," the judge said.

He noted that Congress has provided a detailed ordering of authority in the event of a vacancy, "and thus must it be presumed to know how to provide for that contingency," he continued. "Thus the failure of the Congress to provide legislation for an Acting Director must be regarded as intentional."

Government attorneys could not be reached last night concerning the possibility of an appeal.