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B-121836 April 22, 1955

Number: B-121836

Date: 1955-04-22

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Honorable Harold E. Stassen Director, Foreign Operations Administration

Dear Mr. Stassen:

Reference is made to letter of September 9, 1954, from the Controller, Foreign Operations Administration, addressed to Mr. George H. Staples, Assistant Director of our Division of Audits, in reply to his letter dated August 3, 1954, questioning the legal propriety of the disposition of $2.9 million recovered from the Government of Austria because of the improper diversion of commodities furnished to that country.

The commodities which had been shipped to Austria were charged and paid by the Foreign Operations Administration during the fiscal year 1953 from the appropriation "118/31041 Economic and Technical Assistance, Europe, Title 1, Mutual Security Act, Executive, April 4, 1948-1053: contained in the Supplemental Appropriation Act, 1953, 66 Stat. 652. The amount of $2.9 million, representing the cost of the diverted commodities, was repaid to FOA during the fiscal year 1954. Instead of depositing the collection to the credit of the appropriation originally charged, inasmuch as the diversion of the commodities by Austria was contrary to the purposes for which the appropriation was made and resulted in improper depletion thereof (23 Comp. Gen. 652; 24 id. 847, it was credited to the related 1954 appropriation and allocated to approved programs in other European areas. In justification of such action the letter of September 9 states:

"The remaining $2.9 million pertained to the FOA- financed cost of the tonnage actually diverted from Austria. The decision not to reprogram these funds to Austria was made in consideration of the circumstances of the diversion and the fact that there was not then an urgent need for the funds in the Austrian program, while the funds were urgently required to carry out approved programs in other areas.

"The Congressional authority to reprogram deobligations, whether from current or prior year's funds, was clearly stated in the Mutual Security legislation. Public Law 218 specifically provided that fiscal year 1953 obligation 'deobligated thereafter for any reason' became 'available for reobligation for the purposes of this Act during the current fiscal year.' Moreover, as you know, the Congress does not appropriate funds for specific countries. Although the question has been considered, the preferability of funds being appropriated on an area basis is well established."

The Mutual Security Appropriation Act, 1954, 67 Stat. 478, made a specific appropriation of $220,000,00 for "Mutual defense financing, defense support, economic and technical assistance, Europe." In addition, there was reappropriated, for certain uses and in specific amounts, not to exceed $115,706,906 of the unobligated balances of prior related appropriations. The appropriation act at 67 Stat. 479, further provided as follows:

"In addition to amounts otherwise mad available herein, such amounts of 1953 funds as were obligated prior to June 30, 1953, and deobligated thereafter for any reason, shall be available for reobligation for the purposes of this Act during the current fiscal year."

By the terms of the quoted appropriation provision your Administration was authorized to deobligate and reobligate during the fiscal year 1954 "amounts of 1953 funds as were obligated prior to June 30, 1953." The collection in question while made during 1954 was on account of a 1953 transaction which had been obligated and reduced to an expenditure prior to June 30, 1953. The term "obligation" when used in connection with appropriation language has a clear and definite meaning which may not be enlarged upon to funds not comprehended by such a term. Since the authority granted to your administration expressly related to the deobligation of obligations-- as distinguished from expenditures-- and since the transaction in question was not administratively recorded as an unliquidated obligation on June 30, 1953, it appears that, as to such transaction, there properly was nothing to deobligate. Moreover, the mere fact that a collection was effected on account of an expenditure affords no basis for the view that the Congress intended by implication to make such collections available also for reobligation purposes.

As indicative of the congressional intent in this matter, the legislative history of the appropriation provision shows that it was introduced on the floor of the House by Representative Taber while the conference report of the Mutual Security appropriation Bill for the fiscal year 19i54 was under consideration. Se page 10928, Congressional Record-House, 83d Congress, dated July 31, 1953. It was introduced and enacted in lieu of the previous Senate amendment with which the House disagreed and which would have continued the congressional practice of continuing the availability of the entire unexpended balances of prior FOA appropriations during the current fiscal year then under consideration. Thus, it seems clear that this provision was intended to limit or restrict the unexpended balance of "118/31041" and carried to "unavailable surplus" as was done with the balance of unobligated 1953 funds, which latter were not reappropriated by the Congress. In view of the use made of such collection during the fiscal year 1954 for approved programs in other areas within Europe, land having regard for the fact that other funds were made available for such purposes during the fiscal year 1954 by the Mutual Security Appropriation Act, 1954, appropriate adjustment of the matter should be effected. It is requested, therefore, that administrative action be promptly taken to transfer $2.9 million of the unobligated balances of the 1954 appropriation to the appropriation "118/31041" and carried to unavailable surplus.

A copy of this letter is being furnished the Secretary of the Treasury for his information.

Sincerely yours,

JOSEPH CAMBELL Comptroller General of the United States