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B-125404, Aug. 31, 1956

Number: B-125404

Date: 1956-08-31

B-125404, AUG. 31, 1956

TO HONORABLE ROBERT E. MCLAUGHLIN, PRESIDENT, BOARD OF COMMISSIONERS OF THE DISTRICT OF OLUMBIA:

REFERENCE IS MADE TO LETTER OF AUGUST 2, 1956, FROM THE ACTING PRESIDENT OF THE BOARD OF COMMISSIONERS, CONCERNING THE PRESENT AVAILABILITY OF FUNDS FOR THE CONSTRUCTION OF A PROPOSED BRIDGE ACROSS THE POTOMAC RIVER IN THE VICINITY OF CONSTITUTION AVENUE AT A LOCATION OTHER THAN THAT PRESCRIBED IN THE ACT AUTHORIZING THE CONSTRUCTION OF THE BRIDGE.

TITLE I OF PUBLIC LAW 704, 83D CONGRESS, APPROVED AUGUST 30, 1954, 68 STAT. 961, AUTHORIZED AND DIRECTED THE COMMISSIONERS OF THE DISTRICT OF COLUMBIA TO CONSTRUCT A "LOW LEVEL BRIDGE OVER THE POTOMAC RIVER * * * SUCH BRIDGE TO BE CONSTRUCTED NORTH OF THE MEMORIAL BRIDGE AND SOUTH OF THE SOUTHERN PORTION OF THEODORE ROOSEVELT ISLAND, SOMETIMES REFERRED TO AS "SMALL ISLAND" * * *.'

BY LETTER DATED AUGUST 30, 1955, THE ACTING PRESIDENT, BOARD OF COMMISSIONERS, PRESENTED TO US THE QUESTION AS TO THE AVAILABILITY OF FUNDS APPROPRIATED UNDER THE HEADING "CAPITAL OUTLAY, DEPARTMENT OF HIGHWAYS," IN THE DISTRICT OF COLUMBIA APPROPRIATION ACT, 1955, APPROVED JULY 1, 1954, 68 STAT. 390, FOR THE PREPARATION OF PLANS AND WORKING DRAWINGS FOR A PROPOSED BRIDGE ACROSS THE POTOMAC RIVER AT A NEW AND SLIGHTLY DIFFERENT LOCATION FROM THAT AUTHORIZED IN PUBLIC LAW 704, I.E., ACROSS THEODORE ROOSEVELT ISLAND RATHER THAN SOUTH OF IT. IN DECISION OF SEPTEMBER 16, 1955, B-125404, WE ADVISED THAT SUCH FUNDS WERE AVAILABLE FOR THE PREPARATION OF DRAWINGS FOR THE BRIDGE AT THE NEW LOCATION. THIS LOCATION IS ONE WHICH WOULD BE AUTHORIZED BY S. 2568, A BILL WHICH, IF ENACTED, WOULD AMEND PUBLIC LAW 704 TO SO PROVIDE.

IT IS STATED IN THE LETTER FROM THE ACTING PRESIDENT OF THE BOARD OF COMMISSIONERS THAT AT THE TIME OF OUR ABOVE REFERRED-TO DECISION TO YOUR PREDECESSOR (SEPTEMBER 16, 1955), S. 2568 HAD PASSED THE SENATE BUT HAD NOT BEEN ACTED UPON BY THE HOUSE. IT IS REPORTED THAT THE BILL WAS PASSED BY THE HOUSE ON JULY 9, 1956, IN THE SAME LANGUAGE AS IT WAS PASSED IN THE SENATE INSOFAR AS IT RELATED TO THE LOCATION OF THE BRIDGE; HOWEVER, THAT THE HOUSE AMENDED THE BILL SO AS TO REQUIRE THE BRIDGE TO BE OF A BASCULE- SPAN TYPE. IT IS REPORTED THAT HOUSE AND SENATE CONFEREES REACHED A CONFERENCE AGREEMENT APPROVING THE BILL AS PASSED BY THE HOUSE AND SENATE IN RESPECT TO THE LOCATION OF THE BRIDGE AND AS PASSED BY THE HOUSE IN RESPECT TO THE BASCULE-SPAN. IT IS ALSO STATED THAT THE SITUATION AT THE PRESENT TIME IS THAT BOTH HOUSES OF CONGRESS HAVE APPROVED THE ALTERNATIVE LOCATION FOR THE BRIDGE ACROSS THEODORE ROOSEVELT ISLAND BUT THAT THE SECOND SESSION OF THE 84TH CONGRESS ADJOURNED BEFORE FINAL ACTION WAS COMPLETED ON THE BILL. IN VIEW OF THE FOREGOING, THERE IS PRESENTED FOR OUR

CONSIDERATION THE QUESTION AS TO WHETHER FUNDS APPROPRIATED IN THE DISTRICT OF COLUMBIA APPROPRIATION ACTS FOR THE FISCAL YEARS 1956 AND 1957 ARE AVAILABLE FOR CONSTRUCTING THE BRIDGE IN THE NEW LOCATION, I.E., THE LOCATION ACROSS ROOSEVELT ISLAND WHICH WOULD HAVE BEEN AUTHORIZED BY S. 2568.

WE WOULD FIRST LIKE TO POINT OUT THAT THE DISTRICT OF COLUMBIA APPROPRIATION ACT, 1955, CONTAINING FUNDS FOR THE PREPARATION OF PLANS AND WORKING DRAWINGS FOR THE PROPOSED BRIDGE ACROSS THE POTOMAC RIVER WAS ENACTED INTO LAW PRIOR TO THE ENACTMENT OF PUBLIC LAW 704, AUTHORIZING THE CONSTRUCTION OF A BRIDGE WITHIN A PRESCRIBED AREA. OUR HOLDING IN THE ABOVE REFERRED-TO DECISION OF SEPTEMBER 16, 1955, WAS PREDICATED CHIEFLY ON THE GROUND THAT THE FUNDS PROVIDED IN YOUR FISCAL YEAR 1955 APPROPRIATION ACT FOR THE PREPARATION OF PLANS AND WORKING DRAWINGS FOR THE PROPOSED BRIDGE ACROSS THE POTOMAC RIVER WERE APPROPRIATED WITHOUT LIMITATION AS TO WHERE THE BRIDGE SHOULD BE LOCATED. HENCE, THE FACT THAT SUCH FUNDS WERE HELD TO BE AVAILABLE FOR THE PREPARATION OF PLANS FOR A BRIDGE AT A LOCATION OTHER THAN THE LOCATION AUTHORIZED IN PUBLIC LAW 704 WOULD NOT NECESSARILY REQUIRE THE CONCLUSION THAT FUNDS APPROPRIATED IN THE DISTRICT OF COLUMBIA APPROPRIATION ACTS FOR THE FISCAL YEARS 1956 AND 1957 FOR CONSTRUCTING THE BRIDGE ACROSS THE POTOMAC RIVER AUTHORIZED BY PUBLIC LAW 704 ARE AVAILABLE FOR CONSTRUCTING THE BRIDGE AT A LOCATION OTHER THAN AUTHORIZED IN THE SAID PUBLIC LAW.

THE DISTRICT OF COLUMBIA APPROPRIATION ACTS FOR THE FISCAL YEARS 1956 AND 1957, 69 STAT. 246 AND 70 STAT. 439, RESPECTIVELY, CONTAIN NO EXPRESS PROVISION CONCERNING THE CONSTRUCTION OF A BRIDGE ACROSS THE POTOMAC RIVER. HOWEVER, AN EXAMINATION OF THE LEGISLATIVE HISTORIES OF THESE ACTS DISCLOSES THAT $1,500,000 AND $3,000,000 WERE CONTAINED IN THE BUDGET ESTIMATES FOR 1956 AND 1957, RESPECTIVELY, FOR THIS ITEM AND THAT THESE AMOUNTS WERE SUBSEQUENTLY APPROPRIATED BY THE CONGRESS. THE LEGISLATIVE HISTORIES OF THESE ACTS ALSO DISCLOSE THAT THE ABOVE AMOUNTS WERE APPROPRIATED PURSUANT TO THE AUTHORIZATION IN PUBLIC LAW 704 OF THE 83D CONGRESS. SEE PAGES 228, 235, 236, AND 237, HEARINGS BEFORE THE SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS, UNITED STATES SENATE, ON H.R. 6239, 84TH CONGRESS, 1ST SESSION, WHICH BECAME THE 1956 APPROPRIATION ACT; AND PAGE 15 OF SENATE REPORT NO. 623, 84TH CONGRESS, 1ST SESSION ON THE 1956 APPROPRIATION ACT. ALSO, SEE AS TO THE 1957 APPROPRIATION ACT, PAGES 373 AND 374, HEARINGS BEFORE THE SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS, HOUSE OF REPRESENTATIVES, ON H.R. 10003, 84TH CONGRESS, 2D SESSION WHICH BECAME THE 1957 ACT, AND PAGE 109, HEARINGS BEFORE THE SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS, UNITED STATES SENATE, ON H.R. 10003, 84TH CONGRESS, 2D SESSION.

APPROPRIATIONS TO CARRY OUT ENABLING OR AUTHORIZING LAWS MUST BE EXPENDED IN STRICT ACCORD WITH THE ORIGINAL AUTHORIZATION BOTH AS TO THE AMOUNT OF FUNDS TO BE EXPENDED AND THE NATURE OF THE WORK AUTHORIZED. OF COURSE, ONE CONGRESS CANNOT BIND A FUTURE CONGRESS AND THE CONGRESS HAS FULL POWER TO AMEND THE ORIGINAL AUTHORIZING ACT OR TO DIRECT THAT AN APPROPRIATION SHALL BE USED FOR PURPOSES ADDITIONAL TO OR ENTIRELY FOREIGN TO THOSE SPECIFIED IN THE ORIGINAL AUTHORIZATION ACT.

S. 2568, WHICH WOULD HAVE AMENDED PUBLIC LAW 704 SO AS TO PERMIT CONSTRUCTION OF THE BRIDGE AT EITHER THE ORIGINAL LOCATION OR AN ALTERNATIVE LOCATION FAILED OF ENACTMENT. THE LEGISLATIVE HISTORY OF S. 2568 DISCLOSES THAT THE CONFERENCE REPORT ON THE BILL WAS AGREED TO BY THE HOUSE ON JULY 25, 1956, AND THAT THE SAID REPORT WAS NOT CALLED UP IN THE SENATE PRIOR TO ADJOURNMENT BECAUSE IT WAS CONSIDERED "QUITE CONTROVERSIAL.' IT APPEARS THAT IT WAS FEARED THAT IF THE

REPORT WERE CALLED UP IN THE SENATE, IT WOULD DELAY THE ADJOURNMENT OF THE CONGRESS. SEE PAGES 13123 AND 13907, CONGRESSIONAL RECORD, JULY 25 AND JULY 28, 1956, RESPECTIVELY.

FURTHER, THERE IS NOTHING IN THE DISTRICT OF COLUMBIA APPROPRIATION ACTS FOR THE FISCAL YEARS 1956 AND 1957, OR IN THE LEGISLATIVE HISTORIES THEREOF, WHICH MAY BE CONSIDERED AS AUTHORIZING OR DIRECTING CONSTRUCTION OF THE BRIDGE ACROSS THE POTOMAC RIVER IN THE VICINITY OF CONSTITUTION AVENUE AT A LOCATION OTHER THAN THE LOCATION PRESCRIBED IN PUBLIC LAW 704. SEE DISCUSSION ON PAGE 108, HEARINGS BEFORE THE SUBCOMMITTEE ON APPROPRIATIONS, UNITED STATES SENATE, 84TH CONGRESS, 2D SESSION.

ALSO, WE NOTE THAT THE LEGISLATIVE HISTORIES OF THE DISTRICT OF COLUMBIA APPROPRIATION ACTS, FOR THE FISCAL YEARS 1956 AND 1957, (PARTICULARLY PAGE 241 OF THE SENATE HEARINGS ON THE 1956 ACT AND PAGE 32 OF THE SENATE HEARINGS ON THE 1957 ACT) DISCLOSE THAT THE CONGRESS PURSUANT TO SECTION 402 (A) OF THE DISTRICT OF COLUMBIA PUBLIC WORKS ACT OF 1954, 68 STAT. 101, 110 AUTHORIZED THE DISTRICT IN THE 1956 AND 1957 APPROPRIATION ACTS TO BORROW FUNDS FROM THE TREASURY FOR CONSTRUCTION OF THE BRIDGE AUTHORIZED BY PUBLIC LAW 704. SECTION 402 (A) OF THE 1954 PUBLIC WORKS ACT PROVIDES, IN PERTINENT PART, AS FOLLOWS:

"* * * PROVIDED, FURTHER, THAT ANY LOAN FOR USE IN ANY FISCAL YEAR MUST FIRST BE SPECIFICALLY REQUESTED OF THE CONGRESS IN CONNECTION WITH THE BUDGET SUBMITTED FOR THE DISTRICT FOR SUCH FISCAL YEAR, WITH A FULL STATEMENT OF THE WORK CONTEMPLATED TO BE DONE AND THE NEED THEREOF, AND SUCH WORK MUST BE APPROVED BY THE CONGRESS * * *.'

INASMUCH AS S. 2568 FAILED OF ENACTMENT AND SINCE THERE IS NOTHING IN THE LEGISLATIVE HISTORIES OF THE APPROPRIATION ACTS IN QUESTION THAT MAY BE CONSIDERED AS AUTHORIZING OR DIRECTING CONSTRUCTION OF A BRIDGE AT OTHER THAN THE LOCATION PRESCRIBED IN PUBLIC LAW 704, IT CANNOT BE SAID THAT CONSTRUCTION OF A BRIDGE AT A LOCATION OTHER THAN AUTHORIZED BY THE SAID PUBLIC LAW WAS APPROVED BY THE CONGRESS, AS REQUIRED BY SECTION 402 (A) OF THE ABOVE REFERRED-TO PUBLIC WORKS ACT.

IN VIEW OF THE FOREGOING, IT MUST BE HELD THAT FUNDS APPROPRIATED IN THE DISTRICT OF COLUMBIA APPROPRIATION ACTS FOR THE FISCAL YEARS 1956 AND 1957 FOR CONSTRUCTING THE BRIDGE ARE NOT AVAILABLE FOR CONSTRUCTING THE BRIDGE AT A LOCATION DIFFERENT FROM THAT PRESCRIBED IN THE SAID PUBLIC LAW. YOUR QUESTION IS ANSWERED ACCORDINGLY.