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B-149163, Jun. 27, 1962

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B-149163, JUN. 27, 1962

TO THE DIRECTOR, ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS:

LETTER DATED JUNE 12, 1962, FROM MR. AUBREY GASQUE, ASSISTANT DIRECTOR, ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS, CONCERNS FUNDS FOR REVISING AND IMPROVING THE FEDERAL RULES OF PRACTICE AND PROCEDURE.

THE ASSISTANT DIRECTOR STATES THAT THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS HAS REQUESTED A SUPPLEMENTAL APPROPRIATION OF $11,250, IN ADDITION TO FUNDS PREVIOUSLY APPROPRIATED TO FINANCE THE NECESSARY SALARIES AND EXPENSES INCIDENT TO THE WORK OF THE JUDICIAL CONFERENCE OF THE UNITED STATES, PURSUANT TO THE ACT OF JUNE 11, 1958, IN REVISING AND IMPROVING THE FEDERAL RULES OF PRACTICE AND PROCEDURE. ADVISES THAT THE WORK IS CONDUCTED BY A STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE AND ADVISORY COMMITTEES IN EACH OF FIVE SPECIALIZED FIELDS, I.E., CIVIL, CRIMINAL, ADMIRALTY, BANKRUPTCY, AND APPEALS, AND THERE IS ALSO A SPECIAL COMMITTEE ON EVIDENCE. HE STATES HOWEVER, THAT THE SECRETARIAT FOR THE RULES PROGRAM IS SITUATED IN THE ADMINISTRATIVE OFFICE AND ALL SALARIES AND EXPENSES PERTAINING TO THE WORK ARE PAID OUT OF THE FUNDS APPROPRIATED TO THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS.

THE ASSISTANT DIRECTOR STATES THAT TESTIMONY SUPPORTING THE NEED FOR THE ADDITIONAL FUNDS WAS PRESENTED BY SENIOR UNITED STATES CIRCUIT JUDGE ALBERT B. MARIS, CHAIRMAN OF THE STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE, HONORABLE E. BARRETT PRETTYMAN, CHAIRMAN OF THE ADVISORY COMMITTEE ON APPELLATE RULES, AND HIMSELF, AT THE HEARINGS ON H.R. 11038, THE SECOND SUPPLEMENTAL APPROPRIATION BILL FOR 1962. HE ADVISES, HOWEVER, THAT THE COMMITTEE ON APPROPRIATIONS OF THE HOUSE OF REPRESENTATIVES DID NOT ALLOW THE INCREASE, BUT THE SENATE INCLUDED THE FULL AMOUNT OF $11,250 IN ITS ACTION ON THE BILL, AND THE MATTER HAS BEEN AWAITING HOUSE-SENATE CONFERENCE FOR SEVERAL WEEKS.

THE ASSISTANT DIRECTOR ADVISES THAT THIS DELAY HAS CREATED A CRITICAL SITUATION FOR YOUR OFFICE IN CARRYING ON THE RULES WORK. THEREFORE, OUR DECISION IS REQUESTED AS TO WHETHER THE APPROPRIATION FOR THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS FOR THE FISCAL YEAR 1962 IS AVAILABLE TO CONTINUE THIS WORK, NOTWITHSTANDING THE FAILURE OF THE CONGRESS TO ENACT THE SECOND SUPPLEMENTAL APPROPRIATION BILL, 1962.

THE ACT OF JULY 11, 1958, 72 STAT. 356, PROVIDES THAT THE JUDICIAL CONFERENCE SHALL CARRY ON A CONTINUOUS STUDY OF THE OPERATION AND EFFECT OF THE GENERAL RULES OF PRACTICE AND PROCEDURE IN USE IN THE COURTS OF THE UNITED STATES WITH A VIEW TO RECOMMENDING CHANGES AND ADDITIONS TO THE RULES DEEMED DESIRABLE.

AN EXAMINATION OF THE LEGISLATIVE HISTORIES OF THE ACTS CONTAINING YOUR ANNUAL APPROPRIATION FOR FISCAL YEARS 1960 AND 1961 DISCLOSES THAT FUNDS WERE REQUESTED BY, AND MADE AVAILABLE TO YOUR OFFICE IN SUCH ACTS FOR THE PURPOSE OF CARRYING OUT THE PROVISIONS OF THE ACT OF JULY 11, 1958.

THE LEGISLATIVE HISTORIES OF THE APPROPRIATION ACTS FOR SAID FISCAL YEARS DISCLOSE THAT THE CONGRESS WAS SPECIFICALLY ADVISED THAT SOME OF THE FUNDS REQUESTED THEREIN WERE TO BE USED FOR RULES REVISION PURPOSES. IN FACT, $107,740 WAS REQUESTED FOR THIS PURPOSE IN FISCAL YEAR 1960 AND $79,000 IN FISCAL YEAR 1961 (SEE PAGE 455, SENATE HEARINGS ON YOUR APPROPRIATION FOR FISCAL YEAR 1960, AND PAGE 532, SENATE HEARINGS ON YOUR APPROPRIATION FOR FISCAL YEAR 1961). THE STATEMENT OF THE HOUSE MANAGERS (PAGE 7) ACCOMPANYING THE CONFERENCE REPORT (HOUSE REPORT NO. 2136) ON THE BILL CONTAINING YOUR APPROPRIATION FOR FISCAL YEAR 1961 DISCLOSES THAT IT WAS INTENDED THAT $79,540 WOULD BE AVAILABLE FOR THE "RULES GROUP" FOR THAT YEAR. ALSO, THE HOUSE HEARINGS ON THE SECOND SUPPLEMENTAL APPROPRIATION BILL, 1962, DISCLOSE THAT A REQUEST FOR $45,000 HAS BEEN INCLUDED IN YOUR ANNUAL APPROPRIATION ESTIMATE FOR FISCAL YEAR 1963 FOR THIS WORK. SEE ALSO IN CONNECTION WITH "RULES REVISION," PAGES 506, 507, 509, AND 510 SENATE HEARINGS ON APPROPRIATIONS FOR THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS FOR FISCAL YEAR 1960; AND PAGES 529 THROUGH 534, SENATE HEARINGS ON THE SAME APPROPRIATION FOR FISCAL YEAR 1962. THUS, IT IS ESTABLISHED THAT, IN THE ABSENCE OF SPECIFIC PROVISION OTHERWISE, THE REGULAR ANNUAL APPROPRIATION OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS IS THE APPROPRIATION LEGALLY AVAILABLE TO CARRY OUT THE THE PROVISIONS OF THE ACT OF JULY 11, 1958, I.E., FOR RULES REVISION PURPOSES.

THE APPROPRIATION FOR THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS FOR THE FISCAL YEAR 1962 PROVIDES (PUBLIC LAW 87-264, 75 STAT. 556):

"FOR NECESSARY EXPENSES OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS, INCLUDING TRAVEL, ADVERTISING, AND RENT IN THE DISTRICT OF COLUMBIA AND ELSEWHERE, $1,426,750.'

THE LANGUAGE IS IDENTICAL TO THAT APPEARING IN THE 1960 AND 1961 FISCAL YEAR APPROPRIATION ACTS AND ANNUAL APPROPRIATION ACTS PRIOR TO THE ACT OF JULY 11, 1958.

THE QUOTED APPROPRIATION CONSTITUTES A LUMP-SUM APPROPRIATION AND THERE IS NO PROVISION, OR LIMITATION, THEREIN CONCERNING FUNDS FOR REVISING AND IMPROVING THE FEDERAL RULES OF PRACTICE AND PROCEDURE. ALTHOUGH WE UNDERSTAND THERE WAS NOT SET OUT IN YOUR BUDGET ESTIMATES FOR FISCAL YEAR 1962 ANY SPECIFIC AMOUNT FOR THE ACTIVITY IN QUESTION, "THE BUDGET OF THE UNITED STATES GOVERNMENT FOR THE FISCAL YEAR ENDING JUNE 30, 1962" (PAGE 57), STATES THAT ONE OF THE PRINCIPAL FUNCTIONS OF THE ADMINISTRATIVE OFFICE IS "CONDUCTING A CONTINUOUS STUDY OF THE RULES OF PRACTICE AND PROCEDURE IN THE FEDERAL COURTS.'

WITH RESPECT TO THE EFFECT OF BUDGET ESTIMATES, WE HELD IN 17 COMP. GEN. 147 (QUOTING FROM THE SYLLABUS) THAT:

"AMOUNTS OF INDIVIDUAL ITEMS IN THE ESTIMATES PRESENTED TO THE CONGRESS ON THE BASIS OF WHICH A LUMP SUM APPROPRIATION IS ENACTED, ARE NOT BINDING ON ADMINISTRATIVE OFFICERS UNLESS CARRIED INTO THE APPROPRIATION ACT.'

THUS, IN THE ABSENCE OF A SPECIFIC LIMITATION OR PROHIBITION IN THE APPROPRIATION UNDER CONSIDERATION AS TO THE AMOUNT WHICH MAY BE EXPENDED FOR

REVISING AND IMPROVING THE FEDERAL RULES OF PRACTICE AND PROCEDURE, YOU WOULD NOT BE LEGALLY BOUND BY YOUR BUDGET ESTIMATES OR ABSENCE THEREOF.

IF THE CONGRESS DESIRES TO RESTRICT THE AVAILABILITY OF A PARTICULAR APPROPRIATION TO THE SEVERAL ITEMS AND AMOUNTS THEREOF SUBMITTED IN THE BUDGET ESTIMATES, SUCH CONTROL MAY BE EFFECTED BY LIMITING SUCH ITEMS IN THE APPROPRIATION ACT ITSELF. OR, BY A GENERAL PROVISION OF LAW, THE AVAILABILITY OF APPROPRIATIONS COULD BE LIMITED TO THE ITEMS AND THE AMOUNTS CONTAINED IN THE BUDGET ESTIMATES. IN THE ABSENCE OF SUCH LIMITATIONS AN AGENCY'S LUMP-SUM APPROPRIATION IS LEGALLY AVAILABLE TO CARRY OUT THE FUNCTIONS OF THE AGENCY.

IN LIGHT OF THE FOREGOING IT IS OUR VIEW THAT THE APPROPRIATION FOR THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS FOR FISCAL YEAR 1962 IS LEGALLY AVAILABLE FOR THE PURPOSE IN QUESTION, NOTWITHSTANDING THE FAILURE OF THE CONGRESS TO PASS H.R. 11038, THE SECOND SUPPLEMENTAL APPROPRIATION BILL, 1962.