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B-178131, Mar 8, 1973

Number: B-178131

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B-178131, MAR 8, 1973

SOLDIERS HOME - WITHDRAWAL OF FUNDS FROM TRUST FUND - CONTINUING RESOLUTION DECISION ALLOWING THE WITHDRAWAL OF $244,000 FROM THE U.S. SOLDIERS AND AIRMAN'S HOME PERMANENT FUND (TRUST FUND) TO BE USED TO FINANCE PRELIMINARY PLANS FOR THE CONSTRUCTION OF A DOMICILIARY BUILDING. SINCE H.R. 15417 REMAINED CONTROLLING INSOFAR AS PUB. L. 92-334, THE CONTINUING RESOLUTION, IS CONCERNED, NOTWITHSTANDING THE PRESIDENTIAL VETO OF H.R. 15417, THESE TRUST FUNDS MAY PROPERLY BE OBLIGATED UNLESS THE PROPOSED PRELIMINARY PLANNING CONSTITUTES A NEW PROJECT OR ACTIVITY WITHIN THE MEANING OF SECTION 106 OF THE CONTINUING RESOLUTION. ACCORDINGLY, SINCE FUNDS HAD BEEN PREVIOUSLY MADE AVAILABLE TO THE HOME FOR THE CONSTRUCTION OF BUILDINGS AND FACILITIES DURING FISCAL YEAR 1972 AND SINCE FUNDS FOR THIS PRELIMINARY PLANNING WERE INCLUDED IN THE 1973 BUDGET AND APPROPRIATED UNDER SIMILAR GENERAL APPROPRIATION LANGUAGE IN H.R. 15417, IT IS CLEAR THAT THE PROPOSED PRELIMINARY PLANNING IS NOT A NEW PROJECT AND THESE FUNDS MAY BE PROPERLY WITHDRAWN FOR THIS PURPOSE.

TO LT. GEN. F. T. UNGER:

REFERENCE IS MADE TO LETTER OF MARCH 2, 1973, FROM THE SECRETARY TREASURER OF THE UNITED STATES SOLDIERS' AND AIRMEN'S HOME (HOME) ASKING OUR OPINION AS TO WHETHER PUBLIC LAW 92-334, APPROVED JULY 1, 1972, AS AMENDED, THE SO-CALLED "CONTINUING RESOLUTION," PERMITS THE WITHDRAWAL OF $244,000 FROM THE HOME'S PERMANENT FUND (TRUST FUND) TO BE USED TO FINANCE PRELIMINARY PLANS FOR THE CONSTRUCTION OF A DOMICILIARY BUILDING.

THE ABOVE AMOUNT WAS AUTHORIZED FOR SUCH PURPOSE BY H.R. 15417, THE BILL PROVIDING APPROPRIATIONS FOR FISCAL YEAR 1973 FOR THE DEPARTMENTS OF LABOR, AND HEALTH, EDUCATION, AND WELFARE, AND RELATED AGENCIES. HOWEVER, THAT BILL WAS VETOED BY THE PRESIDENT, AND A LATER SIMILAR BILL, H.R. 16654, ALSO WAS SUBSEQUENTLY VETOED (POCKET VETO) BY THE PRESIDENT.

UNDER THOSE CIRCUMSTANCES WE HELD IN OUR LETTER OF JANUARY 15, 1973, B- 152098, THAT NOTWITHSTANDING ITS VETO BY THE PRESIDENT, H.R. 15417 REMAINED CONTROLLING INSOFAR AS THE CONTINUING RESOLUTION IS CONCERNED. ACCORDINGLY, FUNDS IN THE AMOUNT OF $244,000 PROPERLY MAY BE OBLIGATED FOR THE PURPOSE MENTIONED ABOVE UNLESS SUCH PURPOSE MUST BE HELD TO CONSTITUTE A NEW PROJECT OR ACTIVITY WITHIN THE MEANING OF SECTION 106 OF THE CONTINUING RESOLUTION WHICH PROVIDES THAT -

NO APPROPRIATION OR FUND MADE AVAILABLE OR AUTHORITY GRANTED PURSUANT TO THIS JOINT RESOLUTION SHALL BE USED TO INITIATE OR RESUME ANY PROJECT OR ACTIVITY WHICH WAS NOT BEING CONDUCTED DURING THE FISCAL YEAR 1972.

WHILE PRELIMINARY PLANNING FOR THE PROPOSED DOMICILIARY BUILDING DID NOT TAKE PLACE DURING FISCAL YEAR 1972, FUNDS FOR THAT FISCAL YEAR WERE MADE AVAILABLE TO THE HOME FOR CONSTRUCTION OF BUILDINGS AND FACILITIES, INCLUDING PLANS AND SPECIFICATIONS WITHOUT REFERENCE IN THE APPROPRIATION LANGUAGE TO ANY SPECIFIC BUILDINGS OR FACILITIES. SEE THE DEPARTMENTS OF LABOR, AND HEALTH, EDUCATION, AND WELFARE, AND RELATED AGENCIES APPROPRIATION ACT, 1972, APPROVED AUGUST 10, 1971, 85 STAT. 301. MOREOVER, FUNDS FOR THE PRELIMINARY PLANNING FOR THIS PROPOSED DOMICILIARY BUILDING WERE INCLUDED IN THE 1973 BUDGET AND APPROPRIATED UNDER SIMILAR GENERAL APPROPRIATION LANGUAGE IN BOTH H.R. 15417 AND H.R. 16654 AS PASSED BY THE CONGRESS. ACCORDINGLY, WE THINK IT CLEAR THAT THE PROPOSED PRELIMINARY PLANNING IS NOT A NEW PROJECT OR ACTIVITY WITHIN THE MEANING OF SECTION 106 OF THE CONTINUING RESOLUTION. IT IS OUR OPINION, THEREFORE, THAT THE AMOUNT OF $244,000 PROPERLY MAY BE WITHDRAWN FROM THE TRUST FUND AND USED FOR PRELIMINARY PLANS FOR THE CONSTRUCTION OF THE DOMICILIARY BUILDING.