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APPROPRIATIONS/FINANCIAL MANAGEMENT - APPROPRIATION AVAILABILITY - AMOUNT AVAILABILITY - AUGMENTATION - GIFTS/DONATIONS - REVOLVING ACCOUNTS DIGEST: GAO HAS NO OBJECTION TO ACCEPTANCE BY LIBRARY OF CONGRESS OF A SUBSTANTIAL GIFT FROM THE LIBRARIAN OF THE CONGRESS AND HIS WIFE TO ESTABLISH A PUBLICATION FUND IN THE LIBRARY'S CENTER FOR THE BOOK. THE GIFT DOCUMENT STIPULATES THAT THE MONEYS ARE TO CONSTITUTE A REVOLVING FUND TO BE REPLENISHED FROM PROCEEDS EARNED FROM SALE OF PUBLICATIONS PRODUCED BY THE FUND. WHILE GAO HAS IN THE PAST RECOMMENDED AGAINST ESTABLISHMENT OF REVOLVING FUNDS WITHOUT EXPLICIT STATUTORY AUTHORITY, THE PROVISIONS OF 2 U.S.C. SEC. 175(2), WHICH DESCRIBE THE LIBRARIAN'S AUTHORITY FOR CENTER PROGRAMS, ARE TANTAMOUNT TO A GRANT OF AUTHORITY TO OPERATE WITH A REVOLVING FUND.

JOHN J. KOMINISKY, ESQ.:

YOUR DECEMBER 4, 1986 LETTER SEEKS GAO'S FORMAL APPROVAL FOR ACCEPTANCE OF A SUBSTANTIAL GIFT FROM THE LIBRARIAN OF THE CONGRESS, DANIEL BOORSTIN, AND HIS WIFE TO ESTABLISH A PUBLICATION FUND IN THE LIBRARY'S CENTER FOR THE BOOK, IN RECOGNITION OF THE "YEAR OF THE READER", WHICH BEGINS IN 1987. THE DONORS SPECIFY THAT THE GIFT MONEYS ARE TO BE ADMINISTERED AS A REVOLVING FUND; ANY REVENUES DERIVED FROM SALES OF PUBLICATION PRODUCED BY THE FUND ARE TO BE RETURNED TO THE FUND FOR ITS PURPOSES. A LETTER EXPLAINING THE LIBRARIAN'S INTENDED DONATION HAS ALREADY BEEN SENT TO THE CHAIRMAN OF THE JOINT COMMITTEE ON THE LIBRARY. IN THIS SPECIFIC INSTANCE, WE HAVE NO OBJECTION TO THE FORM OF THE GIFT OR TO THE LIBRARY'S ACCEPTANCE OF THE DONATION.

AS YOU KNOW, THE GAO HAS REPORTED SEVERAL TIMES TO THE CONGRESS ON THE USE OF REVOLVING FUNDS IN GENERAL ("REVOLVING FUNDS: FULL DISCLOSURE NEEDED FOR BETTER CONGRESSIONAL CONTROL", PAD-77-25, AUGUST 30, 1977), THE USE OF GIFT FUNDS IN GENERAL ("REVIEW OF FEDERAL AGENCIES' GIFT FUNDS", FGMA-80-77, SEPTEMBER 4, 1980), AND THE USE OF THE LIBRARY OF CONGRESS REVOLVING TRUST FUNDS IN PARTICULAR (FGMS-80 76, SEPTEMBER 24, 1980, THE REPORT TO WHICH YOU REFER SPECIFICALLY). IN EACH REPORT, THE GAO RECOMMENDED THAT AGENCIES SEEK SPECIFIC CONGRESSIONAL APPROVAL TO FINANCE ANY OF ITS ACTIVITIES THROUGH A REVOLVING FUND, REGARDLESS OF WHETHER THE INITIAL CAPITAL WAS DERIVED FROM APPROPRIATED FUNDS OR FROM GIFT MONEY. (SEE PAD 77-25, P. 46). OTHERWISE, WE SAID, THERE IS A CONSIDERABLE DIMINUTION IN THE ABILITY OF THE CONGRESS TO EXERCISE EFFECTIVE OVERSIGHT OVER THE AMOUNTS AND MANNER IN WHICH THE FUNDS ARE BEING SPENT. THE EXPENDITURE OF GIFT FUNDS IN THIS MANNER IS PARTICULARLY TROUBLESOME BECAUSE FEDERAL AGENCIES GENERALLY HAVE SUCH GREAT FLEXIBILITY IN DETERMINING WHICH ACTIVITIES WOULD FURTHER THE AGENCY'S GOALS. THE LIBRARY OF CONGRESS' GIFT FUNDS WERE USED AS EXAMPLES OF FUNDS WHICH HAD GROWN IN SIZE CONSIDERABLY BEYOND THE

AMOUNT OF THE ORIGINAL DONATION WITHOUT EVER OBTAINING CONGRESSIONAL APPROVAL. (FGMSD-80-77, P. 2).

ALTHOUGH THE LIBRARY HAS TAKEN A NUMBER OF STEPS TO ENHANCE THE VISIBILITY OF ITS GIFT REVOLVING FUND OPERATIONS-- FOR EXAMPLE, WE UNDERSTAND THAT THE LIBRARIAN NOW SUBMITS A DETAILED ANNUAL REPORT TO THE CONGRESS-- THE ANNUAL BUDGET APPENDIX PRESENTS ONLY SKETCHY INFORMATION, AND LETTERS TO THE LIBRARY'S OVERSIGHT AND APPROPRIATIONS SUBCOMMITTEES DO NOT AMOUNT TO INFORMING THE CONGRESS AS A WHOLE.

NEVERTHELESS, THE WORDING OF 2 U.S.C. SEC. 175 (2), THE ADMINISTRATIVE PROVISIONS FOR THE CENTER, ARE TANTAMOUNT TO AUTHORIZING A REVOLVING FUND ACTIVITY. THE LIBRARIAN MAY:

"RECEIVE MONEY AND OTHER PROPERTY DONATED, BEQUEATHED, OR DEVISED FOR THE PURPOSES OF THE CENTER, AND TO USE, SELL, OR OTHERWISE DISPOSE OF SUCH PROPERTY FOR THE PURPOSES OF CARRYING OUT THE CENTER'S FUNCTIONS WITHOUT REFERENCE TO FEDERAL DISPOSAL STATUTES; ***"

(COMPARE 2 U.S.C. SEC. 156-- GIFTS, ETC. TO LIBRARY OF CONGRESS TRUST FUND BOARD, AND 2 U.S.C. SEC. 160-- DISBURSEMENT OF GIFTS, ETC. TO THE LIBRARY.)

OUR ONLY UNEASINESS CONCERNS THE LIBRARIAN'S STATEMENT TO THE JOINT COMMITTEE THAT THE DONATED FUNDS WOULD BE USED FOR PUBLICATIONS BY THE CENTER FOR THE BOOK "AND OTHER LIBRARY PROGRAMS." THE CONGRESS SET FORTH THE UNIQUE FUNCTIONS OF THE CENTER AT 2 U.S.C. SEC. 174. THE CENTER WAS INTENDED TO "FILL THE GAP IN SCHOLARLY RESEARCH" ON THE "ROLE OF THE BOOK IN THE TRANSMISSION OF KNOWLEDGE, PAST AND PRESENT." HOUSE REPORT NO. 95-491, P. 2, SEPT. 26, 1977. WHILE THE LEGISLATION ESTABLISHING THE CENTER FOR THE BOOK PROVIDES THE LIBRARIAN WITH GREAT FLEXIBILITY IN ADMINISTERING GIFT FUNDS FOR THE CENTER, IT DOES NOT AUTHORIZE HIM TO AUGMENT THE FUNDS OF UNRELATED "OTHER LIBRARY PROGRAMS" WITH FUNDS DERIVED FROM THE SALE OF CENTER PUBLICATIONS. YOU MAY WISH TO CLARIFY THIS AMBIGUITY BEFORE MAKING THE DONATION FINAL.