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Questions Concerning District of Columbia Lottery and Charitable Games Enterprise Fund

Number: B-208354

Date: 1982-08-10

B-208354 L/M, AUG 10, 1982

JAMIE L. WHITTEN, HOUSE OF REPRESENTATIVES:

THIS IS IN RESPONSE TO YOUR LETTER OF JULY 12, 1982, REQUESTING OUR OPINION AS TO THE PERMANENCY OF THE LANGUAGE UNDER THE HEADING "LOTTERY AND CHARITABLE GAMES ENTERPRISE FUND" IN THE DISTRICT OF COLUMBIA APPROPRIATION ACT FOR FISCAL YEAR 1982 (PUB.L. NO. 97-91, APPROVED DECEMBER 4, 1981, 95 STAT. 1173). IT IS OUR OPINION THAT THE SUM APPROPRIATED FOR ESTABLISHMENT OF AND REVENUES AND EXPENSES OF THE LOTTERY WILL NOT REMAIN AVAILABLE AFTER SEPTEMBER 30, 1982, BUT THAT THE OTHER PROVISIONS OF THE SECTION SHOULD BE VIEWED AS PERMANENT LEGISLATION.

UNDER THE HEADING "LOTTERY AND CHARITABLE GAMES ENTERPRISE FUND" THERE IS APPROPRIATED "$628,000, TO BE DERIVED FROM NON-FEDERAL DISTRICT OF COLUMBIA REVENUES:" 95 STAT. 1174. SECTION 109 OF THE ACT PROVIDES THAT NO FUNDS APPROPRIATED IN THAT ACT ARE AVAILABLE BEYOND THE END OF THE FISCAL YEAR UNLESS EXPRESSLY SO PROVIDED. SINCE THE MONIES APPROPRIATED TO THE FUND ARE NOT EXPRESSLY AVAILABLE BEYOND FISCAL YEAR 1982, THEY LAPSE AT THE END THEREOF.

THE REMAINDER OF THE SECTION UNDER THAT HEADING CONTAINS A NUMBER OF PROVISIONS GOVERNING THE OPERATION OF THE FUND. TO DETERMINE WHETHER THIS IS PERMANENT LEGISLATION, THIS OFFICE EXAMINED THE LANGUAGE FOR EVIDENCE OF CONGRESSIONAL INTENT. WHEN WORDS INDICATING FUTURITY, SUCH AS "HEREAFTER," ARE PRESENT, WE HAVE GENERALLY CONSTRUED THE LANGUAGE AS PERMANENT. SEE, E.G., 36 COMP.GEN. 434 (1956). FUTURITY IS INDICATED THROUGHOUT THE GIVEN SECTION BY THE USE OF VERBS IN THE FUTURE TENSE AND REFERENCES TO FUTURE FISCAL YEARS AS, FOR EXAMPLE:

"*** PROVIDED FURTHER, THAT THE LEVEL OF ADMINISTRATIVE EXPENSES TO BE INCURRED BY THE BOARD SHALL BE APPROPRIATED IN THE DISTRICT'S GENERAL FUND BUDGET AS A TRANSFER FROM LOCALLY GENERATED REVENUES; ADMINISTRATIVE EXPENSES BEING DEFINED AS ALL ANTICIPATED EXPENSES OF THE BOARD FOR THE COMING FISCAL YEAR EXCLUDING MONEYS NECESSARY FOR THE PAYMENTS OF PRIZES TO THE WINNERS OF THE GAMES SPECIFIED IN D.C.LAW 3-172:

*** PROVIDED FURTHER, THAT FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 1982, AND FOR EACH FISCAL YEAR THEREAFTER, THE DISTRICT OF COLUMBIA AUDITOR SHALL CONDUCT A COMPREHENSIVE AUDIT ON THE FINANCIAL STATUS OF THE FUND, INCLUDING BUT NOT LIMITED TO ALL APPROPRIATIONS, REVENUES, AND TRANSFERS TO THE FUND, AND PROVIDE SUCH REPORT TO THE MAYOR, CHAIRMAN OF THE DISTRICT OF COLUMBIA COUNCIL, AND TO THE SUBCOMMITTEES ON DISTRICT OF COLUMBIA APPROPRIATIONS OF THE HOUSE OF REPRESENTATIVES AND THE SENATE:

*** PROVIDED FURTHER, THAT THE BOARD SHALL MAKE AN ANNUAL REPORT TO THE SUBCOMMITTEES ON DISTRICT OF COLUMBIA APPROPRIATIONS OF THE HOUSE OF REPRESENTATIVES AND THE SENATE AT THE END OF EACH YEAR DETAILING THE RECEIPTS AND DISBURSEMENTS OF THE BOARD AND SUMMARIZING MEASURES OF REGULATION AND ENFORCEMENT ENACTED AS WELL AS OTHER INFORMATION AND RECOMMENDATIONS DEEMED OF VALUE OR WHICH MAY BE REQUESTED."

WE THINK IT CLEAR THAT CONGRESS INTENDED THAT THE ENTIRE PARAGRAPH, EXCEPT FOR THE PORTION APPROPRIATING A SPECIFIC SUM FOR FISCAL YEAR 1982, WOULD REMAIN IN EFFECT WHILE THE ENTERPRISE FUND ESTABLISHED BY THE SECTION CONTINUED TO OPERATE. IT IS ACCORDINGLY OUR CONCLUSION THAT THE PROVISIONS UNDER THE HEADING "LOTTERY AND CHARITABLE GAMES ENTERPRISE FUND" SHOULD BE CONSTRUED AS PERMANENT LEGISLATION.

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