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[Query Concerning Legality of Transfer of Japan-United States Friendship Commission Funds]

Number: B-217093

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B-217093, JAN 9, 1985

DEPARTMENTS AND ESTABLISHMENTS - SERVICES BETWEEN EDUCATIONAL PROGRAMS DIGESTS: 1. THE JAPAN-UNITED STATES FRIENDSHIP COMMISSION MAY TRANSFER FUNDS TO THE DEPARTMENT OF EDUCATION FOR A STUDY OF EDUCATION IN JAPAN PURSUANT TO THE COMMISSION'S AUTHORITY TO SUPPORT JAPANESE-AMERICAN CULTURAL AND EDUCATIONAL ACTIVITIES NOT MENTIONED IN, BUT WHICH ARE CONSISTENT WITH, SUBSECTIONS (1)-(5) OF SECTION 2902(B) OF TITLE 22 OF THE UNITED STATES CODE. THE AUTHORITY PROVIDED BY SUBSECTION (6) IS VERY BROAD AND ITS LEGISLATIVE HISTORY SHOWS THAT THE COMMISSION IS TO HAVE SOME DISCRETION IN DETERMINING WHICH PROJECTS ARE TO BE FUNDED UNDER IT. DEPARTMENTS AND ESTABLISHMENTS - SERVICES BETWEEN - EDUCATIONAL PROGRAMS THE COMMISSION'S AUTHORITY TO "ENTER INTO CONTRACTS, GRANTS, OR OTHER ARRANGEMENTS", 22 U.S.C. SEC. 2905(8), PARTICULARLY THE LANGUAGE "OR OTHER ARRANGEMENTS" IS SUFFICIENTLY BROAD TO ENCOMPASS TRANSFERS OF COMMISSION FUNDS SO LONG AS THE TRANSFER IS TO AN ENTITY CARRYING OUT FUNCTION SET FORTH IN 22 U.S.C. SEC. 2902(B).

THE HONORABLE WILLIAM V. ROTH, JR.: CHAIRMAN, COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

DEAR MR. CHAIRMAN:

BY LETTER OF NOVEMBER 7, 1984, YOU ASKED WHETHER THE JAPAN-UNITED STATES FRIENDSHIP COMMISSION LEGALLY COULD TRANSFER $165,000 /1/ FOR FISCAL YEAR 1985 AND $134,500 FOR FISCAL YEAR 1986 TO THE DEPARTMENT OF EDUCATION TO HELP FUND A STUDY OF JAPANESE EDUCATION. FOR THE REASONS GIVEN BELOW WE FIND THAT THE TRANSFER WOULD BE PERMISSIBLE.

1. BACKGROUND

THE DEPARTMENT OF EDUCATION INFORMS US THAT IN NOVEMBER 1983, PRESIDENT REAGAN AND PRIME MINISTER YASUHIRO NAKASONE DISCUSSED THE NEED FOR COOPERATIVE STUDIES OF MATHEMATICS AND SCIENCE EDUCATION IN THE UNITED STATES AND JAPAN. IN APRIL 1984, DR. EDWARD M. ELMENDORF, THE DEPARTMENT'S ASSISTANT SECRETARY FOR POSTSECONDARY EDUCATION, AND HIS STAFF HAD EXTENSIVE MEETINGS WITH THE STAFF OF THE JAPANESE MINISTRY OF EDUCATION, SCIENCE AND CULTURE ON THE GUIDELINES FOR THE STUDIES. SEVERAL MONTHS THEREAFTER, THE PROPOSAL FOR THE STUDIES WAS PRESENTED AT THE BIANNUAL MEETING OF THE UNITED STATES-JAPAN CONFERENCE ON CULTURAL AND EDUCATIONAL EXCHANGE (CULCON) /2/ AND WAS APPROVED. IN SEPTEMBER 1984, FORMER SECRETARY OF EDUCATION, TERRELL BELL, AND THE JAPANESE MINISTER OF EDUCATION, SCIENCE AND CULTURE, YOSHIRO MORI, REACHED FINAL ORAL AGREEMENT FOR THE STUDIES.

THE STUDY IS TO BE CONDUCTED BY THE UNITED STATES DEPARTMENT OF EDUCATION IN CONJUNCTION WITH THE CULCON. DIRECTION AND DEVELOPMENT OF THE STUDY IS TO BE AT THE DEPARTMENT'S NATIONAL INSTITUTE OF EDUCATION WITH POLICY GUIDANCE PROVIDED BY DR. ELMENDORF. RESEARCH FOR THE STUDY ALSO IS TO BE CONDUCTED AT THE NATIONAL INSTITUTE OF EDUCATION; HOWEVER, EXTENSIVE USE WILL BE MADE OF UNITED STATES EXPERTS ON JAPAN WHEREVER THEY WORK. THE MATERIALS SUBMITTED BY THE DEPARTMENT SHOW THAT THE JAPAN-UNITED STATES FRIENDSHIP COMMISSION'S (COMMISSION) ROLE IN THE PROJECT ESSENTIALLY IS TO PROVIDE FUNDING, ALTHOUGH DEPARTMENT OFFICIALS SUGGEST THAT THE COMMISSION ALSO WILL MONITOR THE PROJECT AND PROVIDE SOME ADVICE. AT THE STUDY'S CONCLUSION, REPORTS ARE INTENDED TO BE PUBLISHED AND DISTRIBUTED IN BOTH JAPAN AND THE UNITED STATES. IT APPEARS THAT THE DEPARTMENT WILL CONTRIBUTE SOME $800,000 TO THE PROJECT, WHICH INCLUDES FUNDS FOR SALARIES FOR THE FIVE NATIONAL INSTITUTE OF EDUCATION EMPLOYEES TO BE ASSIGNED TO THE PROJECT.

THE COMMISSION'S INVOLVEMENT IN THE PROJECT WAS FORMALLY PROPOSED AT A MEETING OF THE COMMISSION ON SEPTEMBER 20, 1984. THERE, DR. ELMENDORF /3/ SUGGESTED THAT THE COMMISSION CONTRIBUTE TO THE STUDY SOME $300,00 OVER A TWO-YEAR PERIOD: $165,500 FOR FISCAL YEAR 1985 AND $134,500 FOR FISCAL 1986. THE LARGEST SHARE OF THESE MONIES IS INTENDED TO BE USED FOR PRIVATELY CONTRACTED-FOR RESEARCH STUDIES FROM EXPERTS ON JAPANESE EDUCATION ($100,000 IN FISCAL 1985 AND $70,000 IN FISCAL 1986). THE OTHER MONIES ARE INTENDED TO BE USED FOR TRAVEL AND PER DIEM, RESEARCH-RELATED EXPENSES, AND WORKING CONFERENCES. COMMISSION PERSONNEL WILL NOT BE WORKING ON THE PROJECT. AT THE MEETING, THE COMMISSION APPROVED THE PROPOSAL BY A VOTE OF 9-2; /4/ NEVERTHELESS, A QUESTION AROSE ABOUT THE LEGALITY OF THE TRANSFER OF FUNDS FROM THE COMMISSION TO THE DEPARTMENT.

THE DEPARTMENT OF EDUCATION MAINTAINS THAT THERE IS SUFFICIENT LEGAL BASIS FOR THE COMMISSION TRANSFERRING FUNDS TO THE DEPARTMENT. THE DEPARTMENT RELIES ON THE COMMISSION'S AUTHORITY TO "DEVELOP AND CARRY OUT PROGRAMS AT PUBLIC OR PRIVATE INSTITUTIONS FOR THE PROMOTION OF SCHOLARLY, CULTURAL, AND ARTISTIC ACTIVITIES IN JAPAN AND THE UNITED STATES", "TO SUPPORT STUDIES *** IN *** SCHOLARLY RESEARCH IN JAPAN *** DESIGNED TO FOSTER MUTUAL UNDERSTANDING BETWEEN JAPAN AND THE UNITED STATES", AND "TO ENTER INTO CONTRACTS, GRANTS, OR OTHER ARRANGEMENTS" TO CARRY OUT ITS FUNCTIONS. 22 U.S.C. SECS. 2904(A), 2904(B), 2905(8).

THE DEPARTMENT ALSO STATES THAT IT IS AUTHORIZED TO RECEIVE FUNDS FROM OTHER FEDERAL AGENCIES BY VIRTUE OF SECTION 415(A) OF THE DEPARTMENT OF EDUCATION ORGANIZATION ACT, 20 U.S.C. SEC. 3475, WHICH PERMITS THE SECRETARY TO MAKE, ENTER INTO, AND TO PERFORM CONTRACTS, GRANTS, COOPERATIVE AGREEMENTS, OR OTHER SIMILAR TRANSACTIONS WITH FEDERAL OR OTHER PUBLIC AGENCIES; SECTION 405(E) OF THE GENERAL EDUCATION PROVISIONS ACT, 20 U.S.C. SEC. 1221EE), WHICH CONTEMPLATES THAT THE NATIONAL INSTITUTE OF EDUCATION WILL COORDINATE AND COOPERATE WITH OTHER FEDERAL AGENCIES IN CONDUCTING EDUCATIONAL RESEARCH; AND SECTION 405(I) OF THE SAME ACT, ID. SEC. 1221EI), WHICH PROVIDES THAT THE NATIONAL INSTITUTE OF EDUCATION MAY ACT FOR ALL AGENCIES WHERE FUNDS ARE ADVANCED FOR A SINGLE PROJECT BY MORE THAN ONE FEDERAL AGENCY. IN THIS REGARD, THE DEPARTMENT SAYS THAT THE STUDY IS A PROJECT NEITHER PRIMARILY OF THE DEPARTMENT NOR JOINTLY UNDERTAKEN BY THE DEPARTMENT AND THE COMMISSION. ALTHOUGH THE DEPARTMENT WILL MANAGE THE PROJECT, IT MAINTAINS THAT THE PROJECT REFLECTS A MULTI-AGENCY EFFORT, INCLUDING THE STATE DEPARTMENT, UNITED STATES INFORMATION AGENCY, THE NATIONAL ENDOWMENTS FOR THE ARTS AND THE HUMANITIES, THE LIBRARY OF CONGRESS, AND CULCON, AS WELL AS THE COMMISSION. NEVERTHELESS, THE COMMISSION IS THE ONLY FEDERAL AGENCY OTHER THAN THE DEPARTMENT PROVIDING FUNDING FOR THE PROJECT, NOR ARE WE AWARE, AT THIS

POINT, THAT ANY OF THE AGENCIES MENTIONED ABOVE WILL HAVE MORE THAN A LIMITED ADVISORY ROLE.

ADDITIONALLY, THE DEPARTMENT RELIES ON SECTION 601 OF THE ECONOMY ACT, 31 U.S.C. SEC. 1535, WHICH PERMITS INTERAGENCY AGREEMENTS WHERE ONE AGENCY PROVIDES GOODS AND SERVICES TO ANOTHER AGENCY ON A REIMBURSABLE BASIS. THE DEPARTMENT STATES THAT WHILE THE COMMISSION IS NOT ACTUALLY PURCHASING THE STUDY FROM THE DEPARTMENT, CONSISTENT WITH OUR DECISION IN 38 COMP.GEN. 36 (1958), IT IS CONTRIBUTING TOWARD THE CONDUCT OF IT.

2. LEGAL DISCUSSION

THE JAPAN-UNITED STATES FRIENDSHIP COMMISSION WAS ESTABLISHED BY LAW IN 1975 FOR THE PURPOSE OF AIDING "EDUCATION AND CULTURE AT THE HIGHEST LEVEL IN ORDER TO ENHANCE RECIPROCAL PEOPLE-TO-PEOPLE UNDERSTANDING AND TO SUPPORT THE CLOSE FRIENDSHIP AND MUTUALITY OF INTERESTS BETWEEN THE UNITED STATES AND JAPAN." PUB.L. NO. 94-118, SEC. 2, 89 STAT. 603, CODIFIED AT 22 U.S.C. SECS. 2901 AND FOLLOWING. THE COMMISSION IS AN 18 MEMBER ENTITY COMPOSED OF (1) THE 12 MEMBERS OF THE UNITED STATES PANEL OF THE JOINT COMMITTEE OF CULCON; (2) 2 MEMBERS OF THE HOUSE OF REPRESENTATIVES; (3) 2 SENATORS; AND, (4) THE CHAIRMEN OF THE NATIONAL ENDOWMENTS FOR THE ARTS AND HUMANITIES. THE CHAIRMAN OF THE UNITED STATES PANEL OF THE JOINT COMMITTEE OF CULCON ALSO IS THE CHAIRMAN OF THE FRIENDSHIP COMMISSION. INFORMALLY THE UNITED STATES INFORMATION AGENCY HAS TOLD US THAT THE 12 UNITED STATES CULCON MEMBERS ARE APPOINTED BY THE DIRECTOR OF THE UNITED STATES INFORMATION AGENCY, THE DIRECTOR IS A MEMBER HIMSELF, AND USIA PROVIDES SMALL AMOUNTS OF FUNDS TO CULCON.

SECTION 2904(A) OF TITLE 22 OF THE U.S.C. AUTHORIZES THE COMMISSION TO "DEVELOP AND CARRY OUT PROGRAMS AT PUBLIC OR PRIVATE INSTITUTIONS FOR THE PROMOTION OF SCHOLARLY, CULTURAL AND ARTISTIC ACTIVITIES IN JAPAN AND THE UNITED STATES", CONSISTENT WITH SECTION 2902(B) OF TITLE 22. THE LATTER SECTION SPECIFICALLY AUTHORIZES THE COMMISSION TO PROMOTE (1) STUDIES IN INSTITUTIONS OF HIGHER EDUCATION OR SCHOLARLY RESEARCH IN JAPAN AND THE UNITED STATES DESIGNED TO FOSTER MUTUAL UNDERSTANDING BETWEEN THE TWO COUNTRIES; (2) SUPPORT FOR MAJOR COLLECTIONS OF JAPANESE AND AMERICAN BOOKS AND PUBLICATIONS IN APPROPRIATE LIBRARIES /5/ THROUGHOUT THE TWO COUNTRIES; (3) PROGRAMS IN THE ARTS IN ASSOCIATION WITH APPROPRIATE INSTITUTIONS IN JAPAN AND THE UNITED STATES; (4) FELLOWSHIPS AND SCHOLARSHIPS AT GRADUATE AND FACULTY LEVELS; (5) SUPPORT FOR VISITING PROFESSORS AND LECTURERS AT COLLEGES AND UNIVERSITIES; AND (6) SUPPORT FOR OTHER JAPAN-UNITED STATES CULTURAL AND EDUCATIONAL ACTIVITIES CONSISTENT WITH THE ABOVE ENUMERATED PURPOSES. 22 U.S.C. SEC. 2902(B)(1)-(6). THE HOUSE REPORT ACCOMPANYING THE LEGISLATION STATED THAT THE LAST CATEGORY WAS A CATCHALL TO INSURE THAT ANY OTHER ACTIVITIES NOT ENUMERATED, BUT THAT IN THE JUDGEMENT OF THE COMMISSION ARE CONSISTENT WITH THE ACT'S PURPOSES, WOULD BE INCLUDED. H.R. REP. NO. 503, 94TH CONG., 1ST SESS. 3 (1975). IN THE HOUSE DEBATE, ONE OF THE BILL'S SPONSORS STATED THAT COLLEGES AND UNIVERSITIES WOULD BE THE BILL'S BENEFICIARIES, BUT THE OTHER INSTITUTIONS SUCH AS LIBRARIES AND CIVIC CENTERS ALSO WOULD BENEFIT. 121 CONG. REC. 30410 (1976) (REPRESENTATIVE ZABLOCKI).

THE COMMISSION IS AUTHORIZED TO CARRY OUT THE ACTIVITIES ENUMERATED IN SECTION 2902(B) BY ENTERING INTO "CONTRACTS, GRANTS, OR OTHER ARRANGEMENTS, OR MODIFICATIONS THEREOF." 22 U.S.C. SEC. 2905(8). FUNDING FOR THE COMMISSION'S PROGRAMS IS TO COME FROM THE JAPAN-UNITED STATES FRIENDSHIP TRUST FUND. ID. SEC. 2902(A). MONIES ARE APPROPRIATED YEARLY FROM THE FUND. E.G., PUB.L. NO. 98-166, 97 STAT. 1071, 1097.

CONSISTENT WITH THE DEPARTMENT'S POSITION DESCRIBED ABOVE, WE DO NOT QUESTION ITS AUTHORITY TO ENTER INTO CONTRACTS, GRANTS, OR COOPERATIVE ARRANGEMENTS WITH OTHER FEDERAL AGENCIES TO CARRY OUT FUNCTIONS OF THE SECRETARY OF EDUCATION OR THE DEPARTMENT THAT THE SECRETARY DETERMINES NECESSARY, OR TO RECEIVE FUNDS FROM OTHER FEDERAL AGENCIES WHEN FUNDS ARE ADVANCED FOR A SINGLE PROJECT. THE PROBLEM WITH THE PROPOSED TRANSFER CONCERNS THE COMMISSION'S AUTHORITY TO TRANSFER FUNDS TO OTHER GOVERNMENT AGENCIES.

IN GENERAL, UNLESS OTHERWISE AUTHORIZED BY LAW, TRANSFERS OF FUNDS BETWEEN GOVERNMENT AGENCIES AND INSTRUMENTALITIES ARE PROHIBITED BY SECTION 1532 OF TITLE 31 OF THE UNITED STATES CODE. IN ADDITION, 31 U.S.C. SEC. 1301(A) PROVIDES THAT APPROPRIATIONS BE APPLIED ONLY TO THE OBJECTS FOR WHICH APPROPRIATED. /6/ B-182398, MARCH 29, 1976 (LETTER TO SENATOR LAXALT); B-166506, JANUARY 17, 1974. PROHIBITING INTERAGENCY TRANSFERS WITHOUT SPECIFIC AUTHORITY PRESERVES CONGRESS' CONTROL OVER THE APPROPRIATIONS PROCESS. SEE U.S. CONST. ART. I., SEC. 9, CL. 7.

THE COMMISSION IS NEITHER SPECIFICALLY AUTHORIZED TO TRANSFER MONIES TO FEDERAL AGENCIES NOR DOES THE LEGISLATIVE HISTORY STATE THAT THAT ACTIVITY IS CONTEMPLATED. NEVERTHELESS, SECTION 2902(B)(1)-(6) PROVIDES BROAD AUTHORITY FOR COMMISSION FUNDING OF SCHOLARLY, CULTURAL, AND ARTISTIC ACTIVITIES BETWEEN JAPAN AND THE UNITED STATES, INCLUDING "SUPPORT FOR STUDIES *** IN INSTITUTIONS OF HIGHER EDUCATION OR SCHOLARLY RESEARCH IN JAPAN AND IN THE UNITED STATES," DESIGNED TO FOSTER MUTUAL UNDERSTANDING BETWEEN THE TWO COUNTRIES, 22 U.S.C. SEC. 2902(B)(1) AND "SUPPORT FOR JAPAN-UNITED STATES CULTURAL AND EDUCATIONAL ACTIVITIES" NOT MENTIONED IN SUBSECTIONS (1)-(5) WHICH ARE CONSISTENT WITH THE ACT'S PURPOSES, ID. SEC. 2902(B)(6). ALTHOUGH SECTION 2902(B) SUGGESTS THAT THE INSTITUTIONS TO WHICH THE COMMISSION WILL PROVIDE FUNDS ESSENTIALLY ARE TO BE NON- GOVERNMENTAL ENTITIES, THE LEGISLATIVE HISTORY INDICATES THAT PUBLIC LIBRARIES SUCH AS THE LIBRARY OF CONGRESS ARE INTENDED TO RECEIVE COMMISSION FUNDS. H.R. REP. NO. 504, 94TH CONG., 1ST SESS. 3 (1975).

ALTHOUGH WE DOUBT THAT THE CONGRESS EXPECTED THAT COMMISSION FUNDS WOULD BE TRANSFERRED TO OTHER FEDERAL ENTITIES TO CARRY OUT STUDIES FOR WHICH SUCH ENTITIES HAD ALREADY RECEIVED APPROPRIATIONS, WE THINK SUCH TRANSFERS WOULD BE AUTHORIZED WHEN THE PROJECT FOR WHICH THE MONIES ARE BEING TRANSFERRED CLEARLY FALLS WITHIN THE PURPOSES SET FORTH IN SECTION 2902(B). IN THIS REGARD, THE AUTHORITY PROVIDED BY SUBSECTION (6) OF SECTION 2902(B) IS VERY BROAD. MOREOVER, THE HOUSE REPORT ACCOMPANYING THE LEGISLATION ESTABLISHING THE COMMISSION INDICATED THAT THE COMMISSION WAS TO HAVE DISCRETION IN DETERMINING WHICH PROJECTS WERE CONSISTENT WITH THE ACT'S PURPOSES; THAT IS, PROJECTS THAT ARE NOT SPECIFICALLY PROVIDED FOR IN SUBSECTIONS (1)-(5) BUT WHICH COULD BE COMPREHENDED BY SUBSECTION (6). H.R. REP. NO. 503, 94TH CONG., 1ST SESS. 3 (1975). THIS SHOW OF INTENT TOGETHER WITH THE BROAD LANGUAGE OF SUBSECTION (6) GIVES THE COMMISSION SUBSTANTIAL LEEWAY IN DETERMINING THE KINDS OF PROJECTS IT MAY FUND, AND, SIMILARLY, THE KINDS OF INSTITUTIONS WHICH MAY CARRY OUT THE PROJECTS THAT THE COMMISSION FUNDS. WE THINK THIS AUTHORITY DOES COVER THE DEPARTMENT'S STUDY OF JAPANESE EDUCATION. WE NOTE THAT THE COMMISSION ALREADY HAS APPROVED THE PROJECT BY A 9-2 VOTE.

WE ALSO THINK IT ARGUABLE THAT THE STUDY IS AUTHORIZED BY SUBSECTION (1) OF SECTION 2902(B). THE STUDY CLEARLY IS ONE THAT IS DESIGNED TO FOSTER MUTUAL UNDERSTANDING BETWEEN JAPAN AND THE UNITED STATES. /7/ ALTHOUGH THE LANGUAGE OF THE SUBSECTION SUGGESTS THAT THE PROJECTS CONTEMPLATED ARE TO BE DONE BY UNIVERSITIES AND OTHER NON-GOVERNMENTAL RESEARCH INSTITUTIONS, AS THE NATIONAL INSTITUTE OF EDUCATION IS AUTHORIZED TO CARRY OUT EDUCATIONAL RESEARCH, IT COULD

QUALIFY AS AN INSTITUTION OF SCHOLARLY RESEARCH FOR THE STUDY OF JAPANESE EDUCATION.

THE COMMISSION'S AUTHORITY TO "ENTER INTO CONTRACTS, GRANTS, OR OTHER ARRANGEMENTS," 22 U.S.C. SEC. 2905(8), PROVIDES THE MEANS TO CARRY OUT THE COMMISSION'S FUNCTIONS SET FORTH IN SECTION 2902(B). WE THINK THE LANGUAGE, "OR OTHER ARRANGEMENTS" IS BROAD ENOUGH TO ENCOMPASS TRANSFERS OF COMMISSION FUNDS SO LONG AS THE TRANSFER IS TO AN ENTITY CARRYING OUT FUNCTIONS AUTHORIZED BY SECTION 2902(B). AS WE HAVE FOUND THE DEPARTMENT TO BE SUCH AN ENTITY FOR THE PROPOSED STUDY, IT FOLLOWS THAT THE TRANSFER CAN BE MADE TO THE DEPARTMENT. ALTHOUGH THE CIRCUMSTANCES WERE SOMEWHAT DIFFERENT, /8/ OUR CONCLUSION IS, TO SOME EXTENT, SUPPORTED BY OUR DECISION IN B-182398, MARCH 29, 1976 (LETTER TO SENATOR LAXALT). IN THAT CASE, WE PERMITTED THE SECRETARY LABOR TO TRANSFER FUNDS, PURSUANT TO TITLE III OF THE COMPREHENSIVE EMPLOYMENT AND TRAINING ACT OF 1973, (CETA) PUB. L. NO. 92-203, 87 STAT. 839, 857, 29 U.S.C. SECS. 871 AND FOLLOWING, TO THE NATIONAL COMMISSION ON THE OBSERVANCE OF INTERNATIONAL WOMEN'S YEAR WHERE THE LEGISLATION AUTHORIZED THE SECRETARY OF LABOR TO ENTER INTO "GRANTS, CONTRACTS, OR OTHER ARRANGEMENTS" TO CARRY OUT RESEARCH AND INVESTIGATIONS IN FURTHERANCE OF THE OBJECTIVES OF THE CETA. /9/

WE HOPE WE HAVE BEEN OF ASSISTANCE.

/1/ THE CORRECT AMOUNT APPEARS TO BE $165,500.

/2/ CULCON IS A JOINT UNITED STATES-JAPAN ENTITY FORMALLY ESTABLISHED IN 1968. AGREEMENT ON JOINT COMMITTEE ON CULTURAL AND EDUCATIONAL COOPERATION, NOVEMBER 8, 1968, UNITED STATES-JAPAN, T.I.A.S. NO. 6597.

/3/ DR. ELMENDORF, ASSISTANT SECRETARY FOR POSTSECONDARY EDUCATION, DEPARTMENT OF EDUCATION, IS ALSO A MEMBER OF THE COMMISSION.

/4/ ALTHOUGH THERE APPEARS TO BE A DISPUTE ON THIS ISSUE, THE PROPOSAL MAY HAVE BEEN AGREED TO ON CONDITION OF THE OUTCOME OF CONSULTATION BETWEEN THE COMMISSION AND ITS FOUR CONGRESSIONAL MEMBERS, AND, AS REGARDS FUNDING FOR THE SECOND YEAR, SUBJECT TO THE DEPARTMENT'S SEEKING ALTERNATE SOURCES BEFORE ASKING THE COMMISSION FOR ADDITIONAL FUNDS.

/5/ IT WAS INTENDED THAT LIBRARIES INCLUDE PUBLIC LIBRARIES SUCH AS THE LIBRARY OF CONGRESS THAT ARE NOT CONNECTED WITH INSTITUTIONS OF HIGHER LEARNING. R.H. REP. NO. 503, 94TH CONG., 1ST SESS. 3 (1975).

/6/ UNAUTHORIZED TRANSFERS ALSO CAN CREATE UNLAWFUL AUGMENTATIONS IN THE APPROPRIATIONS OF AN AGENCY RECEIVING THE FUNDS. HOWEVER, AS INDICATED ABOVE IN THE TEXT, THIS IS NOT A PROBLEM HERE BECAUSE EDUCATION HAS THE NECESSARY AUTHORITY TO ACCEPT FUNDS FROM OTHER AGENCIES.

/7/ THE JAPANESE ARE CONDUCTING A SIMILAR STUDY OF EDUCATION IN THE UNITED STATES, AND BOTH STUDIES ALREADY HAVE BEEN SANCTIONED BY EACH NATION'S HIGHEST OFFICIALS.

/8/ THE EXECUTIVE ORDER CREATING THE NATIONAL COMMISSION ON THE OBSERVANCE OF INTERNATIONAL WOMEN'S YEAR CLEARLY INDICATED THAT FEDERAL AGENCIES WERE TO PROVIDE FINANCIAL ASSISTANCE TO THE COMMISSION. EXEC. ORDER NO. 11832, 40 FED.REG. 2415 (JANUARY 13, 1975).

/9/ AS WE HAVE FOUND THAT THE COMMISSION'S LEGISLATION AUTHORIZES IT TO TRANSFER MONIES TO THE DEPARTMENT FOR THE STUDY OF EDUCATION IN JAPAN, WE NEED NOT DISCUSS THE DEPARTMENT'S ARGUMENT THAT THE TRANSFER OF FUNDS CAN BE MADE PURSUANT TO THE ECONOMY ACT, 31 U.S.C. SEC. 1535-- AN ARGUMENT WITH WHICH WE DISAGREE. IN ANY EVENT, AS WE UNDERSTAND IT, NO ECONOMY ACT AGREEMENT HAS ACTUALLY BEEN CONCLUDED, NOR IS ONE NOW CONTEMPLATED.