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B-221694, Apr 8, 1986

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APPROPRIATIONS - CONTINUING RESOLUTIONS DIGEST: 1. AMENDMENTS REPORTED IN "TECHNICAL DISAGREEMENT" BY THE COMMITTEE OF CONFERENCE ON THE DISTRICT OF COLUMBIA APPROPRIATIONS ACT, 1986, WERE INCORPORATED BY REFERENCE INTO THE 1986 CONTINUING RESOLUTION AND THUS ENACTED INTO LAW. BY APPROPRIATING FUNDS FOR THE D.C. ACT TO THE EXTENT AND IN THE MANNER PROVIDED FOR IN THE CONFERENCE REPORT AND JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE "AS IF ENACTED INTO LAW," THE CONGRESS INDICATED ITS INTENT THAT THE ENTIRE ACT, INCLUDING RESTRICTIONS AND SUBSTANTIVE PROVISIONS, BE INCORPORATED INTO THE RESOLUTION. APPROPRIATIONS - CONTINUING RESOLUTIONS 2. AMENDMENTS REPORTED IN "TECHNICAL DISAGREEMENT" BY THE COMMITTEE OF CONFERENCE ON THE DISTRICT OF COLUMBIA APPROPRIATIONS ACT, 1986, WERE INCORPORATED BY REFERENCE INTO THE 1986 CONTINUING RESOLUTION AND THUS ENACTED INTO LAW. THE D.C. ACT WAS INCORPORATED TO THE EXTENT AND IN THE MANNER PROVIDED FOR IN THE CONFERENCE REPORT AND THE JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE. THE AMENDMENTS REPORTED IN "TECHNICAL DISAGREEMENT" BY THE JOINT EXPLANATORY STATEMENT WERE ACTUALLY AGREED TO BY THE HOUSE AND SENATE CONFEREES BUT WERE SO REPORTED TO AVOID VIOLATING RULES OF THE HOUSE OF REPRESENTATIVES. BY REFERRING TO BOTH THE CONFERENCE REPORT AND THE JOINT EXPLANATORY STATEMENT, THE CONGRESS INDICATED ITS INTENT THAT AMENDMENTS REPORTED IN "TECHNICAL DISAGREEMENT" AS WELL AS THOSE REPORTED IN AGREEMENT WERE TO BE INCORPORATED INTO THE RESOLUTION.

THE HONORABLE JAMIE WHITTEN:

CHAIRMAN, COMMITTEE ON APPROPRIATIONS

HOUSE OF REPRESENTATIVES

IN YOUR LETTER OF JANUARY 16, 1986, YOU REQUESTED OUR OPINION ON WHETHER THE "JOINT RESOLUTION MAKING FURTHER CONTINUING APPROPRIATIONS FOR THE FISCAL YEAR 1986, AND FOR OTHER PURPOSES," PUB.L. NO. 99-190, 99 STAT. *** (1985) (CONTINUING RESOLUTION), ENACTED INTO LAW AMENDMENTS REPORTED IN TECHNICAL DISAGREEMENT BY THE COMMITTEE OF CONFERENCE ON H.R. 3067, THE DISTRICT OF COLUMBIA APPROPRIATIONS ACT, 1986. FOR THE REASONS INDICATED BELOW WE CONCLUDE THAT THE CONTINUING RESOLUTION ENACTED THE ENTIRE DISTRICT OF COLUMBIA APPROPRIATIONS ACT, INCLUDING RESTRICTION AND SUBSTANTIVE PROVISIONS AND ALL AMENDMENTS REPORTED IN TECHNICAL DISAGREEMENT BY THE CONFERENCE COMMITTEE.

AT THE TIME THE CONFERENCE COMMITTEE MET ON H.J. RES. 465 (WHICH WAS TO BECOME THE CONTINUING RESOLUTION, PUBLIC LAW 99-190), ONLY FOUR OF THE 13 ANNUAL APPROPRIATIONS ACTS HAD BEEN ENACTED INTO LAW. OF THE REMAINING ACTS, ONE HAD BEEN VETOED BY THE PRESIDENT (TREASURY, POSTAL SERVICE, AND GENERAL GOVERNMENT),

TWO HAD CLEARED BOTH CHAMBERS OF THE CONGRESS AND WERE AWAITING THE PRESIDENT'S SIGNATURE (LABOR, HHS, EDUCATION AND RELATED AGENCIES); COMMERCE, JUSTICE, STATE, THE JUDICIARY, AND RELATED AGENCIES), AND TWO OTHERS HAD BEEN REPORTED TO THE HOUSE BY THEIR RESPECTIVE CONFERENCE COMMITTEES (AGRICULTURE, RURAL DEVELOPMENT, AND RELATED AGENCIES; DISTRICT OF COLUMBIA). THE FOUR OTHER ACTS WERE EITHER IN CONFERENCE (TRANSPORTATION AND RELATED AGENCIES), HAD PASSED ONLY THE HOUSE (INTERIOR AND RELATED AGENCIES; DEFENSE), OR HAD PASSED NEITHER CHAMBER (FOREIGN ASSISTANCE AND RELATED PROGRAMS). WHILE THE CONFERENCE COMMITTEE WAS MEETING, THE PRESIDENT APPROVED THE LABOR, HHS, AND THE COMMERCE, JUSTICE ACTS. THUS, THE COMMITTEE NEEDED TO AGREE ON A RESOLUTION THAT PROVIDED CONTINUED FUNDING FOR THE PROGRAMS NORMALLY FUNDED BY THE SEVEN STILL UNENACTED ACTS.

WITH RESPECT TO THE FOUR ACTS THAT HAD NOT PASSED BOTH CHAMBERS AND GONE THROUGH CONFERENCE, THE CONFEREES INCORPORATED INTO THE RESOLUTION THE ENTIRE TEXTS OF THE ACTS THEY HAD AGREED TO, "TO BE EFFECTIVE AS IF THEY HAD BEEN ENACTED INTO LAW AS THE REGULAR APPROPRIATION ACTS." SEE H.R. REP. NO. 450, 99TH CONG., 1ST SESS. 2-42 (DEFENSE), 42-87 (INTERIOR), 87-110 (TRANSPORTATION), 111-136 (FOREIGN ASSISTANCE) (1985). IN OUR OPINION IT IS CLEAR FROM THE JUST-QUOTED LANGUAGE THAT, WHEN THE HOUSE AND SENATE ACCEPTED THE CONFERENCE REPORT AND THE PRESIDENT SIGNED THE CONTINUING RESOLUTION, THESE FOUR ACTS, IN THEIR ENTIRETY--INCLUDING RESTRICTIONS AND SUBSTANTIVE PROVISIONS AS WELL AS APPROPRIATIONS--BECAME LAW. THIS VIEW IS CONFIRMED BY THE LEGISLATIVE HISTORY OF THE CONTINUING RESOLUTION. FOR EXAMPLE, WITH RESPECT TO THE DEFENSE ACT, THE JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE STATES:

"THE CONFERENCE AGREEMENT ON HOUSE JOINT RESOLUTION 465 INCORPORATES SOME OF THE PROVISIONS OF BOTH THE HOUSE AND SENATE VERSIONS OF THE DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 1986, AND HAS THE EFFECT OF ENACTING THE ACT INTO LAW." ID. AT 158.

WITH RESPECT TO THE THREE ACTS WHICH HAD BEEN THROUGH CONFERENCE (AND IN ONE CASE BEEN VETOED BY THE PRESIDENT), THE COMMITTEE DID NOT INCORPORATE THE ENTIRE ACT. RATHER IT INCORPORATED BY REFERENCE THE ACTION OF THE RESPECTIVE CONFERENCE COMMITTEE FOR THAT ACT (ADJUSTED IN THE CASE OF THE TREASURY, POSTAL SERVICE ACT TO OVERCOME THE PRESIDENT'S OBJECTIONS). FOR EXAMPLE, AS RECOMMENDED BY THE COMMITTEE AND LATER ENACTED INTO LAW, SUBSECTION 101(C) APPROPRIATES:

"(C) SUCH AMOUNTS AS MAY BE NECESSARY FOR PROGRAMS, PROJECTS, OR ACTIVITIES PROVIDED FOR IN THE DISTRICT OF COLUMBIA APPROPRIATIONS ACT, 1986 (H.R. 3067), TO THE EXTENT AND IN THE MANNER PROVIDED FOR IN THE CONFERENCE REPORT AND JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE (HOUSE REPORT 99-419), AS FILED IN THE HOUSE OF REPRESENTATIVES ON DECEMBER 5, 1985, AS IF ENACTED INTO LAW." (ENROLLED RESOLUTION AT 40.)

IN OUR OPINION, AS IN THE CASE OF THE FOUR ACTS DISCUSSED ABOVE, SECTION 101(C) INCORPORATES THE DISTRICT OF COLUMBIA APPROPRIATIONS ACT, AS REPORTED TO THE HOUSE, IN ITS ENTIRETY, INCLUDING RESTRICTIONS AND SUBSTANTIVE PROVISIONS AS WELL AS APPROPRIATIONS. USE OF THE WORDS "AS IF ENACTED INTO LAW" INDICATED THAT THE CONGRESS INTENDED TO INCORPORATE THE APPROPRIATION ACT THAT WOULD HAVE RESULTED HAD BOTH CHAMBERS ACCEPTED THE RECOMMENDATIONS OF THE CONFERENCE COMMITTEE AND THE PRESIDENT SIGNED THEM INTO LAW. WE CAN CONCEIVE OF NO OTHER REASON THAT THE CONGRESS WOULD HAVE USED THE WORDS EXCEPT TO MAKE IT CLEAR THAT THE ENTIRE ACT WAS BEING INCORPORATED BY REFERENCE.

IT COULD BE ARGUED THAT BECAUSE SUBSECTION 101(C) BEGINS WITH THE WORDS "SUCH AMOUNTS AS MAY BE NECESSARY" THE RESOLUTION INCORPORATES ONLY THE APPROPRIATIONS CONTAINED IN THE DISTRICT OF COLUMBIA ACT. IN OUR VIEW, HOWEVER, THIS ARGUMENT IS OVERCOME BY THE USE OF "AS IF ENACTED INTO LAW." CERTAINLY, HAD IT INTENDED TO INCORPORATE ONLY THE APPROPRIATIONS CONTAINED IN THE ACT, THE CONGRESS WOULD NOT HAVE USED THIS PHRASE. MOREOVER, THE FOUR SUBSECTIONS THAT INCORPORATE THE FULL TEXT OF ACTS ALSO BEGIN WITH "SUCH AMOUNTS AS MAY BE NECESSARY." CLEARLY THE CONGRESS COULD NOT HAVE MEANT THESE SUBSECTIONS TO INCORPORATE ONLY THE APPROPRIATIONS CONTAINED IN THOSE ACTS.

FURTHER, THE FACT THAT THE CONGRESS DID NOT INCORPORATE THE ENTIRE TEXT OF THE ACT, AS IT DID WITH THE FOUR ACTS DISCUSSED ABOVE, DOES NOT AFFECT OUR CONCLUSION. WITH RESPECT TO THE DISTRICT OF COLUMBIA ACT, AND THE OTHER TWO ACTS FOR WHICH THE CONTINUING RESOLUTION USES THE SAME LANGUAGE, THERE WAS ALREADY THE TEXT OF AN ACT AGREED TO BY CONFEREES FROM BOTH THE HOUSE AND THE SENATE. IT WAS SUFFICIENT FOR THE RESOLUTION TO INCORPORATE IT BY REFERENCE. WITH RESPECT TO THE OTHER FOUR ACTS, ON THE OTHER HAND, THERE WAS NO EXISTING LANGUAGE WHICH HAD BEEN AGREED TO BY REPRESENTATIVES OF BOTH CHAMBERS. THEREFORE IT WAS NECESSARY THAT THE RESOLUTION INCORPORATE THE ENTIRE TEXT OF THOSE ACTS.

HAVING DECIDED THAT THE CONTINUING RESOLUTION INCORPORATES THE ENTIRE DISTRICT OF COLUMBIA APPROPRIATIONS ACT, 1986, AS REPORTED TO THE HOUSE BY THE CONFERENCE COMMITTEE ON THAT ACT, WE STILL NEED TO DETERMINE WHAT THE ACT CONTAINED AT THAT TIME. THE CONTINUING RESOLUTION STATES THAT THE ACT IS INCORPORATED AS "PROVIDED FOR IN THE CONFERENCE REPORT AND JOINT EXPLANATORY STATEMENT OF THE COMMITTEE ON CONFERENCE (HOUSE REPORT 99-419)" AS FILED IN THE HOUSE ON DECEMBER 5, 1985. THUS WE MUST LOOK AT TWO DOCUMENTS-- THE CONFERENCE REPORT AND THE JOINT EXPLANATORY STATEMENT.

THE CONFERENCE REPORT ON THE DISTRICT OF COLUMBIA APPROPRIATIONS ACT INDICATES THAT THE CONFEREES HAD AGREED ON SEVERAL SENATE AMENDMENTS TO THE HOUSE-PASSED ACT, BUT WERE STILL IN DISAGREEMENT ON SEVERAL OTHERS. THE JOINT EXPLANATORY STATEMENT EXPLAINED THE COMMITTEE ACTIONS ON EACH OF THE SENATE AMENDMENTS. WITH RESPECT TO THE AMENDMENTS ON WHICH THE CONFEREES HAD NOT AGREED, THE JOINT EXPLANATORY STATEMENT REPORTED THAT THE COMMITTEE WAS IN "TECHNICAL DISAGREEMENT." HOWEVER, THE MANAGERS FOR EACH CHAMBER AGREED TO MOVE THEIR RESPECTIVE CHAMBERS TO CONCUR IN AN AMENDMENT TO THE SENATE AMENDMENT, OR IN SOME INSTANCES THE MANAGERS ON THE PART OF THE HOUSE AGREED TO MOVE THAT THE HOUSE RECEDE FROM ITS DISAGREEMENT TO THE SENATE AMENDMENT. IN OTHER WORDS, ALTHOUGH THE COMMITTEE REPORTED THESE AMENDMENTS IN "TECHNICAL DISAGREEMENT," THE CONFEREES HAD, IN FACT, ACTUALLY AGREED ON COMPROMISE LANGUAGE.

UNDER THE RULES OF THE HOUSE, HOUSE CONFEREES ARE LIMITED IN WHAT THEY CAN AGREE TO. SHOULD THE CONFEREES REACH AN AGREEMENT ON AN AMENDMENT THAT VIOLATES ONE OF THESE RULES IT WOULD MAKE THE ENTIRE COMMITTEE REPORT SUBJECT TO A POINT OF ORDER WHEN IT IS VOTED ON IN THE HOUSE. TO AVOID THIS RESULT, THE CONFEREES REPORT THESE AMENDMENTS IN "TECHNICAL DISAGREEMENT." EACH OF THESE AMENDMENTS IS THEN VOTED ON SEPARATELY FROM THE CONFERENCE REPORT IN THE HOUSE AND SENATE. SEE THE WASHINGTON MONITOR, A REFERENCE MANUAL TO ACCOMPANY UNDERSTANDING CONGRESS III-20 (1978); SEE GENERALLY, RULE NO. XXVIII, RULES OF THE HOUSE OF REPRESENTATIVES, H.R. DOC. NO. 227, 98TH CONG., 2D SESS. 641 660 (1985); CLEAVES' MANUAL OF THE LAW AND PRACTICE IN REGARD TO CONFERENCES AND CONFERENCE REPORTS, SENATE MANUAL, S. DOC. NO. 1, 98TH CONG., 2D SESS. 181 -192 (1984).

BASED ON THE ABOVE, WHEN THE CONTINUING RESOLUTION INCORPORATED THE DISTRICT OF

COLUMBIA APPROPRIATIONS ACT TO THE EXTENT AND MANNER PROVIDED IN BOTH THE CONFERENCE REPORT AND JOINT EXPLANATORY STATEMENT, IT INCORPORATED NOT ONLY THE AMENDMENTS REPORTED IN AGREEMENT IN THE REPORT, BUT ALSO THOSE AMENDMENTS REPORTED IN THE TECHNICAL DISAGREEMENT IN THE STATEMENT. WERE WE TO CONCLUDE OTHERWISE, THE RESULTING ACT, AS ENACTED AS PART OF THE CONTINUING RESOLUTION, NOT ONLY WOULD BE LACKING IN SOME OF THE SUBSTANTIVE PROVISIONS WHICH THE CONFEREES AGREED ON IN FACT, BUT ALSO WOULD BE WITHOUT APPROPRIATIONS FOR SOME ACCOUNTS. AS WE STATED IN B-204449, NOVEMBER 18, 1981:

"WHILE THE AMENDMENTS IN THE CONFERENCE REPORT WHICH WERE REPORTED 'IN DISAGREEMENT' DO NOT INDICATE AN AGREED-UPON APPROPRIATION AMOUNT IN THE REPORT, THE ACTION PROPOSED BY THE CONFERENCE COMMITTEE, INCLUDING RECOMMENDED AMOUNTS, IS SPELLED OUT IN THE JOINT EXPLANATORY STATEMENT. THUS, HAD THE CONGRESS REFERRED ONLY TO THE CONFERENCE REPORT IN THE CONTINUING RESOLUTION, THERE WOULD BE NO SPECIFIED AMOUNTS APPROPRIATED FOR THE AMENDMENTS WHICH THE CONFERENCE COMMITTEE REPORTED IN TECHNICAL DISAGREEMENT. THEREFORE, IT WAS NECESSARY FOR THE CONGRESS TO REFER ALSO TO THE JOINT EXPLANATORY STATEMENT IN ORDER TO SPECIFY THOSE AMOUNTS AS APPROPRIATED BY THE CONTINUING RESOLUTION."

WE THEREFORE CONCLUDE THAT THOSE AMENDMENTS REPORTED IN TECHNICAL DISAGREEMENT BY THE COMMITTEE OF CONFERENCE ON THE DISTRICT OF COLUMBIA APPROPRIATIONS ACT, 1986, WERE INCORPORATED BY REFERENCE INTO THE CONTINUING RESOLUTION AND THUS ENACTED INTO LAW.

WE TRUST THAT THIS OPINION IS RESPONSIVE TO YOUR REQUEST. UNLESS YOU RELEASE IT EARLIER, THIS OPINION WILL BE AVAILABLE TO THE PUBLIC 5 DAYS FROM TODAY.