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B-230727, Aug 1, 1988

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MISCELLANEOUS TOPICS - Federal Administrative/Legislative Matters - Advisory committees - Gifts/donations - Acceptance DIGEST: No statutory mechanism exists for accepting contributions to the United States Commission on Improving the Effectiveness of the United Nations (Commission) before March 1, 1989. The statute that creates the Commission does not take effect until March 1, 1989, and fails to authorize any entity to act on behalf of the Commission.

The Honorable Dante B. Fascell

Chairman, Committee on Foreign Affairs

House of Representatives:

In your letter of March 1, 1988, you asked our advice on the proper handling of contributions to the future United States Commission on Improving the Effectiveness of the United Nations (Commission). The Commission-- provision for which was made in the fiscal years 1988 and 1989 Foreign Relations Authorization Act-- will not come into existence until March 1, 1989. As explained below, we conclude that, in the absence of a statutory amendment providing a mechanism for accepting contributions in advance of the establishment of the Commission, potential donors may not make contributions to support the operations of the Commission before March 1, 1989.

BACKGROUND

Title VII, Part B, of the Foreign Relation Authorization Act, Fiscal Years 1988 and 1989, Pub.L. No. 100-204, 101 Stat. 1331, 1391-1394, provides for the establishment of a United States Commission on Improving the Effectiveness of the United Nations. The purpose of the Commission will be to examine the United Nations system as a whole and to submit a report to the President and the Congress recommending ways to improve the effectiveness of the United Nations system. The Commission will have no operational responsibilities. The Commission will consist of 16 members appointed by the leaders of the House and the Senate and by the President.

The method by which the Commission is to be funded is set forth in section 727 of he Act, as follows:

"(a) COMMISSION TO BE PRIVATELY FUNDED.-- The Commission may accept and use contributions from private United States sources to carry out this part. No Federal funds may be made available to the Commission for use in carrying out

this part.

"(b) LIMITATION ON SIZE OF CONTRIBUTIONS.-- The Commission may not accept contributions from any single source which have a value of more than--

"(1) $100,000, or

"(2) 20 percent of the total of all contributions accepted by the Commission.

"(c) COMMISSION APPROVAL OF CERTAIN CONTRIBUTIONS-- The Commission may accept contributions having a value of $1,000 or more from a single source only if more than two-thirds of the members of the Commission have approved the acceptance of those contributions."

101 Stat. at 1394.

Section 730 of the Act provides, "This part shall take effect on March 1, 1989." Id. The concern expressed in your letter arises from this provision. If the Commission, and its authority to accept contributions do not come into existence until next year, what mechanism exists to permit individuals to make contributions to the Commission before then?

To assist us in responding to your inquiry, we requested the views of the Departments of State and of the Treasury and the General Services Administration (GSA). Both Treasury and GSA submitted written responses concluding that they had no legal authority to accept or administer contributions on behalf of the Commission prior to March 1, 1989. Although State has not formally responded to our request, we have been contacted informally and told that State also has no authority to administer contributions on behalf of the Commission.

DISCUSSION

Under section 730 of the Act, no provision of Part B is to take effect until March 1, 1989. This means that not only may no Commissioners be appointed before that date, but also the authority to accept contributions does not arise until then. Therefore, authority to accept contributions on behalf of the Commission before March 1, 1989, if it exists at all, must be found elsewhere.

In our letters to Treasury, State, and GSA, we suggested the possibility that one of these entities act as custodian for contributions made on behalf of the Commission and then transfer them to the Commission when it comes into existence. Treasury informed us that it could set up a Deposit Fund account into which contributions for the future Commission could be deposited. A Deposit Fund account is an account that holds "deposits received from outside sources for which the Government is acting solely as a banker, fiscal agent or custodian." 1 Treasury Financial Manual Sec. 2- 1560.10; see Department of the Treasury, Federal Financial Transactions 8, 120 (1980).

According to Treasury, however, merely establishing an account in the Treasury would not permit potential donors to make contributions to the Commission. Treasury points out that someone must administer the fund by taking custody and accounting for the donations. Since the statute provides no authority for any entity to administer these funds on behalf of the Commission until it comes into existence, Treasury concludes that it would be without authority to accept and hold any contributions.

Normally, a small, temporary agency may receive administrative support services, including fiscal and accounting support, from GSA or from Treasury's Financial Management Service, Finance Division. However, because neither GSA nor Treasury has independent authority to provide these services for other agencies, the basis for providing them would normally be an interagency agreement under 31 U.S.C. Sec. 1535, which authorizes one agency to do work for another on a reimbursable basis. this instance, because the Commission will not come into existence until March 1 of next year, there is no entity to enter into such an interagency agreement with either GSA or Treasury. Equally significant, there are no funds currently available to reimburse either agency for the costs it would incur in administering contributions for the Commission.

Finally, another provision in the Act complicates the acceptance of donations to the Commission before it comes into existence. Under subsection (c) of section 727, which we quoted above, accepting contributions is a discretionary rather than a ministerial function. Acceptance of any contribution of $1,000 or more from one source requires the approval of more than two-thirds of the Commissioners. Since there will be no Commissioners appointed until on or after March 1, 1989, the determination of whether any contributions of $1,000 or greater can be retained cannot be made until the Commissioners are appointed.

For the above reasons, Treasury, GSA, and State all conclude that there is no current mechanism for accepting contributions to the Commission prior to March 1, 1989, the date the Commission will come into existence. We agree with this position, particularly with respect to donations of $1000 or more, which only the Commission will have authority to accept. We therefore conclude that, in the absence of a statutory amendment providing a mechanism for accepting contributions in advance of the birth of the Commission, potential donors may not make contributions in support of the Commission prior to March 1, 1989.

We trust that this opinion is responsive to your needs. In accordance with our normal practice, unless you make it public earlier, this opinion will be available for public distribution 30 days from today.