Text as published on gao.gov, https://www.gao.gov/products/b-231662, archived 2026-08-07. GAO published no original file for this decision. Rendered by Comptroller Desk.

B-231662 September 1, 1988

Number: B-231662

Date: 1988-09-01

B-231662 September 1, 1988

The Honorable Alan J. Dixon United States Senate

Dear Senator Dixon:

This is in response to your joint letter of May 9, 1988, with Senator Steve Symms and Senator Frank Lautenberg, which asked for this Office's legal opinion regarding the effect of apparent inconsistencies between provisions of fiscal year 1988 authorization and appropriation laws providing for economic assistance to the independent Polish trade union Solidarity. As explained in detail below, we conclude that the conflicting provisions may be construed harmoniously as earmarking $1 million in appropriated funds for the exclusive support of Solidarity.

LEGISLATIVE BACKGROUND

Section 1207 of the Foreign Relations Authorization Act for fiscal years 1988 and 1989, expresses general congressional support for the Polish trade union Solidarity and in addition provides:

"ASSISTANCE IN SUPPORT OF DEMOCRACY IN POLAND. --Notwithstanding any other provision of law, of the amounts authorized to be appropriated to carry out chapter 4 of part II of the Foreign Assistance Act of 1961 (relating to the economic support fund) for fiscal year 1988, not less than $1,000,000 shall be available only for the unconditional support of democratic institutions and activities in Poland."

Pub. L. No. 100-204, 101 Stat. 1331, 1412 (Dec. 22, 1987).

The Committee Report accompanying the authorization measure states that the earmark for support of democratic institutions and activities in Poland is in lieu of a direct earmark for Solidarity. H.R. Conf. Rep. No. 475, 100th Cong., 1 Sess. at 175 (1987).

However, the Economic Support Fund (ESF) Appropriation in the Foreign Operations, Export Financing and Related Programs Appropriation Act, 1988 states:

"Provided further, That $1,000,000 of the funds appropriated under this heading shall be made available, notwithstanding any other provision of law, only for the support of the i independent Polish trade union 'Solidarity.'"

Pub. L. No. 100-202, 101 Stat. 1329-144 (Dec. 22, 1987). /1/

The report issued by the House Committee on Appropriations states that the $1,000,000 earmark for Solidarity is to be used in the same manner provided for in the fiscal year 1987 Supplemental Appropriations Act, /2/ which also provided $1,000,000 for support of Solidarity. H.R. Rep. No. 283, 100th Cong., 1st Sess. at 84 (1987).

LEGAL ANALYSIS

A principle of statutory construction is that in order to resolve perceived inconsistencies between an appropriation act and an authorizing act, particularly when both are enacted on the same day, the statutes should be construed harmoniously so as to give maximum effect to both whenever possible. See B-193202, Dec. 21, 1978. Here, we concludd that both acts may be construed harmoniously to give effect to both provisions and fulfill congressional intent.

Clearly, the Foreign Operations appropriation earmarks $1,000,000 of the ESF for the exclusive use of Solidarity. Originally, the Foreign Relations authorization act contained similar language providing $1,000,000 "only for the unconditional support of . . . 'Solidarity'." 133 Cong. Rec. S13578 (daily ed. Oct. 6, 1987). This provision was introduced as an amendment to the authorization act by Senator Symms during the Senate floor debates on the legislation. Id. Senator Symms stressed that the intent of the amendment's sponsors was that money continue to flow to Solidarity through the same channels used in expending the 1987 appropriation. Id. In conference, however, the amendment was modified to provide for unconditional support to democratic institutions and activities in Poland rather than naming Solidarity directly as the recipient. H.R. Conf. Rep. No. 475, 100th Cong., 1st Sess. at 175 (1987). The legislative history of the authorization indicates that the language change was a result of an internal political dispute in Poland between supporters and representatives of Solidarity as to whether appropriation of American dollars should be made directly to Solidarity, and did not reflect an intention by our Congress to deny exclusive use of the funds to Solidarity.

Apparently according to the Polish American Congress, in Poland, Solidarity, as a trade union organization, may only accept needed funds from free trade union organizations in the west. In fact, fiscal year 1987 funds appropriated specifically for Solidarity had to be diverted by Solidarity through the "Solidarity Social Fund." Conference Report at 176. Thus, the Polish American Congress supported the "democratic institutions and activities" language because it would facilitate the distribution of appropriated funds to Solidarity. Id. On the other hand, Solidarity's Brussels Coordinating Office favored a direct earmark for Solidarity. Id. at 177. Although the Brussels Office recognized that a direct earmark for Solidarity in United States legislation might expose Solidarity to harsh propaganda attacks and give the Polish Government an excuse to deny legal status to the union, it stated that "the same will only strengthen [the] Union's negotiating position vis-a-vis the [Polish] regime." Id. The Conference Committee apparently decided not to earmark funds for Solidarity in the legislation in order to meet these concerns. However, it clearly intended the $1,000,000 to be provided only for Solidarity. In an apparent adoption of the Polish American Congress' recommendation, the Committee Report states:

"The committee of conference intends that the $1 million be channeled through the National Endowment for Democracy's Free Trade Union Institute for use in

Poland in full consultation with representatives of Solidarity." Id. at 175 (Emphasis added.) /3/

Thus, notwithstanding the "democratic institutions" language in the authorization act, the legislative history clarifies the fact that the intended beneficiary of the funds is, lidarity. /4/ The differing language can be attributed to congressional sensitivity to the potential practical and political repercussions in Poland that could be generated by specifically naming Solidarity in legislation. In any event, an appropriation of funds to Solidarity fulfills the authorization language mandating assistance to "democratic institutions-and ities in Poland

These views are shared by the Agency for International Development, the agency charged with distributing the ESF monies, which took the following position in a letter to us dated June 10:

"While the committees which considered assistance for Solidarity differed in their approach to providing that assistance, their clear intention was that $1 million of Economic Support Funds be used in support of Solidarity, and that the phrase 'democratic institutions and activities' was simply a euphemism for Solidarity. This could be accomplished through provision of assistance directly to Solidarity (and used by Solidarity to support its Social Welfare Fund program), through the AFL-CIO's Free Trade Union Institute, or through other means that might be available. It is our opinion that assistance for Solidarity, whether Provided through the AFL-CIO or the Social Welfare Fund meets the criteria contained in the State Department Authorization of 'support of democratic institutions and activities in Poland.' At the same time, we construe such assistance as being assistance for Solidarity.

. . . When faced with a political problem of whether to mention Solidarity in [the] statute, the Congress in one instance chose not to, in another it did the opposite."

Based on the foregoing, we conclude that the two provisions can be read consistently to reflect the intent of the Congress to provide $1 million exclusively for the use of Solidarity.

We hope this information is fully responsive to your request. Unless you publicly announce the contents of this decision earlier, we will withhold further distribution for 30 days, after which copies will be made available to other interested parties.

Sincerely yours,

Comptroller General of the United States

1. The funds made available under this heading are to remain available until September 30, 1989.

2. See Pub. L. No. 100-71, 101 Stat. 407 (1987).

3. An Amendment to the International Security and Development Act of 1987 (H.R. 3100) contains language identical to the Foreign Relations Authorization and provides for $1 million in support for "democratic institutions and activities in Poland." Prior to the amendment, the provision offered the assistance only

for Solidarity. 133 Cong. Rec. H10625 (daily ed. Nov. 19, 1987). Representative Solarz offered the perfecting amendment in order to:

"[E]xpress in clear and forceful language the strong support of the Congress for Solidarity in Poland and [to] facilitate the more effective distribution of the resources authorized [i.e., $1 million] . . . [and] it has the support of the Polish-American Congress. . . ." Id.

4. A piece of related legislation provides significant insight as to the sense of the Congress regarding funds appropriated exclusively for the use of Solidarity. In 1987, an Amendment was offered to the Omnibus Trade and Competitiveness Act of 1987 (S.1420), providing for $1 million only for the support of Solidarity. 133 Cong. Rec. S9997 (daily ed. July 15, 1987). In Conference, however, the provision concerning exclusive assistance to Solidarity was eliminated insofar as provisions for support of Solidarity had already been enacted into law not only by the Continuing resolution (Pub. L. No. 100-202) but also by the Foreign Relations Authorization Act (Pub. L. No. 100204). See 133 Cong. Rec. H2982 (daily ed. April 20, 1988).