GAO

United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

B-278121

November 7, 1997

John D. Webster
Director, Financial Services
Library of Congress

Dear Mr. Webster:

This responds to your request of September 22 for our opinion regarding the 1998 Salaries and Expenses Appropriation for the Library of Congress (Library). You question, given the language of the applicable conference report, the amount of the Library's Salaries and Expenses Appropriation that must be used for the acquisition of library materials.

The Legislative Branch Appropriations Act, 1998 appropriates money to the Library of Congress, under the heading "Library of Congress, Salaries and Expenses", as follows:

> *"For necessary expenses of the Library of Congress not otherwise provided for. . .$227,016,000 . . . Provided further, That of the total amount appropriated, $9,619,000 is to remain available until expended for acquisition of books, periodicals, newspapers, and all other materials . . . ."*

Other than the $9,619,000 earmark and two other earmarks not relevant here, this appropriation is available only for fiscal year 1998. Because the Library had sought only $8,845,000 of the $227,016,000 total for the acquisition of materials, to accommodate a $9,619,000 earmark, the Library must reduce its spending on other programs and activities by $774,000 (representing the amount by which the Congress increased the Library's request for funding for acquisition of materials) and use $774,000 of its fiscal year money to cover the difference.

Instead of reading the $9,619,000 earmark for acquisition of materials as both the minimum and maximum amount available for this purpose, you have suggested an alternative. After reviewing the conference committee report (H.R. Rep. No. 105-254), you believe that the conferees intended to authorize the Library to fund "up to" $9,619,000 for materials, but not to require that level of spending. In other

words, the $9,619,000 earmark is a maximum only. The relevant language in the conference report reads as follows:

> *"Provides $227,016,000 for salaries and expenses, Library of Congress instead of $223,507,000 as proposed by the House and $229,904,000 as proposed by the Senate. Of this amount, $9,619,000 is to remain available until expended for acquisition of library materials as proposed by the Senate instead of $8,845,000 as proposed by the House".*

H.R. Rep. No. 105-254, at 30.

You point out that the conferees agreed to the House proposed funding level ($223,507,000) with two exceptions that taken together represent an increase of $3,509,000 over the House level. This, taken in concert with the fact that the conference report makes no mention of a $774,000 reduction in fiscal year money, indicates that the Congress intended no other change to the total fiscal year amount generally available, such as would be required by a mandated $9,619,000 level of funding. Accordingly, you suggest that the Congress necessarily intended the $9,619,000 to represent the maximum amount, not the minimum and maximum, available for this purpose.

We think the language of the appropriation requires the Library to set aside $9,619,000 from its fiscal year money for the acquisition of library materials. The language employed by the Congress is straightforward and does not contain any qualifying terms. It provides simply that "$9,619,000 is to remain available until expended for acquisition of books . . . and all other materials". On its face, this language makes the entire amount available only for the acquisition of books and materials. If the Congress had intended the $9,619,000 to be a discretionary maximum level of expenditure, we think it would have so stated in the law. See 53 Comp. Gen. 695 (1974).

Because the language of the law is clear, we have no basis to resort to assumptions or inferences drawn from inexplicit statements contained in the conference report. When the Congress appropriates lump-sum amounts without statutorily restricting what can be done with these funds, a clear inference arises that it does not intend to impose legally binding restrictions, and indicia in committee reports and other legislative history as to how the funds should or are expected to be spent do not establish any legal requirements on federal agencies. 55 Comp. Gen. 307, 319 (1975). Implicit within this holding is the more basic proposition that an existing statutory provision cannot be superseded or repealed by statements, explanations, recommendations, or tables contained in committee reports or in other legislative history. Id. In other words, if explanations or other comments in committee reports do not create any legally binding restrictions on an agency's discretionary

authority to spend a lump-sum appropriation as it chooses, such comments certainly cannot supersede an existing statutory provision that establishes a legally binding amount that an agency may dispose of as an available appropriation. Cf. 64 Comp. Gen. 282 (1985). As stated by the Supreme Court, "[e]xpressions of committees dealing with requests for appropriations cannot be equated with statutes enacted by Congress . . . ." Tennessee Valley Authority v. Hill, 437 U.S. 153, 191 (1978).

You ask whether the Library could reprogram $774,000 of its no-year funds to its fiscal year account subject to approval of House and Senate appropriations committees. Although you describe the action as a reprogramming, we think this movement of funds is more appropriately characterized as a transfer. We use the term "reprogramming" to refer to the utilization of funds within an appropriation account for purposes different than those budgeted or projected at the time of appropriation. In other words, it is the shifting of funds from one object to another within an appropriation. See 1 Principles of Federal Appropriations Law, p. 2-25 (GAO/OGC-91-5, 2nd ed.) A transfer is the shifting of funds between appropriations, and is prohibited without statutory authority. 31 U.S.C. § 1532 (1994). Section 1532 provides that "[A]n amount available under law may be withdrawn from one appropriation account and credited to another or to a working fund only when authorized by law." An unauthorized transfer would also violate 31 U.S.C. § 1301(a) (which prohibits the use of appropriations for other than their intended purpose) and would constitute an unauthorized augmentation of the receiving appropriation. See B-248284, B-248284.2, Sept. 1, 1992 ("informal congressional approval of an unauthorized transfer of funds between appropriation accounts did not have force and effect of law"). The fact that an appropriation for a specific purpose, such as library materials, is included as an earmark in a general appropriation does not deprive it of its character as an appropriation for the particular purpose designated. 20 Comp. Gen. 739 (1941). Accordingly, we do not think the Library may transfer the funds without statutory authority to do so.

I trust that this responds fully to your question. If I can be of further assistance on this matter, please do not hesitate to call me or Ms. Barbara Timmerman of my staff at 512-5644.

Sincerely yours,

Gary L. Kepplinger
Associate General Counsel

B-278121

November 7, 1997

DIGEST

Language in the Library of Congress Salaries and Expenses appropriation earmarking $9,619,000 "to remain available until expended" for acquisition of library materials requires that the Library make $9,619,000 available for this purpose; the law does not simply impose a cap on expenditure, or otherwise authorize the Library to obligate "up to" this amount.

Shifting of funds from the $9,619,000 earmark to the fiscal year lump sum appropriation for Salaries and Expenses constitutes a transfer. Library of Congress may not transfer funds between appropriations without statutory authorization. 31 U.S.C. § 1532.