United States General Accounting Office
Washington, DC 20548

Office of the General Counsel

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February 24, 2000

Mr. John A. Carver
Trustee, Court Services and Offender Supervision Agency
for the District of Columbia
633 Indiana Avenue, N.W. 12th Floor
Washington, DC 20004

Subject: Unauthorized Use of Interest Earned on Appropriated Funds

Dear Mr. Carver:

Pursuant to a request from the Chairman of the House Subcommittee, District of Columbia Appropriations, we reviewed interest earnings on federal funds paid to various District of Columbia government entities from fiscal year 1995 through fiscal year 1999. During our review, we learned that the Court Services and Offender Supervision Agency of the District of Columbia (CSOSA) earned interest on funds appropriated to it and spent the interest in 1998 and 1999. As discussed below, we conclude that CSOSA lacked the requisite statutory authority to spend the interest earned.

Congress appropriated to CSOSA $43 million for fiscal year 1998 and $59.4 million for fiscal year 1999.[1] Based on the information your agency provided us, CSOSA earned approximately $1.693 million in interest by depositing the 1998 appropriation in an interest bearing account.[2] Of the interest earned, CSOSA spent approximately $1.575 million—approximately $450,000 for 1999 contracts, approximately $688,000 for 1998 contracts and approximately $437,000 for interagency services. Because CSOSA obligated all but approximately $159,000 of its fiscal years 1998 and 1999 appropriations, CSOSA's spending of the $1.575 million in interest resulted in CSOSA spending in fiscal years 1998 and 1999 more than the budgetary resources Congress provided in the appropriations acts.

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[1] Pub. L. No. 105-100, 111 Stat. 2160, 2161 (1997); Pub. L. No. 105-277, 112 Stat. 2681, 2681-123 (1998).

[2] Congress changed the appropriation act language for fiscal year 1999 to provide that Treasury would transfer the appropriated funds to CSOSA only as needed to liquidate obligations. As a result, CSOSA did not earn interest on the 1999 appropriation.

The National Capital Revitalization and Self-Government Reorganization Act of 1997 (Revitalization Act), Pub. L. No. 1105-33, Title XI, 111 Stat. 712 (1997) transferred a number of activities related to offender supervision from District agencies to CSOSA. CSOSA will become an agency of the executive branch of the federal government when the CSOSA Trustee certifies, and the Attorney General concurs, that CSOSA can carry out the functions assigned to it.[3] Until then, the functions are carried out under the authority of the CSOSA Trustee, an independent officer of the District of Columbia government.[4]

The District of Columbia Home Rule Act provides that no amount may be obligated or expended by a District government officer or employee unless such amount has been approved by an act of Congress and then only according to such act.[5] The Antideficiency Act prohibits an officer or employee of the District of Columbia Government from making or authorizing an expenditure or obligation in excess of or in advance of an appropriation.[6] Within this statutory framework, when Congress appropriates an amount for the CSOSA Trustee, that amount establishes the authorized program spending level beyond which the CSOSA Trustee may not operate in the absence of additional authority.

When an agency retains and spends funds received from outside sources, it augments its appropriation to the extent that such amount results in agency spending in excess of the level established by the appropriation act. An agency's authority to augment its appropriation is no greater than its authority to spend funds in the absence of an appropriation. Further, even when a law authorizes an officer or employee to receive funds from outside sources, the authority to then spend the funds must be provided in law. The authority to spend may not be inferred from the absence of an express prohibition to spend in the law authorizing the collection.[7]

When Congress wants to authorize entities funded with appropriations to earn and spend interest on appropriated funds, it expressly provides the requisite legislative authority. For example, after Congress passed legislation in 1995 establishing the

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[3] Sections 11232(h) and 11233 of the Revitalization Act, as amended, D.C. Code Ann. §§ 24-1232(h) and 1233 (1981, 1996 Replacement Vol. and 1999 Supp.)

[4] D.C. Code Ann. § 24-1232(a).

[5] Pub. L. No. 93-198, § 446, 87 Stat. 774, 801 (1973), D.C. Code Ann. § 47-304 (1981, 1997 Replacement Vol. and 1999 Supp.)

[6] 31 U.S.C. § 1341 (1994).

[7] We reached a similar conclusion regarding D.C. Courts spending interest earned on federal appropriations. D.C. Courts, Planning and Budgeting Difficulties During Fiscal Year 1998, GAO/AIMD/OGC-99-226, p. 10 (September 1999).

Financial Responsibility and Management Assistance Authority, the Congress amended the legislation in 1997 to authorize the Authority to spend interest earned on various accounts, including its annual appropriation.[8] Similarly, after we reported that DC Courts had improperly spent interest earned on appropriated funds in fiscal year 1998, Congress expressly provided for how DC Courts may spend interest earned in fiscal year 1999. District of Columbia Appropriations Act, 2000, Pub. L. No. 106-113, Div. A., Title I, 113 Stat. 1501, 1503 (1999). Congress has not, however, enacted similar authority for CSOSA.

Early in our review, we solicited your agency's views regarding the legal authority relied upon for CSOSA to spend interest earned on deposits. Subsequently, we briefed CSOSA officials on our preliminary view that CSOSA spent interest without the requisite authority. CSOSA's General Counsel provided explanations that we considered in analyzing the issue.[9] Having considered the material CSOSA provided, we conclude that CSOSA lacked the requisite statutory authority to spend interest earned on appropriations, and that CSOSA's spending the interest therefore constitutes an unauthorized augmentation of its appropriation. To the extent the interest spent in 1998 and 1999 exceeds the unobligated balances of the appropriations made to CSOSA for those fiscal years, CSOSA committed a reportable violation of the Antideficiency Act.[10]

Sincerely yours,

Robert P. Murphy
General Counsel

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[8] D.C. Code Ann. § 47-391.6(d)

[9] CSOSA's comments focused primarily on the mitigating circumstances relating to its spending in excess of available amounts and the corrective action it has taken to prevent a recurrence.

[10] 31 U.S.C. § 1351. See OMB Cir. A-34, §§ 22.6 (November 1997) providing guidance on the contents of an Antideficiency Act report to the President and Congress.