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B-37609 November 15, 1943

Number: B-37609

Date: 1943-11-15

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The Honorable, The Secretary of State.

My dear Mr. Secretary:

I have your letter of October 11, 1943, your reference DA, as follows:

"The Department of State Appropriation Act, 1944, under the heading 'Cooperation with the American Republics', authorizes the Secretary of State, in his discretion, to make contracts with, and grants of money or property to, governmental and public or private nonprofit institutions and facilities in the United States and the other American republics without regard to the provisions of Section 3709 of the Revised Statutes. The authority for the cultural relations program under this heading was heretofore exercised by the Coordinator of Inter-American Affairs, and in connection with the assumption of responsibility for such activities by this Department, there are two related questions which it is desired to submit to you for your opinion."

"(1) It appears to be necessary, provided the appropriation authority permits, to make grants-in-aid for the purpose of financing activities or projects for periods not exceeding one year which will not coincide with the fiscal year of the united States Government. This is due either to requirements peculiar to the project, to the wishes of the grantee organization, or to the time when negotiations could be concluded during the fiscal year. It should be possible to complete projects underwritten by grants-in-aid without further reference to the Congress for any supplemental appropriation on the basis of a definite financial plan submitted. Therefore, may the Department in its discretion, make grants-in-aid under the appropriation for cooperation with the American republics covering periods of not more than one year when the endoof such a period falls in the following fiscal year? Somewhat similar authority previously been authorized in the case of contracts made with or grants to students and others under the cultural relations programs as indicated in decision B-12473, dated October 2, 1940, B-34477, dated May 27, 1943, and others."

"(2) In a limited number of cases it also appears desirable to underwrite projects by means of grants-in-aid which will extend over more than a twelve-month period where the circumstances are such that unless the entire activity can be assured without the necessity of obtaining further funds from the Congress it will not be desirable to undertake them. It is, therefore requested that you advise whether grants-in-aid may cover activities or projects contemplated to extend over a period of more than one year from the date of the grant when, in the opinion of the Department, it would be detrimental to the

entire program and our good relations with the other American republics, as well as wasteful of public funds, to embark on a project without absolute assurance that it could be carried through to completion. It is recognized that this procedure would be justified only under unusual circumstances, but it is believed that it would be consistent with the intentions of the Congress for the Department to exercise its discretion when making grants-in-aid under such conditions."

"Since it is desired that contemplated programs be established without delay, I shall appreciate your informing me at your earliest convenience whether you perceive any objection to the procedures outlined herein.:

The Department of State Appropriation Act, 1944, Public Law 105, 78th Congress (57 Stat. 271, 282), referred to in the above-quoted letter, provides, in pertinent part:

" * * * and the Secretary of State is hereby authorized, in his discretion, to make contracts with, and grants of money or property to, governmental and public or private nonprofit institutions and facilities in the United States and the other American republics, including the free distribution, donation, or loss of publications, phonograph records, radio transcriptions, art works, motion-picture films, educational material, and such other material and equipment as the Secretary may deem necessary and appropriate, and such other gratuitous assistance as the Secretary deems advisable in the fields of the arts and sciences, education and travel, publications, the radio, the press, and the cinema; all without regard to the provisions of section 3709 of the Revised Statutes; * * * Provided further, That not to exceed $100,000 of this appropriation shall be available until June 30, 1945."

By decision of April 3, 1942, B-24827, to the Liaison Officer, Office for Emergency Management, relative to a question submitted by the Coordinator of Inter-American Affairs, it was held, in substance, that a grant of funds to a corporation organized at the instance of the Coordinator of Inter-American Affairs pursuant to specific statutory authority constituted a legal obligation of the amount granted, even though the final obligation and expenditure for definite projects in the various American republics was to be accomplished by the said corporation in the following fiscal year. The funds there involved were made available, by the pertinent appropriation act, to the Coordinator of Inter-American Affairs for use for specified purposes by various methods, including "grants to governmental and private nonprofit institutions and facilities in the United States and the other American republics." In the said decision, it was stated:

" * * * Also, it has been held that an appropriation is obligated when a definite commitment is made or liability incurred to pay funds from such appropriation, even though the duty to pay the obligation may not arise until later."

"Having in view the authority given by the Congress to the Coordinator to make grants to governmental institutions and facilities and to furnish capital for such corporations, the conclusion appears justified that funds so granted or furnished to those institutions, facilities, or corporations were not intended to remain subject to the fiscal year limitation of the appropriations from which the funds were derived; and that, insofar as concerns the Coordinator of Inter-American Affairs, such funds are legally obligated when formally granted

to an authorized grantee or when furnished, or formally agreed to be furnished, in the process of capitalizing a corporation created pursuant to the quoted act. Cf. 21 Comp. Gen. 498."

The situation presented in your above-quoted letter appears to be so similar to that considered in the said decision of April 3, 1942, B-24827, as to warrant a similar conclusion -- that is, that funds formally granted or formally agreed to be furnished to an institution or facility as authorized by the provision above quoted from the Department of State Appropriation Act, 1944, are legally obligated at the time of the said grant or agreement to grant and properly may be made available and expended thereafter by the grantee institution or facility without regard to the fiscal year limitation of the appropriations from which the funds were derived. See 21 Comp. Gen. 574; 20 id. 370; id. 185 (B-12473, October 2, 1940, referred to in your letter); 18 id. 363. Accordingly, both of the questions presented in your letter under paragraphs numbered (1) and (2) are answered in the affirmative.

It may be stated that the proviso in the appropriation making a maximum of $100,000 of the involved appropriation "available until June 30, 1945," is understood as making that amount available for obligating until such date. However, it is presumed that you questions are submitted for decision for the reason that such amount would be inadequate for the purpose contemplated and that, possibly, the said period of obligating as limited by the said statute also might prove inadequate.

Respectfully,

Comptroller General of the United States