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B-52501 November 9, 1945

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Price Administrator, Office of Price Administration.

My dear Mr. Bowles:

Reference is made to your letter of September 11, 1945, as follows:

"Your opinion is respectfully requested as to the legality of GPA's receipt and use of money contributions in furtherance of the agency's enforcement duties in supplementation of its regular appropriations. The specific questions are:"

"1. Are conditional gifts of money pursuant to Title XI of the Second War Powers Act, 'appropriations made by Congress' within the meaning of R.S. 3679?"

"2. May such conditional gifts to further the war program validly augment or supplement the ordinary appropriations for any Federal agency or department?"

"These questions arise under the following situation:"

"Under section 201(c) of the Emergency Price Control Act, as amended by the Stabilization Extension Act of 1944 (P.L. 383, 78th Congress, 2d Session), the Price Administrator was authorized --"

". . . to make such expenditures (including expenditures . . . for purchase of commodities in order to obtain information or evidence of violations of price, rent, or rationing regulations or orders or price schedules) as he may deem necessary for the administration and enforcement of this Act."

"By the Second Deficiency Appropriation Act of 1945 (P.L. 132, 79th Congress, 1st Session), there was appropriated for the agency a sum,"

". . . not to exceed $100,000 for test purchases of commodities, services, or ration currency for enforcement purposes . . ."

"However, this amount is all that is appropriated for test purchases of all controlled commodities throughout the United States for the entire year. Use of the appropriation for adequate test purchases of higher- priced commodities (such as used cars) is impracticable, since such use would exhaust these enforcement funds in a single industry, or for a small number of products."

"Black market activities in the used car industry have increased lately, to the extent that legitimate dealers have become aware of the need for greater

enforcement effort. Realizing the inadequacy of our appropriation, so far as the used car industry is concerned, various dealers' associations across the country have volunteered to make outright money contributions for use by our agency in the purchase of cars at over- ceiling prices for evidentiary purposes, with the intention of eliminating price-ceiling violators from their industry. The cars so purchased will become the property of the United States."

"The associations intend to make their contributions to the United States Treasury under the provisions of Title XI of the Second Was Powers Act of 1942 (P.L. 507, 77th Congress, 2d Session), with the specific request that the monies be used by OPA for the particular war purpose of preventing inflation by working against the black market in used cars. Title XI of the Second War Powers Act, insofar as it is relevant, reads:"

"Title XI - Acceptance of Conditional Gifts to Further the War Program."

"Sec. 1101. To further the war program of the United States, the Secretary of the Treasury is authorized to accept or reject on behalf of the United States any gift of money or other property, real or personal, or services, made on condition that it be used for a particular war purpose."

* * * * * * *

"Sec. 1104. The Secretary of the Treasury in order to effectuate the purpose of which gifts accepted under this title are made, shall from time to time allocate the money . . . . to such of the various appropriations available for the purpose of war material and the furtherance of the war program of the United States as in his judgement will best effectuate the intent of the donors, and such money is hereby appropriated and shall be available for expenditure for the purposes of the appropriations to which allocated."

"It is our understanding that such contributions were intended by Congress to augment regular agency appropriations. However, I am advised that the Treasury Department takes the position that the appropriations statute providing that no agency may spend more than its appropriation, precludes our receiving and expending more than $100,000 for test purchases under any circumstances; in other words, that any contribution will merely be substituted for an equal amount in our regular appropriation, and that we may use in all $100,000, and no more. The Treasury Department cites as basis for its contention, the following provision of the statute on appropriations (31 U.S.C. 665, R.S. 3679):"

"No executive department or other Government establishment of the United States shall expend, in any one fiscal year, any sum in excess of appropriations made by Congress for that fiscal year."

"Our position in this matter is based on the following considerations:"

"1. The use of such a gift by OPA, in addition to the regular appropriation, would be in accordance with, and not contrary to, the above statute on appropriations. The statute merely prohibits a Government establishment from expending any sum in excess of appropriations made by Congress. However Title XI, Sec. 1104 of the Second War Powers Act, declares in part, '. . . . and such money is hereby appropriated . . .' the latter clause is practically the same as'. . . the following sums are appropriated . . .' which is the language commonly used in the Appropriation Acts for this and other federal agencies and

establishments. This clause is clearly language of appropriation. And the amount of the gift having been automatically appropriated by Congress immediately upon acceptance thereof by the Secretary of the Treasury, it would be disbursed as part, and not in excess, of 'the appropriations made by Congress.'"

"2. The use of such funds by OPA, in addition to the regular appropriation, would also be in accordance with the Congressional intention concerning donations under the Second War Powers Act, as set forth in Report No. 1765 of the Committee on the Judiciary of the House of Representatives (77th Congress, 2d Session, 1942). Page 10 of that report contains the following comments on Title XI (then entitled 'XII'):"

"Title XII authorizes the Secretary of the Treasury to accept gifts of money, property, or services, made on condition that they be used for a particular war purpose."

"Existing law precluded the Treasury from taking gifts made on special conditions and applying them to the specified purposes for which they are given. All money received by the Treasury, in the absence of the specified authority conferred by this bill must be covered into the miscellaneous receipts account of the Treasury Department, and await appropriation by Congress."

"'. . . . The provisions of this title, however, would permit the Treasury to accept gifts made for specific purposes and to put them into the existing congressional appropriations which would most nearly effectuate the intent of the donors in each case, thus supplementing that appropriation to the extent of the gifts . . .'(Underscoring ours.)"

"Nor is there anything in the language of Title XI itself to indicate a contrary intention. Inasmuch as the method by which a gift should be handled is set forth in considerable detail, it being required that the money be deposited in a special account (Sec. 1103), and that the money in such account be allocated to the proper appropriation and be available for proper expenditure (Sec. 1104), it is significant that no mention of a requirement for diminution of the regular appropriation is made."

"I should, therefore, appreciate your opinion and comments on this subject."

As you were informed in office letter of October 3, 1945, it was thought necessary to request a report from the Secretary of the Treasury relative to the matter and by letter of October 22, 1945, the Fiscal Assistant Secretary of the Treasury advised this office as follows:

"There does not appear in the records of the Treasury any request from the Office of Price Administration for the views of the Treasury Department relative to disposition of donations under the provisions of the Second War Powers Act, nor has the Treasury any record or knowledge of a statement to the Office of Price Administration of its views, or the issuance of any ruling or instructions involving donations for the activities of the Office of Price Administration. In this connection it has been ascertained that the Office of Price Administration has not informally contacted the Department concerning the matter and that no informal advice has been rendered to that Office by any member of the Department."

"The Treasury has not been offered any conditional donation for a specific war

purpose involving the Office of Price Administration, therefore the Secretary of the Treasury has not made any allocation to its appropriations pursuant to authority of Section 1104, Title II of the Act."

As section 1101, Title XI, of the Second War Powers Act, 1942, 56 Stat. 183, authorized the acceptance of any gift of money upon condition that it be used for a particular war purpose, and as section 1104 of that act authorizes the allocation of such gifts by the Secretary of the Treasury to the appropriation which in the judgement of the Secretary of the Treasury will best effectuate the purpose of the donors, and provides further that "such money is hereby appropriated and shall be available for expenditure for the purposes of the appropriations to which allocated," gifts so made, accepted, and allocated would constitute appropriated funds, and would be available for expenditure in addition to the particular appropriation to which allocated, irrespective of any limitation in such appropriation as to the amount to be expended for any particular purpose. Should -- as you state you were informed -- such gifts be substituted for an equal amount of the involved appropriated funds, the purpose of the statute would be defeated because that would result, at the end of the fiscal year, in an unused balance in the appropriation which would be required to be returned to the Treasury. That would have the same effect as though the gifts were deposited into the general fund of the Treasury as miscellaneous receipts when received - - the procedure which would have been required in respect of such donations in the absence of the statutory provision in question.

I have not overlooked your statement that the contemplated gifts are to be used for the purchase of automobiles, which -- if passenger-carrying vehicles -- ordinarily could not be purchased without specific appropriation by the Congress in view of the prohibition contained in the act of July 16, 1914, 38 Stat. 508. However, it is believed that the authorization in section 201(c), 56 Stat. 29, of the Emergency Price Control Act, quoted in your submission, to make expenditures for the purchase of commodities in order to obtain information or evidence of violations of the price control regulations and orders, constitutes sufficient statutory authority for the purchase of passenger-carrying vehicles if such purchases are made at over-ceiling prices for evidentiary purposes and it is administratively certified that the purchases were made for that purpose and not in order to obtain vehicles for passenger- carrying use. 1. Comp. Gen. 58; id. 360.

Respectfully,

(Signed) Lindsay C. Warren Comptroller General of the United States