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B-87612 July 26, 1949

Number: B-87612

Date: 1949-07-26

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Honorable Francis Case House of Representatives

My dear Mr. Case:

Reference is made to your letter of July 2, 1949, concerning a point of order raised by you on the floor of the House during consideration of the Housing Act of 1949, H. R. 4009, 81st Congress, as reported on pages 8699- 8704 of the Congressional Board for June 28, 1949, and asking whether or not the General Accounting Office will recognize the validity of the language contained in section 102(a) and (f) in view of article 1, section 9, clause 7 of the Constitution, which says that "No money shall be drawn from the Treasury but in consequence of appropriations made by law."

The primary purpose of H. R. 4009 (enacted as Public Law No. 171, approved July 15, 1949), as stated in section 2 thereof, is to remedy the housing shortage, and section 102a) authorizes loans to local public agencies in order to assist local communities in eliminating their slum areas and for redevelopment of project areas by private enterprise. Subparagraphs (e) and (f) under the said section 102, provided as follows:

"(e) To obtain funds for loans under this title, the Administrator, on and after July 1, 1949, may, with the approval of the President, issue and have outstanding at any one time notes and obligations for purchase by the secretary of the Treasury in an amount not to exceed $25,000,000.

"(f) Notes or other obligations issued by the Administrato under this title shall be in such forms and denominations, have such maturities, and be subject to such terms and conditions as may be prescribed by the Administrator, with the approval of the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average rate on outstanding marketable obligations of the United States as of the last day of the month preceding the issuance of such notes or other obligations. The Secretary of the Treasury is authorized and directed to purchase any notes and other obligations of the Administrator issued under this title and for such purpose is authorized to use as a public debt transaction the preceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended, and the purpose for which securities may be issued under such Act, as amended, are extended to include any purchases of such notes and other obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this section. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes

or other obligations shall be trusted as public debt transactions of the United States."

H. R. 4009 was reported by the Committee on Banking and Currency and in the discussion refferred to it was contended by you that subparagraphs (e) and (f) constituted an appropriation of funds contrary to the provisions of clause 4, rule 21, Rules of the House of Representatives, which states that no bill or joint resolution carrying appropriations shall be reported by any committee not having jurisdiction to report appropriations. Following a discussion of the question on the point of order, the Chairman (Mr. Boggs of Louisiana) ruled as follows:

"As the Chair sees the point of order, the issue involved turns on the meaning of the work 'appropriation.' 'Appropriation,' in its usual and customary interpretation, means taking money out of the Treasury by appropriate legislative language for the support of the general functions of Government. The language before us does not do that. This language authorizes the Secretary of the Treasury to use proceeds of public-debt issues for the purpose of making loans. Under the language, the Treasury of the United States makes advances which will be repaid in full with interest over a period of years without cost to the taxpayers.

"Therefore, the Chair rules that this language does not constitute an appropriation, and overrules the point of order."

It will be noted that a similar discussion arose in the Senate when that body was considering an amendment to the companion bill S. 1070, as reported on page 4953 of the Congressional Record for April 21, 1949, wherein there appear the following statements:

"Mr. Cain. Mr. President, this amendment is designed to require that all funds needed for loans under title I shall be subject to the normal procedures of the Appropriations Committees. Senate bill 1070 as drawn makes no such requirement. As I have read and interpreted the language of the bill it merely states that the Administrator, with the approval of the President, may issue notes, and that the Secretary of the Treasury shall purchase notes up to certain maximum amounts is each of the next five fiscal years. I respectfully submit for the consideration of all Senators that the Congress, through its appropriate committees ought to review annually and pass upon the very substantial amount of funds--in the case before us $1,000,000,000--which can be obligated as loans under title I of the bill.

"The amendment seeks to accomplish under title I what the amendment offered by the Senator from Ohio [Mr. Bricker] sought from Alabama sees any virtue in this amendment relating to title I, as opposed to the opposition he voiced to the recent amendment, which concerned itself with title II?

"Mr. Sparkman. I may say only this very brief word: The difference is that in the bill as reported from the committee it is provided that the money shall be obtained through loans. Under the amendment suggested by the Senator from Washington there would be a provision that it shall be obtained by direct appropriations. So far as I know, every type of business which the Government takes part in today, of a nature similar to this, is handled through the method of loans, not by direct appropriations. We began a good many years ago with REA, providing for appropriations. That was carried for but a few years, when it was

found much better from a fiscal standpoint to provide for loans. We have been handling it as a loan ever since. The same thing is true of the farm- tenant program. I think I am safe in saying that is the method followed in every single activity of this nature carried on by the Government. I certainly think it would be unwise to depart from it at this time, particularly since we changed from this method back over the years, and now we have I think a fairly uniform system of operating. I believe we should adhere to that system in connection with the pending measure.

"The President pro tempore. The question is on agreeing to the amendment offered by the Senator from Washington, for himself and for the Senator from Ohio [Mr. Bricker].

"The amendment was rejected."

Since the Senate rejected such amendment and thereby semmingly agreed that the language in question did not constitute an appropriation within the constitutional provision referred to by you, and since the Chairman of the Committee of the Whole House on the State of the Union overruled the point of order raised by you, the intent of the Congress appears clear.

And regardless of whether or not the language, in effoect, makes an appropriation and hence, regardless of whether or not the action takes by the House was after comformity with its own rules, I think the position of the General Accounting Office, as the agent of the Congress, must be, in this case and always, to accord full effect to the clear meaning of an enactment by the Congress so ling as it remains unchanged by legislative action and unimpaired by judicial dtermination. In other words I do not believe it ti be a proper function of the General Accounting Office to inquire whether or not the Congress, in enacting any particular legislation, complied with its own rules of conduct, or to question the constitutionality of an action of the Congress.

Accordingly, I have to advise that, since the Congress has so clearly expressed itself in the matter, the General Accounting Office, as an agent of the Congress, will not, on the basis of the existing record, raise any question as to the validity of the involved statutory provisions in relating so the constitutional provision cited in your letter.

As you will observe the foregoing is confined to the question presented by your letter and is not intended to indicate the Comptroller Gneeral's vies as to the desirability of the method employed in the Housing Act and other legislation to authorize the use of Treasury funds. In this connection see the Comptroller General's Report on Audit of Reconstruction Finance Corporation and Affiliated Corporations for the fiscal year ended June 30, 1945, pages 21 and 25 (House Document No. 316, 80th Congress), and Audit Report on the Examination of Commodity Credit Corporation for the period ended June 30, 1945, pages 8-10 (House Document No. 148, 81st Congress).

Sincerely yours,

Frank L. Yates Acting Comptroller General of the United States