



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

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Perkins

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March 24, 1981

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The Honorable Charles H. Percy, Chairman  
Committee on Foreign Relations SEN01300  
United States Senate

Dear Mr. Chairman:

Use of Appropriated Funds

DLG06349

The Committee staff has requested our opinion on whether the Department of State may lawfully use funds appropriated for its Salaries and Expenses to pay the operating expenses of the American members of the United States-Japan Economic Relations Group (Group). The Department proposes to make \$160,000 available to the Group by reprogramming funds within the Bureau of East Asian Affairs.

You have provided us with copies of the reprogramming letters and documents along with a legal memorandum from the Assistant Legal Advisor of the Department. The memorandum indicates that the Department relies on section 5 of the Act of August 1, 1956, 22 U.S.C. § 2672, as general authority for the Department to fund the Group. The memorandum also suggests that the formal reprogramming notice, along with affirmative responses from the relevant committees of the Congress, if forthcoming, would constitute specific congressional authority for the use of the Department's Salaries and Expenses appropriation to fund the group.

For the reasons indicated below, we conclude that the Department's Salaries and Expenses appropriation is not available to pay the expenses of the Group and that the Department may not lawfully reprogram this appropriation for that purpose.

The United States-Japan Economic Relations Group was established by President Carter and Prime Minister Ohira during an exchange of official visits in 1979. A Joint Communique issued May 2, 1979, at the close of Prime Minister Ohira's visit to Washington, announced that a small group of private citizens would be formed to make recommendations to the President and Prime Minister on ways to maintain a healthy economic relationship between the United States and Japan. 15 Weekly Compilation of Presidential Documents 766 (1979). Subsequently, while President Carter was visiting Tokyo, the White House announced that the President and Prime Minister had agreed "to create a Consultative Group on U.S.-Japan Economic Relations," and had appointed American and Japanese co-chairmen. Id., at 1165. On November 15, 1979, President Carter and Prime Minister Ohira jointly announced the remaining members

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of the Group, and indicated that "[t]he Group will hold its first meeting in mid-December, with the objective of submitting timely recommendations to the President and Prime Minister." Id., at 2126.

The major purpose of the Group was thus to provide advice or recommendations to the Governments of the United States and Japan. As phrased in a letter to your committee staff from the Director, Office of Budget and Planning, of the Department,

"\* \* \* The purpose of the Group's creation was to provide an essentially non-government U.S./Japan capacity to take a long range view of economic and trade problems between the two countries and to recommend actions that might be suggested to relieve those problems to our mutual benefit."

United States participation in the activities of the Group has never been specifically approved by the Congress, through the appropriations process or otherwise.

According to the Department, during fiscal year 1980 and through January 30, 1981, the Group was financed from the President's Unanticipated Needs appropriation. The Department has determined, however, that further funding from this source is precluded by section 213 of the Independent Offices Appropriation Act, 1945, 31 U.S.C. § 696. The Department thus seeks to use its own funds for the Group by means of the proposed reprogramming.

As we have indicated, the Department relies on section 5 of the Act of August 1, 1956, 22 U.S.C. § 2672, as its authority for using its appropriations to fund the Group. That section provides:

"The Secretary of State is authorized to--

(a) provide for participation by the United States in international activities which arise from time to time in the conduct of foreign affairs for which provision has not been made by the terms of any treaty, convention, or special Act of Congress: Provided, That this subsection shall not be construed as granting authority to accept membership for the United States in any international organization, or to participate in the activities of any international organization for more than one year without approval by the Congress; and

(b) pay the expenses of participation in activities in which the United States participates by authority of subsection (a) of this section, \* \* \*

The purpose of section 5 was to provide permanent authority for the Department to carry on activities which were previously authorized and funded on a yearly basis under the appropriation "International Contingencies." See S. Rept. No. 1175, 84th Cong., 1st Sess. 6 (1955); H.R. Rept. No. 2508, 85th Cong., 2d Sess 13 (1956). That appropriation had been available to permit United States participation "in international meetings, conferences, congresses, and in less formal cooperative endeavors, as well as to meet the initial contributions to international groups." H.R. Rept. No. 2508, *supra*. The proviso in subsection (a) was added by the House Committee on Foreign Affairs "to make clear the committee's intent that this basic authorization does not grant authority to the Department to accept membership or participate on a continuing basis without the approval of Congress in the activities of an international organization." *Id.*, at 14.

Under the proviso in subsection (a), unless approved by the Congress, United States participation in the activities of an international organization, under the authority of section 5, is limited to one year. As we have already indicated, the Congress has never approved United States participation in the Group. Moreover, the Group has been operating at least since December 1979, a period in excess of one year. It follows that if the Group is an "international organization," as that term is used in the proviso, the Department may not use the authority of section 5 to fund United States participation in the Group since it has been operating for more than one year.

Neither the statute nor the legislative history defines the term "international organization." However, the legislative history does indicate that section 5 was designed to permit the United States to participate in otherwise unauthorized international activities of a temporary nature. For example, the Senate Committee on Foreign Relations described the authority as being "for United States participation in [new or] temporary international organizations or other routine international activities \* \* \*" S. Rept. No. 1175, *supra*. The House report referred to such activities as "meetings, conferences, congresses, and in less formal cooperative endeavors." H.R. Rept. No. 2508, at 13. While we think it is possible to characterize the Group as an "international organization" and thus qualified for initial funding under section 5, the intention of the Congress, as reflected in the proviso, is quite clear that the funding authority provided by section 5 is

only for short range activities. For activities which were to last more than one year, the Department was to seek specific authority from the Congress.

It is apparently the position of the Department that it may use the authority of section 5 for a full year even though the Group may have been operating for a longer period of time under another authority. Specifically, the Department is arguing that the Group may be funded for one year from the President's Unanticipated Needs appropriation and then for an additional year under the authority of section 5. Such an interpretation of the proviso would clearly defeat the intent of the Congress. As we have indicated, the Congress intended that the authority of section 5 not be used to permit the United States to participate in the activities of an international organization for more than one year without seeking specific congressional approval. To allow the Department to string together 2 or more separate authorities so as to avoid congressional scrutiny of its activities for a period greater than one year would thwart the will of the Congress. We therefore conclude that since the Group has already operated for more than one year, the authority of section 5 is no longer available to fund it.

Even if we were to conclude that the one year authority of section 5 could be calculated as beginning only after previous authority expired, the Department could not use section 5 as justification for its proposed reprogramming. The appropriation which the Department wishes to reprogram is "Salaries and Expenses." Under Title I of H.R. 7584, 96th Cong., which has become law by means of subsection 101(o) of the second fiscal year 1981 continuing resolution, Pub. L. No. 96-536, 94 Stat. 3166, 3169, this appropriation makes funds available

"For necessary expenses of the Department of State and the Foreign Service, not otherwise provided for \* \* \*."

This appropriation is therefore a general lump-sum appropriation.

Title I of H.R. 7584 also contains an appropriation entitled "International Conferences and Contingencies," which makes funds available

"For necessary expenses authorized by section 5 of the Act of August 1, 1956, as amended (22 U.S.C. § 2669 [sic]) \* \* \*."

This appropriation, although also a lump-sum, is specifically for, among others, expenses authorized by section 5.

This Office has long held that an appropriation for a specific purpose is available for that purpose to the exclusion of a more general appropriation which might also be available for that purpose. See, e.g., 38 Comp. Gen. 758, 767 (1959); 24 Comp. Gen. 807 (1945); 7 Comp. Gen. 459 (1928). In other words, if an agency has a specific appropriation for a particular item, and also a general appropriation broad enough to cover the same item, it may only use the specific appropriation. This rule applies even when, as here, the specific is part of a lump-sum appropriation. See 20 Comp. Gen. 739, 740-41 (1941). It follows that for the Department to fund the Group under section 5, it would have to use its "International Conferences and Contingencies, appropriation and not its "Salaries and Expenses" appropriation.

The Department did not suggest any other authority it might have for using appropriated funds to pay the expenses of the Group. We are aware of only one other possible authority--the Federal Advisory Committee Act, 5 U.S.C. App. I. That Act defines an advisory committee to mean

"\* \* \* any committee, board, commission council, conference, panel, task force, or other similar group, \* \* \* which is

- (a) established by statute or reorganization plan, or
- (b) established or utilized by the President, or
- (c) established or utilized by one or more agencies,

in the interest of obtaining advice or recommendations for the President or one or more agencies or offices of the Federal Government \* \* \*." 5 U.S.C. App. I § 3.

In our opinion the Group, which was created to give advice or make recommendations to the President, would clearly qualify as an advisory committee under the Act.

To operate under the authority of the Advisory Committee Act, however, the Group must conform to the requirements of the Act, including filing a charter with (1) either the Administrator of the General Services Administration if it is to function as a presidential advisory committee, or the Secretary of State, if it is to function as an advisory committee to the State Department; and (2) the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives. See 5 U.S.C. App. I § 9(c). However, if the Group is constituted as a Presidential Advisory committee, reporting to and under the sponsorship of the President only the President can provide the necessary financial and other support. If the Secretary wishes

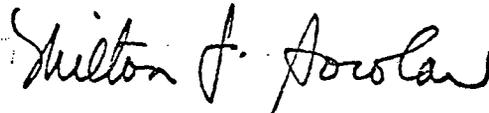
B-202362

to utilize the Group as his own advisory committee, even though it was not originally constituted for that purpose, he may do so now by filing the appropriate charter. If it is his committee, he may provide necessary support services for at least a two year period. (5 U.S.C. App I. § 14(a)(2)(A)). To our knowledge, the Group has not yet complied with these requirements, and unless or until it does, the Advisory Committee Act does not provide authority to the Department to fund the activities of the Group.

In summary, the Department may not lawfully reprogram its "Salaries and Expenses" appropriation to pay the expenses of the U.S.-Japan Economic Relations Group under 22 U.S.C. § 2672. It may, if it wishes to establish and use the Group as an advisory committee reporting to the Secretary of State, provide necessary support services to the Group for a two year period, provided that the Department complies with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App. I.

With your permission, we are forwarding copies of this letter to the Secretary of State and the Executive Director of the Group.

Sincerely yours,



Acting Comptroller General  
of the United States