

GAO

United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

October 23, 1990

Mr. John J. Kominski
General Counsel
Library of Congress
Washington, D.C. 20540

Dear Mr. Kominski:

During our meeting on October 17, 1990, you asked that we memorialize the principal points of our discussion of the appropriate response by legislative branch agencies such as GAO and the Library of Congress to a temporary funding hiatus.

As we discussed, it has long been our view that while the Anti-Deficiency Act, 31 U.S.C. § 1341, imposes certain limitations on agencies incurring obligations to continue operations during temporary funding breaks, Congress neither desires nor expects a complete and immediate shutdown of the Government during such periods. Congress's ratification of obligations incurred to keep the government functioning during such periods supports this proposition. See B-197841, Mar. 3, 1980 (copy enclosed).

The most recent formal guidance from the Office of the Attorney General to agencies confronted with temporary lapses of budget authority is the 1981 opinion of Attorney General Civiletti, 5 Op. O.L.C. 1 (1981). That opinion recognizes that the Anti-Deficiency Act does not preclude agencies during a funding lapse from incurring obligations otherwise "authorized by law," 31 U.S.C. § 1341(a)(1), or entered into for "emergencies involving the safety of human life or the protection of property," 31 U.S.C. § 1342. The opinion recognizes, as you do, that the "authorized by law" exception includes "not only those obligations in advance of appropriations for which express or implied authority may be found in the enactments of Congress, but also those obligations necessarily incident to presidential initiatives undertaken within his constitutional powers." Id. at 7.

Under the same rationale, Congress and its agents may incur obligations to support Congress's exercise of its constitutional powers. Thus, congressional agencies may incur obligations necessary to assist the Congress in the performance of its constitutional duties, particularly in situations where the Congress has expressly requested this. The amount of support Congress requires of the Library is a matter within the sound discretion of the Librarian of

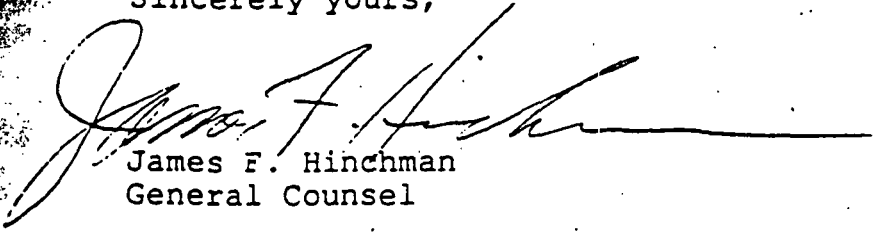
Congress, enlightened by appropriate consultation with the Congress.

The Attorney General goes on to say that in the absence of any other authority in law to enter into obligations during a temporary lapse of budget authority, obligations may be incurred to bring about an orderly termination of an agency's activity. This is not an express statutory authorization, but instead one the Attorney General implies as necessary under the Anti-Deficiency Act. On the other hand, the Attorney General cautions against incurring obligations during an orderly shutdown of agency operations that would only be justified by a more substantial lapse in appropriations than the agency, in its best judgement, expects. Id. at 10, n.12. The clear thrust of the Attorney General opinion is that implied authority exists for agencies to terminate operations in an orderly manner, that obligations so incurred are valid and shall be paid once funds are appropriated, and that the level of obligations properly incurred is a function of prudent management decisionmaking in light of the prevailing circumstances.

In this connection, we think it important that agencies not undertake imprudent actions during a temporary hiatus that unnecessarily increase obligations by terminating agency contracts and activities precipitously or that exacerbate the inefficiencies and waste that accompany these funding gaps. Thus, if there is a funding hiatus later this week, we plan to cease initiating new travel and training, and entering into new procurements, but we do not plan to immediately bring home those on travel, or withdraw staff from contract training. We also plan to have the entire GAO staff report to work as usual, at least on the first day of the hiatus. We see no basis for objection to a similar course of action on the part of the Library.

I appreciated the opportunity to share views with you last week. I hope that we can continue to stay in communication with each other as circumstances change over the coming days.

Sincerely yours,


James F. Hinchman
General Counsel

Enclosure

B-241911

October 23, 1990

DIGEST

In GAO's view, Congress neither desires nor expects complete and immediate shutdown of government during funding gap. Consistent with Attorney General's opinion interpreting Antideficiency Act, legislative branch agency may incur obligations necessary to assist Congress in performance of constitutional duties. How far to go is matter of sound discretion and consultation with Congress. Agency may also incur obligations necessary to orderly termination of activities during funding gap, but should not act precipitously. (Letter from GAO General Counsel to Library of Congress General Counsel)