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MEMORANDUM

THE WHITE HOUSE

WASHINGTON

March 14, 1983

FOR: FRED F. FIELDING
RICHARD A. HAUSER
D. EDWARD WILSON, JR.
PETER J. RUSTHOVEN
H.P. GOLDFIELD
SHERRIE M. COOKSEY
JOHN G. ROBERTS

FROM: DAVID B. WALLER

SUBJECT: Augmentation of Appropriations

file

Attached for your review and file is a copy of a monograph taken from the Comptroller General's Manual on "Augmentation of Appropriations." It is, I believe, the most lucid explanation of this concept as it applies, inter alia, to gifts to agencies, including the payment of travel expenses.

C. AUGMENTATION OF APPROPRIATIONS

(1) The Augmentation Theory

The Comptroller General has often found some particular transaction improper on the grounds that it would constitute an "unauthorized augmentation" of appropriated funds. The body of case law has produced a general rule that an agency may not augment its appropriations from outside sources without specific statutory authority.

The prohibition against augmentation is a corollary of the separation-of-powers doctrine. When Congress makes an appropriation, it is also establishing an authorized program level. In other words, it is telling the agency that it cannot operate beyond the level that it can finance under its appropriation. To permit an agency to operate beyond this level with funds derived from some other source without specific congressional sanction would amount to a usurpation of the congressional prerogative. Restated, the objective of the theory against augmentation of appropriated funds is to prevent a Government agency from undercutting the congressional power of the purse by circuitously exceeding the amount Congress has appropriated for that activity.

There is no express statutory prohibition against the augmentation of appropriated funds. The concept does, nevertheless, have an adequate statutory basis although it must be derived from several separate enactments. Specifically:

--31 U.S.C. § 484, the "miscellaneous receipts" statute, discussed in detail later in this Section.

--31 U.S.C. § 628, restricting the use of appropriated funds to their intended purposes. See Chapter 3, this Manual. Early decisions often based the augmentation prohibition on the combined effect of 31 U.S.C. §§ 484 and 628. See, e.g., 9 Comp. Dec. 174 (1902); 17 Comp. Dec. 712 (1911).

--18 U.S.C. § 209, which prohibits the payment of, contribution to, or supplementation of the salary of a Government officer or employee as compensation for his official duties from any source other than the Government of the United States.

The augmentation concept manifests itself in a wide variety of contexts. One application, discussed in Chapter 2 of this Manual, is the prohibition against transfers between appropriations without specific statutory authority. An unauthorized transfer is an improper augmentation. E.g., 23 Comp. Gen. 694 (1944); B-206668, March 15, 1982.

It should be apparent that the augmentation theory is related to the concept of purpose availability as discussed in Chapter 3. However, it is also closely related to amount in that it has the effect of restricting executive spending to the amounts appropriated by Congress.

The remainder of this Section will explore some of the more important manifestations of the augmentation rule.

(3) <u>Gifts and Donations to the Government</u>

(a) <u>Donations to the Government</u>

It has long been recognized that the United States (as opposed to a particular agency) may receive and accept gifts. No particular statutory authority is necessary. As the Supreme Court has said, "Uninterrupted usage from the foundation of the Government has sanctioned it." <u>United States v. Burnison</u>, 339 U.S. 87, 90 (1950). The gifts may be of real property or personal property, and they may be testamentary (made by will) or <u>inter vivos</u> (made by persons who are not dead yet). Since gifts to the United States go to the general fund of the Treasury, there is no augmentation problem. However, as the Supreme Court held in the <u>Burnison</u> case, a State may prohibit testamentary gifts by its domiciliaries to the United States.

Gifts to an individual Federal agency stand on a different footing. The rule is that a Government agency may not accept for its own use (<u>i.e.</u>, for retention by the agency or credit to its own appropriations) gifts of money or other property in the absence of specific statutory authority. 16 Comp. Gen. 911 (1937). As the Comptroller General said in that decision, "When the Congress has considered desirable the receipt of donations * * * it has generally made specific provision therefor * * *." See also B-13378, November 20, 1940; A-44015, March 17, 1937.

Thus, acceptance of a gift by an agency lacking statutory authority to do so is an improper augmentation. If an agency does not have statutory authority to accept donations, it must turn the money in to the Treasury as miscellaneous receipts. <u>E.g.</u>, B-139992, August 31, 1959 (proceeds of life insurance policy designating Federal agency as beneficiary).

For purposes of this discussion, the term "gifts" may be defined as "gratuitous conveyances or transfers of ownership in property without any consideration." 25 Comp. Gen. 637, 639 (1946). A receipt that does not meet this definition does not become a gift merely because the agency characterizes it as one. For example, a fee paid for the privilege of filming a motion picture in a national park is not a gift and must be deposited as miscellaneous receipts rather than in the agency's trust fund. 25 Comp. Gen. 637, <u>supra</u>. Similarly, a reduction of accrued liability in fulfillment of a contractual obligation is not a donation for purposes of a statute authorizing appropriations to match "donations." B-183442, October 21, 1975.

A number of departments and agencies have statutory authority to accept gifts. A partial listing is contained in B-149711, August 20, 1963. The statutory authorizations contain varying degrees of specificity.

In addition, there is a statute tailor-made for the philanthropist desiring to make a donation for the express purpose of reducing the national debt. (Some people think they already do this in April of each year.) The Secretary of the Treasury may accept gifts of money, obligations of the United States, or other intangible personal property made for the express purpose of reducing the public debt. Gifts of other real or personal property for the same purpose may be made to the Administrator of the General Services Administration. 31 U.S.C. § 901.

Assuming the existence of the requisite statutory authority, it is quite easy to make a gift to the Government. There are no particular forms required. A simple letter to the appropriate agency head transmitting the funds for the stated purpose will suffice. See B-157469, July 24, 1974 (non-decision letter).

A 1980 GAO study found that, during fiscal year 1979, 41 Government agencies received a total of $21.6 million classified as gift revenue. See report entitled "Review of Federal Agencies' Gift Funds," FGMSD-80-77, September 24, 1980. The report pointed out that the use of gift funds dilutes congressional oversight because the funds do not go through the appropriation process. The report recommended that agencies be required to more fully disclose gift fund operations in their budget submissions.

The issue raised in most gift cases is the purpose for which gift funds may be used. This ultimately depends on the scope of the agency's statutory authority and the terms of the gift. Gift funds are accounted for as trust funds. They must be deposited in the Treasury as trust funds under 31 U.S.C. § 725s, to be disbursed in accordance with the terms of the trust. In 16 Comp. Gen. 650, 655 (1937), the Comptroller General stated:

> "Where the Congress authorizes Federal officers to accept private gifts or bequests for a specific purpose, often subject to certain prescribed conditions as to administration, authority must of necessity be reposed in the custodians of the trust fund to make expenditures for administration in such a manner as to carry out

the purposes of the trust and to comply with the prescribed conditions thereof without reference to general regulatory and prohibitory statutes applicable to public funds."

While this passage correctly states the trust theory, agencies have sometimes misconstrued it to mean that they have free and unrestricted use of donated funds. This is not the case. On the one hand, donated funds are not subject to all of the restrictions applicable to direct appropriations. Yet on the other hand, they are still "public funds" in a very real sense. They can be used only in furtherance of authorized agency purposes and incident to the terms of the trust. See B-195492, March 18, 1980.

In evaluating the propriety of a proposed use of gift funds, it is first necessary to examine the precise terms of the statute authorizing the agency to accept the gift. Limitations imposed by that statute must be followed. Thus, under a statute which authorized the Forest Service to accept donations "for the purpose of establishing or operating any forest research facility," the Forest Service could not turn over unconditional gift funds to a private foundation under a cooperative agreement, with the foundation to invest the funds and use the proceeds for purposes other than establishing or operating forest research facilities. 55 Comp. Gen. 1059 (1976).

Under a statute authorizing the Federal Board for Vocational Education to accept donations to be used "in connection with the appropriations hereby made or hereafter to be made, to defray the expenses of providing and maintaining courses of vocational rehabilitation," the funds could be used only to supplement the Board's regular appropriations and could not be used for any expense not legally payable from the regular appropriation. The statute here conferred no discretion. 27 Comp. Dec. 1068 (1921).

Once it is determined that the proposed use will not contravene the terms of the agency's authorizing statute, the agency will have some discretion under the trust theory. The area in which this discretion has most often manifested itself in the decisions is entertainment. Appropriated funds are generally not available for entertainment. See Chapter 3, this Manual. However, a number of decisions have established the proposition that donated funds may be used for entertainment. This does not mean any entertainment agency officials may desire. Donated funds may be used for entertainment only if the entertainment will further a valid function of the agency, if the function could not be accomplished as effectively from the Government's standpoint without the expenditure, and if the expenditure does not violate any restrictions imposed by the donor on the use of the funds. 46 Comp. Gen. 379 (1966); B-142538, February 8, 1961; B-170938, October 30, 1972. See also B-195492, March 18, 1980; B-152331, November 19, 1975. (B-152331 involved a trust fund which included both gift and non-gift funds.) It follows that donated funds may not be used for entertainment which is primarily social and which does not have a legitimate connection with official agency purposes. 61 Comp. Gen. ___ (B-206173, February 23, 1982) (donated funds improperly used for breakfast for Cabinet wives and Secretary's Christmas party).

The trust fund concept was also applied in 36 Comp. Gen. 771 (1957). The Alexander Hamilton Bicentennial Commission had been given statutory authority to accept gifts and wanted to use the donations to award Alexander Hamilton Commemorative Scholarships. The Commission was to have a brief existence and would not have sufficient time to administer the scholarship awards. The Comptroller General held that the Commission could, prior to the date of its expiration, transfer the funds to a responsible private organization for the purpose of enabling proper administration of the scholarship awards. The distinction between this case and 55 Comp. Gen. 1059, mentioned above, should be readily apparent. Here, the objective of transferring the funds to a private organization was to better carry out an authorized purpose. In 55 Comp. Gen. 1059, the objective was to enable the funds to be used for unauthorized purposes.

Another case illustrating permissible administrative discretion under the trust theory is B-131278, September 9, 1957. A number of persons had made donations to St. Elizabeth's Hospital to enable it to buy an organ for its chapel. The donors had made the gifts on the condition that the Hospital purchase a high-quality (expensive) organ. When the Hospital issued its invitation for bids on the organ, the specifications were sufficiently restrictive so as to preclude offers on lower quality organs. The decision found this to be entirely within the Hospital's discretion in using the gift funds in accordance with their terms.

As noted above, however, the agency's discretion in administering its gift funds is not unlimited. Thus, for example, an agency may not use gift funds for purely personal items such as greeting cards. 47 Comp. Gen. 314 (1967); B-195492, March 18, 1980.

Gifts which involve continuing expense present special problems. Although there are no recent cases, indications are that the agency may need specific statutory authority--not merely general authority to accept gifts--since the agency's appropriations would not otherwise be available to make the continuing expenses. For example, an individual made a testamentary gift to a United States naval hospital. The will provided that the money was to be invested in the form if a memorial fund, with the income to be used for specified purposes. The Comptroller General found this objectionable in that "the United States would become, in effect, a trustee for charitable uses, would never gain a legal title to the money, but would have the burden and obligation of administering in perpetuity a trust fund * * *." Also, absent specific authorization by Congress, appropriations would not be available for the expenses of administering the trust. Therefore, absent congressional authorization to accept the donation "as made," it could not be accepted either by the naval hospital, 11 Comp. Gen. 355 (1932), or by the Treasury Department, A-40707, December 15, 1936. See also 10 Comp. Gen. 395 (1931); 22 Comp. Dec. 465 (1916).

Finally, if an agency is authorized to accept gifts, it may also accept a loan of equipment by a private party without charge to be used in connection with particular Government work. The agency's appropriations for the work will be available for repairs to the equipment, but only to the extent necessary for the continued use of the equipment on the Government work, and not after the Government's use has terminated. 20 Comp. Gen. 617 (1941). In one case, GAO approved the loan of private property to a Federal agency by one of its employees, without charge and apparently without statutory authority, where the agency administratively determined that the equipment was necessary to the discharge of agency functions and the loan was in the interest of the United States. 22 Comp. Gen. 153 (1942). The decision stressed, however, that the practice should not be encouraged. The decision seems to have been based in part on wartime needs and its precedent value would therefore seem minimal. See, e.g., B-168717, February 12, 1970.

(b) Donations to Individual Employees

Private contributions to the salary or expenses of a Federal employee are improper for two reasons. First, they are prohibited by 18 U.S.C. § 209, noted at the outset of this Section. For purposes of 18 U.S.C. § 209, the proverb that it is better to give than to receive doesn't work. Both the giving and the receiving are criminal offenses under the statute.

Second, they are improper as unauthorized augmentations. To the extent the private contribution replaces the employee's Government salary, it is a direct augmentation of the employing agency's appropriations. To the extent the contribution supplements the Government salary, it is an augmentation in an indirect sense, the theory being that when Congress appropriates money for an activity, all expenses of that activity must be borne by that appropriation unless Congress specifically provides otherwise.

An early case in point is 2 Comp. Gen. 775 (1923). The American Jewelers' Protective Association offered to pay the salary and expenses of a customs agent for one year on the condition that the agent be assigned exclusively for that year to investigate jewelry smuggling. The Comptroller General found the arrangement improper, for the two reasons noted above. Whether the payments were to be made directly to the employee or to the agency by way of reimbursement was immaterial.

Most cases in this area involve schemes for private entities to pay official travel expenses. From the sheer number of these cases, one cannot help feeling that the bureaucrat must indeed be a beloved creature. Be that as it may, it is still an augmentation.

One of the earliest augmentation cases dealt with precisely this situation. Certain commercial organizations wanted to pay the travel expenses of Commerce Department investigators. Can't be done, ruled the Comptroller of the Treasury. It would be both an unauthorized augmentation and a violation of the criminal statute. 26 Comp. Dec. 43 (1919).

A series of later cases developed the current rules. There is a general rule, more accurately a set of rules, and one significant exception. The summary below has been compiled from several cases: 36 Comp. Gen. 268 (1956); 46 Comp. Gen. 689 (1967); 49 Comp. Gen. 572 (1970); 59 Comp. Gen. 415 (1980); B-128527, September 13, 1957; B-134573, December 24, 1957; B-128527, August 11, 1967; B-166850, June 13, 1969.

General rules. Donations from private sources, either in cash or in kind, for official travel to conduct Government business constitute an unlawful augmentation, unless the employing agency has statutory authority to accept gifts.

If the agency has statutory authority to accept gifts, the donation must be made to the agency, not to the individual employee. The employee, as in any other travel situation, will then be reimbursed by his agency in accordance with applicable travel laws and regulations. The employee may receive no more by virtue of the donation than he is entitled to under the travel laws and regulations.

Although donated funds are usually accounted for as trust funds, donations in the form of reimbursement for employee travel should be credited to the agency's appropriation that initially funded the travel. 46 Comp. Gen. 689, 690-91, supra. To credit these donations to the agency's gift account would amount to supplementing gift funds with appropriated funds, thereby avoiding the restrictions applicable to appropriated funds such as expiration at the end of the fiscal year. Since the funds are donated for the express purpose of augmenting travel appropriations, they may be used only for that purpose, i.e., for official employee travel. 36 Comp. Gen. 268, supra. Of course, the donations may be credited to the agency's gift account if the travel was initially funded from that account.

If the donation is in kind, obviously the employee can't ship his ham sandwich back to Washington. Therefore, again assuming the employing agency is authorized to accept gifts, the employee may accept the services. However, it is still treated as a donation to the agency, so the employee's per diem must be reduced or eliminated as appropriate.

If the agency does not have statutory authority to accept gifts, a donation of cash must be deposited in the Treasury as miscellaneous receipts. An offer of a contribution in kind would have to be rejected. (Theoretically, it would seem possible to accept the offer, with the agency to then transfer the employee's per diem to miscellaneous receipts, but there are no cases discussing this.)

Exception. Under 5 U.S.C. § 4111, enacted as part of the Government Employees Training Act, an employee may accept (1) contributions and awards incident to training in non-Government facilities, and (2) payment of travel, subsistence, and other expenses incident to attendance at meetings, but only if the donor is a tax-exempt nonprofit organization. If an employee receives a contribution in cash or in kind under this section, his travel and subsistence allowances must be appropriately reduced.

If a donation by a tax-exempt organization does not involve either of the two situations specified in 5 U.S.C. § 4111 (training and attendance at meetings), then the general rules apply. 49 Comp. Gen. 572, 575 (1970).

5 U.S.C. § 4111 authorizes the employee to accept the donation. It does not authorize the agency to accept the donation for credit to its appropriations and then reimburse the employee. 55 Comp. Gen. 1293 (1976). If an employee receives an authorized donation after the Government has already paid his travel expenses, he cannot keep everything. He must refund to the Government the amount by which his allowances would have been reduced had he received the donation before the allowances were paid. The agency may then credit this refund to its travel appropriation as an authorized repayment. Id.

Donations made under the express condition that they be used for some unauthorized purpose should be returned to the donor. 47 Comp. Gen. 319 (1967). The cited decision involved a donation to pay the cost of air insurance, an expense the agency was not authorized to incur. See also B-166850, June 13, 1969.

Although the principles discussed above arise most often in connection with employee travel, they occasionally arise in other contexts as well. For example, an employee may not retain "discount coupons" or similar items of value received from a commercial airline incident to the purchase of an airline ticket for official travel. 59 Comp. Gen. 203, 206 (1980); B-199656, July 15, 1981. However, the employee may keep a prize won in a contest or lottery sponsored by an air carrier if the contest was open to the general public and not limited to ticket-holding passengers. B-199656, supra.

Similarly, denied boarding compensation is payable to the Government and not to the individual employee. 59 Comp. Gen. 95 (1979). Since this is not a gift, but is more in the nature of damages, it must be deposited into miscellaneous receipts. 41 Comp. Gen. 806 (1962). However, where the employee voluntarily vacates his seat and takes a later flight, he may retain overbooking compensation received from the airline, subject to offset for any additional travel expenses caused by his voluntary action. 59 Comp. Gen. 203 (1980).

THE WHITE HOUSE

WASHINGTON

March 18, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Appropriations Authorization Proposals from Department of Justice

Robert McConnell is seeking OMB clearance of two legislative proposals relating to the Department of Justice appropriations authorization process. The first proposal would codify much of the language typically contained in DOJ's annual appropriations authorizations, thereby taking most of the Department's authorities out of the annual funding process.

This approach is being proposed because Congress has failed to pass the 1981, 1982, and 1983 authorization bills, creating uncertainty (though largely theoretical) concerning the authority of the Department. The second proposal contains the required annual funding level authorization request for FY 1984.

New, potentially controversial aspects of the permanent authorization bill, not included in DOJ's FY 1983 authorization request, include provisions which would:

- authorize the Deputy Attorney General as well as the Attorney General to authorize expenditures for collection of information and evidence of a confidential nature.

- authorize FBI, DEA, and Marshals Service agents to attend competitive firearms matches, to improve their skill and morale.

- change the requirement that the FBI Director and the Attorney General simultaneously approve undercover operations to a requirement that the Director approve and promptly notify the Attorney General or his designee.

- give DEA the same exceptions from general restrictions on use of government funds that the FBI enjoys, for undercover operations.

- o authorize INS to use funds to purchase evidence and pay for information, and accept gifts and voluntary services.

I see no objection to the proposals, although I suspect Congress will not be particularly anxious to yield any part of its power to control, on an annual basis, the Department's authorization.

ID # 130200 CU

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Name of Correspondent: Robert A. McConnell

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Subject: Two legislative proposals to meet the requirements of the FY 1984 appropriation authorization process for the Dept. of Justice

ROUTE TO: **ACTION** **DISPOSITION**

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
CU Holland	ORIGINATOR	83/03/12			/ /
	Referral Note:				
CUAT18	A	83/03/12			/ /
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A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet to be used as Enclosure
I - Info Copy Only/No Action Necessary
R - Direct Reply w/Copy
S - For Signature
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ASSISTANT ATTORNEY GENERAL
OFFICE OF LEGISLATIVE AFFAIRS

Roberts

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Department of Justice
Washington, D.C. 20530

130200

CU

MAR 11 1983

Honorable David A. Stockman
Director, Office of Management
and Budget
Washington, D.C. 20503

Dear Mr. Stockman:

Enclosed are copies of a proposed communication to be transmitted to the Congress relative to: two legislative proposals to meet the requirements of the FY 1984 appropriations authorization process for the Department of Justice.

Please advise this office as to the relationship of the proposed communication to the Program of the President.

Sincerely,

(Signed) Robert A. McConnell

Robert A. McConnell
Assistant Attorney General

TO COORDINATE CLEARANCE CONTACT JACK PERKINS, OLA, 633-2113

U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

The Speaker
House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

There are transmitted herewith two legislative proposals to meet the requirements of the Fiscal Year 1984 appropriations authorization process for the Department of Justice. One proposal would incorporate much of the general authorization language previously contained in this Department's annual appropriations authorization bill within Title 28 and other Titles of the United States Code. (See Tab A.) This would take most of the funding related authorities out of the annual authorization cycle. The second proposal is drafted to satisfy the statutory requirement of submitting to the Congress an annual funding level authorization request for the Department (See Tab B.) The second proposal addresses only very specific funding levels; although commensurate with the President's decision to eliminate the United States Trustees program, it does include a provision that would terminate that program (Sec. 6 of the annual version).

We have taken the approach of drafting two separate legislative proposals because of our serious concern regarding the current authorization process. The Department's 1981, 1982 and 1983 authorization bills were not passed and action on continuing our authorities seems to always be in doubt.

It is critical that this Department be provided a reasonable expectation of continuity for its basic programs. The current authorization process does not provide this expectation. On the contrary, it has created an environment which makes planning and program implementation most difficult; hence, the need for legislation which would take many basic, noncontroversial authorities out of the annual authorization cycle.

The annual authorization bill requests resource levels identical with the President's FY 1984 appropriation request. The "permanent" authorization version requests most of the same general provisions the Department included in its FY 1983 authorization, e.g., an undercover provision for the Federal Bureau of Investigation (FBI), authority to use confidential funds, authority to pay rewards.

However, both authorization bills do include some changes. The most pertinent changes in the permanent authorization version are as follows:

In proposed section 576(c)(3)(p. 4) the word "solely" has been dropped from the phrase "solely on the certificate of the Attorney General." The provision permits the expenditure of funds for the collection of evidence and information of a confidential nature. The word "solely" restricts the certification process by providing that only the Attorney General is permitted to approve the use of funds for such purposes. Removing the word "solely" and adding the Deputy Attorney General permits expeditious certification by either the Attorney General or the Deputy Attorney General. Identical changes have been made to this provision within the FBI (section 5 proposed section 538(i)(p. 17), the Drug Enforcement Administration (DEA) (section 10(d)(p. 24)) and the Immigration and Naturalization Service (section 6(e)(p. 21)) portions of the bill.

Proposed section 576(c)(6)(p. 4) would provide authorization for the timely payment of dues and expenses for U.S. membership in the International Criminal Police Organization from the funds of the U.S. National Central Bureau - INTERPOL.

Proposed section 576(c)(7)(p. 4) allows the Criminal Division to pay for the expenses related to the Attorney General's Panel Review process associated with the Cuban/Haitian entrant program.

In proposed subsections 568(a)(b) and (f)(p. 8) several new items have been added to permit the U.S. Marshals Service to function more effectively. The U.S. Marshals will be allowed to attend firearms matches as do other agents in the Department of Justice. Also, the Marshals will be permitted to retain seized vehicles for official use, primarily, for undercover work in the warrants program when an unobtrusive vehicle is required for surveillance. In addition, language has been provided that allows for payments to informants or other persons aiding the U.S. Marshals in their law enforcement activities.

Proposed section 576(e)(p. 5) adds language to permit the Community Relations Service (CRS) to administer the Cuban/Haitian entrant function. The administration of that function was recently transferred from the Department of Health and Human Services to the Department of Justice. The transfer is consistent with the President's Executive Order 12341, dated January 21, 1982, which earlier had transferred the responsibility for the Cuban/Haitian entrant program to the Department of Justice.

In proposed section 538(g)(p. 16) a provision has been added to allow FBI agents to also attend certain organized firearms matches. As in the case of the U.S. Marshals, participation in competitive matches with other law enforcement agencies improves firearms proficiency and improves the morale of the agents.

Proposed section 599(a)(1)(3)(4)(p. 30) and (d)(1)(A)(2)(B)(p. 32) adjusts the funding provisions for the FBI's undercover activities. Primarily, the citations have been changed since some of the revised statutes that were referenced in the section have been codified recently. In addition, the notification process has been simplified to reflect "prompt" notification of the Attorney General "or his designee" that such action is required. Previously, simultaneous approval by both the Director of the FBI and the Attorney General was necessary. Also, notification on completed audits will be to the "Department of Justice" rather than to the "Attorney General." This will permit more readily the delegation of the audit review responsibility to other appropriate senior Department of Justice officials.

Proposed section 540(a)(p. 18) is similar to a provision in this Department's FY 1983 draft appropriations authorization bill granting the FBI carefully delimited authority to issue subpoenas for documentary materials, with the concurrence of the cognizant United States Attorney. The current version also grants this administrative subpoena authority to any "Assistant Attorney General of a legal division of the Department of Justice or his designee." The Criminal Division and certain other legal divisions of this Department are intimately involved in FBI investigations and therefore, it is appropriate and necessary that the legal divisions also have the authority to issue and be involved in the approval process for an administrative subpoena.

Proposed section 600(p. 32) provides the DEA with exceptions from certain general statutory restrictions on the use of government funds and the use of property in pursuit of undercover operations. The exemptions are identical to those now in effect for the FBI and their passage will facilitate greatly such undercover drug investigations which have proven effective, although they were used sparingly by DEA because of the current statutory restrictions.

In section 6(d) of the draft bill (p. 21) authority is included for the Immigration and Naturalization Service (INS) to use funds for the purchase of evidence and to make payments for information. The nature of investigative operations carried out by the INS requires the use of certain amounts of money for the purchase of evidence and for the payment for information. This provision would permit the use of appropriated funds for these purposes. The authority is identical to that requested for other organizations within the Department such as DEA and the U.S. Marshals Service.

Section 6(i) of the draft bill (p. 21) adds language to refine the authority the INS has to construct facilities. Additional language for planning, site acquisition and construction is required to clarify the INS' authority to construct facilities.

Section 6(q) of the draft bill (p. 22-23) supplements the INS' current authority to hire aliens abroad by contract. This authority continues to be necessary to hire investigative assistants, translators and other aliens for a variety of purposes in its foreign offices. However, recruitment actions for clerical positions in many overseas offices meet with negative results because few qualified people apply due to the remote locations and the adverse living conditions. Even when recruitment is successful, the time between selection and actual arrival at the foreign post often leaves offices without the assistance of necessary support personnel for extended periods of time. This provision will facilitate the temporary employment of dependents of U.S. Foreign Service officers, U.S. military personnel and other U.S. citizens at all foreign posts where the INS has an office. Similar language has been included for the DEA in previous years.

Section 8 of the draft bill (p. 23) would authorize the Commissioner of the INS to accept gifts, donations or bequests, which would assist in the operation of the INS and accept voluntary services to assist in the information services activities of the INS. The need for the former was raised recently by a donation to the INS, in 1981, of eight Morgan horses. Since then, additional offers to donate houses to the INS have been made. The general gift authority is similar to that of other agencies (Administrative Conference of the United States, 5 U.S.C. 575; Treasury Department, 31 U.S.C. 901; the Smithsonian Institution, 20 U.S.C. 55; the Commerce Department, 15 U.S.C. 1522). The authority to use voluntary services without compensation in the information service function of INS would remove the restriction in 31 U.S.C. 1342 for the acceptance of such services. This provision will enable voluntary agencies to operate "ask immigration" tape libraries in conjunction with INS and to maintain roving information representatives in the INS' waiting rooms.

Proposed section 576(a)(3)(p. 1-2) has been added to allow Department overseas employees and their families the same benefits available to members of the Foreign Service. We have added one subsection which would allow the children of employees not residing at post to travel to visit a parent (with whom they do not normally reside) once a year. Primarily, the provision allows visitation travel for children of divorced and separated parents.

In proposed secton 576(a)(12)(p. 3) language has been added to provide training opportunities to dependents of Department personnel assigned to foreign posts. Identical opportunities are currently available to dependents of U.S. Foreign Service personnel. The training concentrates on safety precautions to combat terrorist situations but also provides social, cultural and political awareness training.

> Proposed section 576(a)(13)(p. 3) would authorize the payment of travel expenses of newly appointed Special Agents within the Department and the transportation expenses of household goods and personal effects from the place of residence at the time of selection to the first duty station. Such authorization is necessary to provide adequate staffing flexibility.
>
> Proposed section 576(b)(p. 3) would relieve Special Agents of the Department of Justice of liability for the loss of travel advances when there is no fault or negligence of the agents in consonance with the standards set forth in 31 U.S.C. 3527. The inherently dangerous nature of undercover enforcement operations should provide some protection for our agents and their estates from the potential liability for non-negligent loss of travel advance funds.

In the annual authorization version the most pertinent change is in section 2(10) which contains language to accommodate the new anti-organized criminal drug trafficking activities. Also, language is included to permit the advance of funds to State and local law enforcement entities which engage in cooperative enforcement efforts within this program.

We are confident the overall approach contained in the two attached legislative proposals will adequately address the needs of the Congress to carry out its legislative mandate and its oversight function while, at the same time, providing for the Department's program continuity needs.

The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the submission of this legislation to the Congress.

Sincerely,

Robert A. McConnell
Assistant Attorney General

Attachments

THE WHITE HOUSE

WASHINGTON

May 31, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Proposed Letter to Committee on Appropriations From Stockman Regarding H.R. 5712

I received this letter at 9:00 a.m., and Stockman needed clearance to send it before a 10:00 a.m. hearing on the subject. In the letter Stockman expresses opposition to a rider to the Commerce, Justice, State, the Judiciary and Related Agencies Appropriations Bill, that would preclude use of appropriated funds for any antitrust action against a municipality or other unit of local government. The FTC recently filed antitrust complaints against two municipalities for their regulation of the taxicab industry, prompting the rider.

In his letter Stockman notes that the FTC complaints seek remedial relief, not damages; that the rider goes far beyond the pending FTC proceedings, and has not been adequately debated or considered; and that the FTC action is consistent with that agency's statutory mandate as well as other Congressional and Executive efforts to deregulate transportation. At the suggestion of Jack Svahn and Lee Verstandig, a sentence is being added to the letter, noting that the Administration has supported legislative efforts to restore some degree of antitrust immunity to municipalities.

I have no objection to the letter or the suggested addition. The Supreme Court's misguided opinion sweeping away antitrust immunity for municipalities has created problems in this area, but they should not be addressed by broad appropriations riders. In light of the need for an immediate response, I discussed the letter with Mr. Hauser and, with his concurrence, advised OMB and Darman that we had no objection.

ID # CU

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING
☐ H - INTERNAL
☐ I - INCOMING
Date Correspondence Received (YY/MM/DD) / /

Name of Correspondent: Richard Darman

☐ **MI Mail Report** **User Codes:** (A) (B) (C)

Subject: Proposed Letter to Committee on Appropriations from Stockman re: H.R. 5712

ROUTE TO: | ACTION | DISPOSITION

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
CUHOLL	ORIGINATOR	84 /05 /31			/ /
	Referral Note:				
CUAT 18	D	84 /05 /31			84 /05 /31
	Referral Note:				ASAP
		/ /			/ /
	Referral Note:				
		/ /			/ /
	Referral Note:				
		/ /			/ /
	Referral Note:				

ACTION CODES:
A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet to be used as Enclosure
I - Info Copy Only/No Action Necessary
R - Direct Reply w/Copy
S - For Signature
X - Interim Reply

DISPOSITION CODES:
A - Answered
B - Non-Special Referral
C - Completed
S - Suspended

FOR OUTGOING CORRESPONDENCE:
Type of Response = Initials of Signer
Code = "A"
Completion Date = Date of Outgoing

Comments:

Keep this worksheet attached to the original incoming letter.
Send all routing updates to Central Reference (Room 75, OEOB).
Always return completed correspondence record to Central Files.
Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

5/81

Document No. ____________

WHITE HOUSE STAFFING MEMORANDUM

DATE: 5/31/84 ACTION/CONCURRENCE/COMMENT DUE BY: IMMEDIATE

SUBJECT: PROPOSED LETTER TO COMMITTEE ON APPROPRIATIONS FROM STOCKMAN RE H.R. 5712

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☐	☐	McMANUS	☐	☐
MEESE	☐	☐	MURPHY	☐	☐
BAKER	☐	☐	OGLESBY	☑	☐
DEAVER	☐	☐	ROGERS	☐	☐
STOCKMAN	☐	☐	SPEAKES	☐	☐
DARMAN	☐P	☐SS	SVAHN	☑	☐
FELDSTEIN	☐	☐	VERSTANDIG	☑	☐
FIELDING	☑	☐	WHITTLESEY	☐	☐
FULLER	☑	☐	____	☐	☐
HERRINGTON	☐	☐	____	☐	☐
HICKEY	☐	☐	____	☐	☐
McFARLANE	☐	☐	____	☐	☐

REMARKS:

Hearings are scheduled today at 10:00 a.m.

Please provide any comments immediately. Thank you.

RESPONSE:

1984 MAY 31 AM 8:55

Richard G. Darman
Assistant to the President
Ext. 2702

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

Honorable Silvio O. Conte
Committee on Appropriations
U.S. House of Representatives
Washington, D.C. 20515

Dear Sil:

I am writing to express my concern about the rider adopted by the House Appropriations Committee on May 23, 1984, as an amendment to H.R. 5712, The Commerce, Justice, and State, the Judiciary and Related Agencies Appropriation Bill. This provision would preclude use of appropriated funds for any antitrust action against a municipality or other unit of local government.

I understand this provision was drafted in response to the complaints recently filed by the Federal Trade Commission against two municipalities for violation of the antitrust laws in their regulation of the taxicab industry. Those complaints allege serious anticompetitive conduct; at the same time, they merely initiate a process in which all parties will have ample opportunity to ventilate the issues before any final decision is reached. The complaint seeks remedial relief, not damages.

While prompted by the FTC action, the appropriations rider is very broad and goes far beyond the facts of the pending proceedings. Such sweeping language should not be enacted without thorough investigation of its utility and necessity, or without careful consultation with the other concerned committees including the FTC's Authorization Committee and the Judiciary Committee.

The FTC's action is consistent with its statutory mandate and with other efforts by Congress and the Executive Branch to deregulate transportation. We believe the FTC action should not be summarily precluded, and urge you to oppose adoption of this amendment. If I can be of further assistance, please do not hesitate to call me.

Sincerely,

David A. Stockman
Director

THE WHITE HOUSE

WASHINGTON

October 17, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Report from Treasury Regarding Violation of Antideficiency Act

You have asked if any action is required in response to a report from Secretary Baker of a violation of 31 U.S.C. § 1517. That provision prohibits any Federal employee from making or authorizing an expenditure exceeding an apportionment. Pursuant to 31 U.S.C. § 1512, certain appropriations must be apportioned over the period of the appropriation. The Presidential Election Campaign Fund was originally not apportioned, but a 1978 change in the law resulted in it being apportioned. The Financial Management Service overlooked this change and, as a result, authorized expenditures exceeding the apportionment in the first quarter of FY 1985. (The expenditures did not exceed the general appropriation, which was the only reference available to FMS.) This violated 31 U.S.C. § 1517(a) and, as required by 31 U.S.C. § 1517(b), Secretary Baker reported the violation to the President and Congress.

Pursuant to 31 U.S.C. § 1518, anyone who violates 31 U.S.C. § 1517(a) "shall be subject to appropriate administrative discipline," including suspension without pay or removal. Pursuant to 31 U.S.C. § 1519, a willful or knowing violation subjects the employee to a fine of up to $5,000 and/or a prison sentence of up to two years. Secretary Baker's letter stated that no disciplinary action had been taken because the circumstances of the violation mitigate the blame and there was no willful violation. In my view, "appropriate disciplinary action" can include no action, and if, in Secretary Baker's view, there was no willful violation, I see no reason for a referral to Justice.

To JR — Any action needed? — 10/16

Document No. 330093ss

WHITE HOUSE STAFFING MEMORANDUM

DATE: 10/16/85 ACTION/CONCURRENCE/COMMENT DUE BY: --

SUBJECT: REPORT FROM TREASURY RE VIOLATION OF ANTIDEFICIENCY ACT

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☐	☐	LACY	☐	☐
REGAN	☐	☐	McFARLANE	☐	☐
MILLER	☐	☐	OGLESBY	☐	☐
BUCHANAN	☐	☐	RYAN	☐	☐
CHAVEZ	☐	☐	SPEAKES	☐	☐
CHEW	☐P	☑SS	SPRINKEL	☐	☐
DANIELS	☐	☐	SVAHN	☐	☐
FIELDING	☐	☑	THOMAS	☐	☐
FRIEDERSDORF	☐	☐	TUTTLE	☐	☐
HENKEL	☐	☐	______	☐	☐
HICKEY	☐	☐	______	☐	☐
HICKS	☐	☐	______	☐	☐
KINGON	☐	☐	______	☐	☐

REMARKS:

For your information.

RESPONSE:

David L. Chew
Staff Secretary
Ext. 2702

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

Received

OCT 15 PM 4:34

OCT 15 1985

MEMORANDUM FOR THE PRESIDENT

From: James C. Miller III, Director

Subject: Report of the Secretary of the Treasury on a Violation of Section 3679 of the Revised Statutes, as amended

There is attached a letter dated August 2, 1985, from the Secretary of the Treasury reporting to you, as required by law, a violation of subsection (h) of section 3679 of the Revised Statutes, as amended (31 U.S.C. 1517), commonly known as the Antideficiency Act.

This violation involves the overobligation of an apportionment under the appropriation for the Presidential Election Campaign Fund, fiscal year 1985. The overobligation was in the amount of $752,435 and resulted from a failure to change accounting procedures to reflect a change in apportionment requirements. FMS has informed my staff that this problem has now been corrected.

The letter from the Secretary of the Treasury states that the responsible officers are Raymond Burriss and Thurman Cary. It is further stated that no disciplinary action has been taken because there was no willful violation and the Secretary believes that the circumstances of the violation mitigate the blame.

The Department's regulations for the administrative control of funds are considered to be adequate. In view of the circumstances related in the letter and in subsequent documentation from the Secretary, we do not recommend any further action. We also do not recommend that this account be exempted from the apportionment process at this time, although we will pursue this issue at the appropriate staff level.

Attachment

Attachment

THE SECRETARY OF THE TREASURY

WASHINGTON 20220

August 2, 1985

Dear Mr. President:

In accordance with Office of Management and Budget Circular No. A-34, Section 71.2, the following reports a violation of 31 U.S.C. 1517, formerly referred to as a Section 3679 violation of the Antideficiency Act. The violation involves the Presidential Election Campaign Fund (20X5081), an account which is administered by the Financial Management Service, and occurred in the first quarter of Fiscal Year 1985. The amount of the over obligation was $752,435. Raymond Burriss, Accounting Technician, and Thurman Cary, Manager of the Financial Operations Branch, were the employees involved.

This violation concerns obligations and payments from the Presidential Election Campaign Fund which exceeded the apportioned amount. The apportionment was based on an estimate from the Federal Election Commission (FEC) that stated outlays from the Fund would not exceed $1,107,000 in Fiscal Year 1985.

Candidates eligible for Federal funds in the primaries submit requests for payment of qualified campaign expenses to the FEC. The FEC authenticates and certifies to Treasury, via letter, that the candidates are entitled to the payments. Payments are made within 48 hours of receipt in Treasury of the certification, in compliance with the statutory requirement (Internal Revenue Code 9037(b)) that payments be made promptly.

Prior to Fiscal Year 1978, the entire balance in the Presidential Election Campaign Fund was apportioned and available in the first quarter. In Fiscal Year 1978, however, the Office of Management and Budget determined that a portion of the Fund not earmarked for payment should be withheld pursuant to P.L. 93-443 (Federal Election Campaign Act Amendments of 1974). Because the estimates from the FEC since FY 1978 have been more than adequate, the accounting procedure, established at the inception of the Fund, was never changed. The accounting procedure made no provision in the general ledger for an account with an apportioned amount. For this reason, the payment requested by the FEC was authorized based on the unobligated balance in the Fund which exceeded $90 million, not the apportioned amount of $1.1 million.

No disciplinary action has been taken due to our belief that the circumstances of the violation mitigate the blame, and because there was no willful violation. The Service has corrected the deficiency in the general ledger by establishing an account for the apportionment. We are also requesting that OMB grant a specific exemption from the apportionment process to the Presidential Election Campaign Fund.

Identical reports of this violation have been forwarded to the President of the Senate and the Speaker of the House of Representatives.

Respectfully,

James A. Baker III

James A. Baker, III

The President
The White House
Washington, D.C. 20500

n1240

THE WHITE HOUSE

WASHINGTON

October 17, 1985

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FROM: JOHN G. ROBERTS

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Pursuant to 31 U.S.C. § 1518, anyone who violates 31 U.S.C. § 1517(a) "shall be subject to appropriate administrative discipline," including suspension without pay or removal. Pursuant to 31 U.S.C. § 1519, a willful or knowing violation subjects the employee to a fine of up to $5,000 and/or a prison sentence of up to two years. Secretary Baker's letter stated that no disciplinary action had been taken because the circumstances of the violation mitigate the blame and there was no willful violation. In my view, "appropriate disciplinary action" can include no action, and if, in Secretary Baker's view, there was no willful violation, I see no reason for a referral to Justice.

or to Congress? 10/17

SECRETARY BAKER HAS ALREADY REPORTED TO CONGRESS — SEE LAST SENTENCE OF HIS REPORT TO PRESIDENT (AND LAST SENTENCE OF FIRST ¶ ABOVE).

JGR 10/18

fine — I was only concerned that — P had duty — I gather not —

To JR — Any action req'd? → 10/16

Document No. 330093ss

WHITE HOUSE STAFFING MEMORANDUM

DATE: 10/16/85   ACTION/CONCURRENCE/COMMENT DUE BY: --

SUBJECT: REPORT FROM TREASURY RE VIOLATION OF ANTIDEFICIENCY ACT

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☐	☐	LACY	☐	☐
REGAN	☐	☐	McFARLANE	☐	☐
MILLER	☐	☐	OGLESBY	☐	☐
BUCHANAN	☐	☐	RYAN	☐	☐
CHAVEZ	☐	☐	SPEAKES	☐	☐
CHEW	☐P	☑SS	SPRINKEL	☐	☐
DANIELS	☐	☐	SVAHN	☐	☐
FIELDING	☐	☑	THOMAS	☐	☐
FRIEDERSDORF	☐	☐	TUTTLE	☐	☐
HENKEL	☐	☐	______	☐	☐
HICKEY	☐	☐	______	☐	☐
HICKS	☐	☐	______	☐	☐
KINGON	☐	☐	______	☐	☐

REMARKS:

For your information.

RESPONSE:

1985 OCT 16 AM 11:20

David L. Chew
Staff Secretary
Ext. 2702

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

Received S S
1985 OCT 15 PM 4:34

OCT 15 1985

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Respectfully,

James A. Baker III

James A. Baker, III

The President
The White House
Washington, D.C. 20500

21298