



~~42307~~
510371

13735
UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

GG-17
Berlin



OFFICE OF GENERAL COUNSEL

IN REPLY
REFER TO: B-198507

May 12, 1980

Sh...
Re...

Mr. W. Wasserstein, Director
Division of Government Accounts and Reports
Bureau of Government Financial Operations
Department of the Treasury

Dear Mr. Wasserstein:

You have requested my views on whether the first Continuing Resolution for fiscal year 1980, Public Law 96-86, October 12, 1979, 93 Stat. 656, appropriated \$350,000 for the Senate Office of Legal Counsel, and thus whether a request for a warrant in that amount by the Financial Clerk of the Senate should be honored. After reviewing the record, I am satisfied that the Congress intended to appropriate the amount in question in the Continuing Resolution. Should the Department of the Treasury prepare an appropriation warrant in that amount, I will recommend that the General Accounting Office countersign the warrant under the provisions of 31 U.S.C. § 76.

Section 101(c) of the Continuing Resolution appropriates:

"* * * such amounts as may be necessary for continuing projects or activities for which disbursements are made by the Secretary of the Senate, * * * to the extent and in the manner which would be provided for in the budget estimates, as amended, for fiscal year 1980."

The fiscal year 1980 appropriation requests for the Legislative Branch contained in the annual budget did not contain a request for an appropriation for the Office of the Senate Legal Counsel, nor was such a request contained in any amendment to the budget submitted to the Congress by the President prior to October 12, 1979, the date the Continuing Resolution became law.

However, on September 12, 1979, a month prior to the enactment of the Continuing Resolution, the Financial Clerk of the United States Senate forwarded to the Director of the Office of Management and Budget (OMB) budget amendments totalling \$474,000. These amendments included an additional \$124,000 for the Office of Sergeant at Arms and Doorkeeper, and \$350,000

B-198507

for the Office of the Senate Legal Counsel. The Financial Clerk requested prompt OMB processing of these items for inclusion in the Legislative Branch Appropriation Bill, then pending in the Congress.

For reasons which are not apparent in the record, the Director of OMB did not forward this request to the President, and the President did not submit it to the Congress, until October 26, 1979, 44 days after the request was made by the Senate Financial Clerk, and 14 days after the enactment of the Continuing Resolution.

As indicated in your letter, the Comptroller General has previously interpreted the term "budget estimate", as it was used in a fiscal year 1975 Continuing Resolution (Public Law 94-41, June 27, 1975, 89 Stat. 225), as meaning the budget estimate as it existed on the date of enactment of the resolution. See Letter to Representative Timothy E. Wirth, B-164031(2).17, December 5, 1975. Representative Wirth had asked the Comptroller General whether the amount of funds appropriated for several programs administered by the Department of Health, Education and Welfare, where the appropriations were made in terms of the budget estimate, could be increased after the enactment of the Continuing Resolution by an upward amendment of the budget estimate by the President. The Comptroller General concluded that an amendment to the budget estimate made after the enactment of the Continuing Resolution could not change the amounts of the appropriations in question.

The reason for this conclusion, as explained to Representative Wirth, was that in enacting the resolution the Congress was aware of the amounts contained in the budget estimates for each program in question on the date of enactment. By choosing to appropriate in terms of the budget estimate, the Congress was thus determining the acceptable rate for operations for each program. To allow the President to change this rate for operations by amending the budget estimate after enactment would thwart the intent of the Congress.

I do not believe that the current situation is controlled by the earlier decision of the Comptroller General. The two cases differ in two respects. First, it should be noted that in the 1975 case, no budget amendment had even been proposed by the President at the time of our consideration. The question was whether an upward revision of the budget estimate would be effective after the date of enactment of the Continuing Resolution, assuming that the President acceded to the request of several House members to submit such an amendment. In the instant case, the amendment had been drafted and sent forward in final form for transmittal to the Congress well before the date of enactment. Of even greater significance is the fact that the previous instance involved the Executive Branch and the current instance involves the Legislative Branch.

With respect to Executive Branch requests for appropriations, both OMB and the President exercise significant discretion. Thus, section 207 of the Budget and Accounting Act of 1921, as amended, 31 U.S.C. § 16 (1976), directs

OMB to prepare the budget and gives it specific authority to "revise, reduce, or increase the requests for appropriations of the several departments or establishments." Further, section 201 of the same act, 31 U.S.C. § 11 (1976), directs the President to submit to the Congress the budget for the entire Government, containing "estimated expenditures and proposed appropriations necessary in his judgment for the support of the Government * * *." 31 U.S.C. § 11(a)(5) (Emphasis added.)

Because of the discretion exercised both by OMB and the President, Executive Branch budget requests and amendments are not final until both have acted. Thus with respect to the Executive Branch, the term "budget estimates" includes only those appropriation requests actually transmitted to the Congress by the President.

On the other hand, with respect to Legislative Branch budget requests, neither OMB nor the President exercise any discretion. Their inclusion of these items in the annual budget is merely a ministerial act. Thus, section 2 of the Budget and Accounting Act, 31 U.S.C. § 2 (1975), specifically excludes the Legislative Branch from the definition of "department or establishment." Therefore OMB has no power to alter these requests under section 207 of the Budget and Accounting Act, quoted above. Moreover, section 201 of the Act specifically excepts Legislative Branch budget estimates from the President's discretion, in the following language:

"* * * estimated expenditures and proposed appropriations for such years for the legislative branch of the Government * * * shall be transmitted to the President * * * and shall be included by him in the Budget without revision." (31 U.S.C. § 11(a)(5) (1976). Emphasis added.)

Because inclusion of Legislative Branch appropriation requests and amendments in the President's budget is automatic, these requests and amendments can be considered as included in the budget estimate when received by OMB, even though they have not yet been formally transmitted to the Congress by the President.

Based upon my examination of the record, and communications with the Congress, I am satisfied that the budget amendments prepared by the Financial Clerk of the Senate were transmitted not only to OMB but also to both Houses of the Congress before October 12, 1979. The term "budget estimates, as amended" thus included the request for \$350,000 for the Office of Senate Legal Counsel. I therefore see no reason for further delay in funding the Office.

These comments, parenthetically, do not represent a "reversal" of a previous position, as your letter suggests. We routinely decline to countersign warrants when we have any doubt at all about their propriety

B-198507

in order to study the question more thoroughly upon submission of the question in writing, accompanied by the necessary background information, either by the agency involved or by the Department of the Treasury. There was no such submission in the instant case and we have ascertained that no voucher for the Office of Legal Counsel was ever actually presented. I suggest that it might be useful for you and your staff to meet with my Associate General Counsel, Rollee Efros, to whom I have delegated responsibility for these questions, and his staff to resolve any misunderstandings arising from current procedures for handling Continuing Resolution questions.

Sincerely yours,

for Harry R. Van Cleave
Milton J. Socolar
General Counsel