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

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B-163922

The Honorable Richard S. Schweiker  
United States Senate

Dear Senator Schweiker:

This is in response to your request for our opinion as to the legal effect of certain language contained in the House and Senate reports accompanying the Departments of Labor, and Health, Education, and Welfare Appropriation Act, 1975, approved December 7, 1974, Pub. L. No. 93-517, 88 Stat. 1634.

Your letter reads in pertinent part as follows:

"In the 93rd Congress, the Senate Appropriations Committee Report accompanying H.R. 15580, the Labor-HEW Appropriations Bill, 1975, contained the following language regarding federal funding for Opportunities Industrialization Centers of America (OIC):

'Similarly, the Committee directs the Department of Labor to provide not less than \$15,000,000 in Title III funds under the Comprehensive Employment and Training Act to Prime Sponsors on a 50-50 matching basis for the funding of Opportunities Industrialization Centers of America.<sup>[1]</sup> The Committee, furthermore, instructs the Department of Labor to take steps to insure that funding of OIC for fiscal year 1975 be at least a total of \$75 million through a combination of support by State and local sponsors and national contracts. This will provide for a total of 75,000 job opportunities. OIC presented arguments of compelling importance for these funds, and the job training and employment programs of this organization have, in the past, had an outstanding record of success.

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<sup>1</sup>Opportunities Industrialization Center (OIC) is a private, non-profit self-help organization for job training of minorities. See H.R. Rep. No. 93-659, p. 19 (1973).

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MR. DEMBLING

I have signed this letter but I wonder if we should let it go

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out before our decision in the LTV case. The issue is the same

'The Committee believes that these SER<sup>[2]</sup> and OIC funding levels should be accomplished without reducing other on-going title III programs below the 1974 level. If, however, final agreement on the bill reached by the Congress does not provide adequate resources to make this possible, the title III matching SER and OIC earmarking language shall apply only to the extent that funds are available.' [See S. Rep. No. 93-1146, p. 19 (1974)].

"Moreover, the House Appropriations Committee also recognized the special accomplishments of OIC, by including the following language:

'The Committee is fundamentally in sympathy with the philosophy of the Comprehensive Employment and Training Act, which is that local needs and priorities can best be determined at the local level, and not in Washington. Nevertheless, they are concerned that manpower training programs of proven effectiveness in dealing with special groups, such as those sponsored by the OIC, SER, and Mainstream, may not receive adequate support if their future is left entirely to the discretion of local sponsors. While the Committee has refrained from earmarking specific amounts in either the bill or in this report for programs such as OIC, Mainstream, and SER, the Committee expects the Labor Department to take steps to insure that the funding of these programs is maintained at least at current levels through a combination of national contracts and support by State and local sponsors.' [See H.R. Rep. No. 93-1140, p. 10 (1974)].

"When the House-Senate Conference Committee considered this legislation, no additional explanatory language was added, since the specific Senate earmarking language clarified, and did not contradict, the House language. It is therefore my understanding that the Senate earmarking provision has full force as legislative history, and must be followed by the Department of Labor in administering this law. \* \* \*"

Specifically, you request our Office to "review this legislation and confirm [your] understanding as to the legal impact of this language."

The actual statutory language to which the reports refer, making a lump-sum appropriation of \$2,400,000,000 to the Department of Labor under the heading of "Comprehensive Manpower Assistance," is set forth in title I of Pub. L. No. 93-517, 88 Stat. 1635, as follows:

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<sup>2</sup>Jobs for Progress, Inc., known as SER, is a job training program primarily for Spanish-speaking Americans. See H.R. Rep. No. 93-659, p. 20 (1973).

"For expenses necessary to carry into effect the Comprehensive Employment and Training Act of 1973, and sections 326 and 328 of the Trade Expansion Act of 1962 (19 U.S.C. 1951 and 1961) \$2,400,000,000, plus reimbursements, to remain available until June 30, 1976: Provided, That this appropriation shall be available for the purchase and hire of passenger motor vehicles, and for construction, alteration, and repair of buildings and other facilities and for the purchase of real property for training centers as authorized by the Comprehensive Employment and Training Act of 1973."

The sum specified therein represents the total amount of funds appropriated by the Act to implement, among other programs, the various titles of the Comprehensive Employment and Training Act of 1973, approved December 28, 1973, Pub. L. No. 93-203, 87 Stat. 839, 29 U.S.C. § 801 et seq (Supp. III, 1973).

In its report on this legislation the Senate Appropriations Committee "directed" the Department of Labor to provide a minimum of \$15,000,000 of title III funds under the Comprehensive Employment and Training Act of 1973 (which funds were appropriated within the category of "Comprehensive Manpower Assistance") to prime sponsors on a 50-50 matching basis for the purpose of funding Opportunities Industrialization Centers of America (OIC's). The corresponding House report (H.R. Rep. 93-1140, p. 10 (1974) not only fails to include a similar directive but actually contains a disclaimer of intent to earmark a specific amount of funds for programs such as OIC, Mainstream, and SER "in either the bill or in this report." It does contain a statement of its expectation that the Labor Department will maintain at least the current level of funding. It was this expectation which the Senate expanded into the earmarking language quoted above. However, the Conference Committee Report (H.R. Rep. 93-1189 (1974)) contains no reference to the Senate Committee's directive. Since the bill as amended in conference also contained no earmarking provision, it must be assumed that the House desire to avoid earmarking rather than the Senate desire to specify a minimum amount of title III funds for OIC's represents the intent of the Congress as a whole. In any case, the final statutory language as set forth in the appropriation act itself neither restricts the Labor Department's use of the moneys appropriated thereby nor earmarks any amounts for specific purposes. Furthermore, our examination of the provisions of the Comprehensive Employment and Training Act of 1973, does not reveal any provisions of that Act that would require the Department to expend a specified sum of title III moneys to fund OIC's.

Your letter suggests that the earmarking provision set forth in the Senate report has full force as legislative history and must be followed by the Department of Labor in administering the statute because the Senate earmarking language clarified and did not contradict the House language.

As stated above, we do not agree with the statement that the Senate language was merely a clarification of the language in the House report since the House specifically declared its wish to avoid earmarking. However, even if we accept this interpretation, there is an implicit assumption that, as a general matter, if the House and Senate reports accompanying an appropriations bill contain language directing an agency to make certain expenditures or limiting expenditures in a particular category, that agency is legally required to adhere to such congressional instructions even if the legislation itself does not contain similar directives or restrictions but merely contains a lump-sum appropriation for the category involved.

Expressions of congressional intent contained in committee reports and other sources as to particular uses of funds within lump-sum appropriations are accorded great weight, as they should be. However, our Office has traditionally adhered to the view that, in a strict legal sense, the total amount of a line item or lump-sum appropriation may be applied to any of the programs or activities for which it is available in any amount. Thus any restrictions set forth in the reports of the House and Senate committee, are not technically binding on Executive officials unless they are contained in the appropriation act itself or in another statute. See B-164031, April 16, 1975 (copy enclosed). We held in 17 Comp. Gen. 147, 150 (1937) that:

"The amounts of individual line items in the estimates presented to Congress on the basis of which a lump-sum appropriation is enacted are not binding on administrative officers unless carried into the appropriation act itself."

We reached this conclusion even though the passage of a lump-sum appropriation can be viewed, in the absence of a congressional expression of disagreement with the budget estimate on a particular line item, as congressional approval of the estimate and an indication of congressional desire that no more than the amount of the estimate be spent on that particular item.

Similarly, in a decision to the Director, Administrative Office of the United States Courts, B-149163, June 27, 1962 (copy enclosed), we stated:

"\* \* \* in the absence of a specific limitation or prohibition in the appropriation under consideration as to the amount which may be expended for revising and improving the Federal Rules of practice and procedure, you would not be legally bound by your budget estimates or absence thereof.

"If the Congress desires to restrict the availability of a particular appropriation to the several items and amounts thereof submitted in the budget estimates, such control may be affected by limiting such items in the

appropriation act itself. Or, by a general provision of law, the availability of appropriations could be limited to the items and the amounts contained in the budget estimates. In the absence of such limitations an agency's lump-sum appropriation is legally available to carry out the functions of the agency."

We recognize that the matter under consideration in the instant case is not identical to the question considered in the quoted decisions insofar as the Senate's directive to the Labor Department, as set forth in the Senate report, constitutes an affirmative expression of the Senate's intent rather than the mere acquiescence of Congress, but it still does not operate so as to engraft upon the statute a requirement not imposed by its terms or the terms of any other relevant law.

For the foregoing reasons, we must conclude that inclusion of language in the report of the Senate Committee on Appropriations directing the Department of Labor to provide a minimum of \$15,000,000 to fund OIC's is not legally binding on the Department of Labor since such language was not carried into the appropriation act itself or otherwise set forth in any other relevant legislation. This is not to say that, as a practical matter, language such as this set forth in the reports of the House or Senate committees has no effect. As noted above, we assume that executive agencies, in order to maintain a positive relationship with the legislative branch and avoid the enactment of more specific appropriations legislation in the future, will generally accept and follow such congressional directives.

We trust that the foregoing is responsive to your request.

Sincerely yours,

Comptroller General  
of the United States

Enclosures

NOTICE OF HEARINGS

COMMITTEE : Senate Appropriations Committee  
Subcommittee on Defense

SUBJECT : LTV Bid Protest

DATE : Tuesday, October 21, 1975

TIME : 10:00 a.m.

ROOM : 1223 - Dirksen Senate Office Building

Membership : Senator John J. McClellan (D-Ark.), Chairman

Majority : (9-D) Senators McClellan (Ark.), Stennis (Miss.),  
Pastore (R.I.), Magnuson (Wash.), Mansfield (Mont.),  
McGee (Wyo.), Proxmire (Wis.), Montoya (N. Mex.)  
and Inouye (Hawaii)

Minority : (6-R) Senators Young (N. Dak.), Hruska (Nebr.),  
Case (N.J.), Fong (Hawaii), Stevens (Alaska)  
and Schweiker (Pa.)

Principal staff : Guy G. McConnell, Professional Staff Member

GAO witness : Paul G. Dembling, General Counsel

Accompanied by : Paul Shnitzer, Associate General Counsel  
Jerome H. Stolarow, Deputy Director, Procurement  
and Systems Acquisition Division  
Smith Blair, Director, OCR

One car will leave G Street, 1st Basement at 9:45 a.m.

SB  
Smith Blair, Director