

DOCUMENT RESUME

02199 - [A1392364]

Practices Making Foreign Currencies Available for Congressional Travel. B-129650. May 11, 1977. 9 pp.

Decision by Elmer B. Staats, Comptroller General.

Contact: Office of the General Counsel: General Government Matters.

Budget Function: General Government: Central Fiscal Operations (803).

Congressional Relevance: Congress.

Authority: Mutual Security Act of 1954, as amended (P.L. 83-665; 68 Stat. 850; 22 U.S.C. 1754 (b) (Supp. V)). Supplemental Appropriation Act (31 U.S.C. 724). Legislative Reorganization Act of 1946 (2 U.S.C. 190d). Foreign Assistance Act of 1964 (P.L. 88-633; 77 Stat. 380; 77 Stat. 1009); 110 Cong. Rec. S19062; H. Rept. 88-1925. 7 U.S.C. 1691 et seq. 7 U.S.C. 1705. 15 U.S.C. 714b(j). 22 U.S.C. 2362. 31 U.S.C. 627. 18 Opinion of the Attorney General 176.

The General Counsel of the Department of the Treasury requested a determination of whether the practice of making available U.S.-owned foreign currency for congressional travel is consistent with the appropriate legislation. Up to \$75 per day per person is allowed, exclusive of the cost of transportation available from any other currencies for congressional travel. (SS)

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DECISION

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

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Levy

FILE: B-129650

DATE: May 11, 1977

MATTER OF: Practices making foreign currencies available
for congressional travel

DIGEST: No authority exists for practice of purchasing foreign currencies using dollars of Treasury miscellaneous receipts and Commodity Credit Corporation revolving fund for congressional travel under section 502(b) of Mutual Security Act of 1954, as amended, 22 U.S.C. § 1754(b) in instances where no foreign currency of particular country is owned by United States. Where foreign currency is owned by United States, up to \$75 per day per person exclusive of transportation costs in foreign currency is available for congressional travel under section 502(b) even though there may be insufficient foreign currency for dollar appropriated programs.

The General Counsel of the Department of the Treasury has requested that we determine whether certain of its practices making foreign currency owned by the United States available to members and staff of congressional committees for their expenses while abroad are consistent with section 502(b) of the Mutual Security Act of 1954, as amended, 22 U.S.C. § 1754(b)(Supp. V, 1975). Section 502(b) provides in pertinent part:

"(b) Availability to Congressional committees; reports.

"Notwithstanding section 724 of Title 31, or any other provision of law, local currencies owned by the United States, which are in excess of the amounts reserved under section 2362(a) of this title and of the requirements of the United States Government in payment of its obligation outside the United States, as such requirements may be determined from time to time by the President (and any other local currencies owned by the United States in amounts not to exceed the equivalent of \$75 per day per person exclusive of the actual cost of transportation) shall be made available to Members and employees of appropriate committees of the Congress * * *."

Treasury's General Counsel explains that foreign currencies generated by foreign assistance loans, sales of surplus commodities, etc., are maintained in Treasury miscellaneous receipts while foreign currencies generated under Public Law 480 programs (7 U.S.C. § 1491 et seq. (1970)) are maintained in the Commodity Credit Corporation (CCC) revolving fund. These currencies are transferred from either Treasury miscellaneous receipts or the CCC revolving fund to meet the currency requirements in foreign countries of dollar appropriated programs, and a charge of the dollar value of the transfer is made to the applicable appropriation of the agency receiving the foreign currency while a corresponding dollar credit is given to Treasury or the CCC, as appropriate. Foreign currencies are also transferred from either the Treasury or the CCC to congressional travel accounts for congressional travel expenses pursuant to section 502(b). However no charge is made against appropriations available to the Congress and no dollar credit is given to either Treasury miscellaneous receipts or the CCC revolving fund.

These standard practices have presented no problems in "excess foreign currency" countries. "Excess foreign currencies" means currencies or credits not needed for the normal requirements of agencies or departments doing business in the foreign country concerned or which are not otherwise earmarked by virtue of an agreement with the country concerned. 22 U.S.C. § 2362(b). However, in a number of countries, dollar appropriated program needs have increased to the point where the supply of U.S. owned foreign currencies was exhausted. Consequently, the General Counsel advises, on some occasions no local currencies were available for congressional travel needs or for other purposes. However, General Counsel notes that in certain instances the accounts of either Treasury miscellaneous receipts or the CCC revolving fund maintained dollar credits generated when foreign currencies from these accounts were used to meet the needs of dollar appropriated programs. Where such credits existed, Treasury adopted the practice of purchasing foreign currencies with dollars, charging either Treasury miscellaneous receipts or the CCC revolving fund, and transferring the foreign currencies purchased to the congressional travel account, without charge to congressional appropriations. The charge to either of the above accounts removed the dollar credits previously created. The General Counsel states:

"In effect, this practice results in the sale of dollars to obtain local currency for Congressional travel needs and thereby gives Congressional travel priority over dollar appropriated programs."

The Department of the Treasury questions whether this practice of purchasing foreign currencies for congressional travel expenses is authorized under section 502(b). It also questions whether the section requires that congressional travel needs be met before U.S. owned foreign currencies can be used in lieu of dollars for dollar appropriated programs, as required under 22 U.S.C. § 2362(b)(1970)

and 7 U.S.C. § 1705 (1970). For the reasons set forth below, we conclude that the purchase of foreign currency for congressional travel expenses is not permitted, but that to the extent foreign currencies generated by foreign assistance loans, sales of surplus commodities and receipts of other government program activities have not been disbursed to agencies for their dollar appropriated program needs, up to \$75 maximum per diem per person is available under section 502(b) for congressional travel needs.

As previously noted, the practice in question draws dollar funds from the Treasury or from the CCC revolving fund or exchange into foreign currencies. With respect to the use of Treasury dollars, it is a fundamental Constitutional principle, Art. I, § 9, cl. 7, that "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by law * * *." The clause prohibits disbursements of Treasury funds in the absence of specific statutory authority. In the absence of any other statutory authority (and neither Treasury or this Office has found any) expenditures of Treasury funds for this purpose is proper only if section 502(b) itself is deemed authority therefor.

The same question arises with respect to the conversion of CCC revolving fund dollars into foreign currencies for congressional travel needs. While included among the general powers of the CCC is the authority to determine the character and necessity of its expenditures, 15 U.S.C. § 714b(j)(1970), the broad administrative discretion thereby conferred must be exercised in conformity with the congressional purpose of the CCC, set forth in 15 U.S.C. § 714 (1970), and in accordance with the specific powers granted to the CCC in 15 U.S.C. § 714b (1970). These provisions indicate that the CCC was set up to provide stability in, and assistance for, agricultural prices, production and distribution. Nothing in these provisions or in the provisions of Public Law 480 suggest a congressional intent to allow conversions of dollar funds to foreign currencies for use for congressional travel. Thus as is the case with regard to Treasury funds, the transactions in question are proper only if authorized by the provisions of section 502(b) itself.

Our review of the language and legislative history of section 502(b) indicates that Congress did not intend to provide such authority, either with respect to disbursements from the Treasury or from the CCC revolving fund. As originally enacted in the Mutual Security Act of 1954, Pub. L. No. 83-665, approved August 26, 1954, 68 Stat. 850, section 502(b) stated:

"(b) Notwithstanding section 1415 of the Supplemental Appropriation Act, 1953 [31 U.S.C. § 724], or any other provision of law, local currencies owned

by the United States shall be made available to appropriate committees of the Congress engaged in carrying out their duties under section 136 of the Legislative Reorganization Act of 1946, as amended [2 U.S.C. § 190d], for their local currency expenses * * *."

During Senate consideration of the Foreign Assistance Act of 1964, Pub. L. No. 88-633, approved October 7, 1964, 77 Stat. 380, Senator Fulbright proposed an amendment to section 502(b) to limit its application to foreign currencies in excess of the Government's needs:

"* * * Section 502(b) of the Mutual Security Act of 1954, as amended, is amended by inserting after the words 'United States' where they first appear in the first sentence thereof a comma and the following: 'which are in excess of the amounts reserved under section 612(a) of the Foreign Assistance Act of 1961, as amended, and of the requirements of the U.S. Government in payment of its obligations outside the United States, as such requirements may be determined from time to time by the President,'." 110 Cong. Rec. 19062 (1964).

Senator Fulbright expressed the intent of his proposed amendment as follows:

"The pending amendment would restrict the use of nonexcess foreign currencies. Another way to put it is as follows: Currencies that are not needed for purposes specified in section 612(a), which are in furtherance of Government purposes, would be restricted to those uses except in the countries where they are excess. Those countries are Burma, India, Indonesia, Israel, Pakistan, Poland, Egypt and Yugoslavia. When we are dealing with the currency of a country such as Germany or France, the fact that the United States might own some marks or francs does not mean that those are not valuable currencies. They are convertible into dollars.

"The effect of the amendment would be felt in the Congress, for it would restrict Members of Congress who travel abroad in using the currencies of those countries, other than the 'excess' countries I have named.

"So when a Member of Congress arrived in Paris, he would not be handed a packet of so-called counterpart funds, which some Members of Congress seem to have regarded as not worth anything. They are worth something. When we appropriate or authorize appropriation of such funds for a purpose not mentioned in 612(a), it amounts to appropriating dollars for that purpose in any country other than the ones I mentioned.

"Therefore, I believe the amendment is very worthwhile. At least it would bring home to Senators that they are not dealing with 'funny money' when they are handling German marks. They are just as good as dollars, because they can be taken to a bank and exchanged for dollars.

"Amendments are often offered which in effect state, 'We have this foreign money, and therefore we can undertake to create any kind of project that appeals to someone because it will not cost anything.' And then we vote for such measures. I point out that the regular process of authorization should be followed. There should be consideration of the proposal by the committee. There should be an evaluation as to what it will cost the Treasury. That is the only effect of the amendment. Primarily, I would say that it would bring home the fact that we are dealing with matters of real importance to the Treasury of the country." Id. at S19062-19063.

The Fulbright amendment was passed in Pub. L. No. 88-633, approved October 7, 1964, 78 Stat. 1009. However, a provision added in conference also was enacted, making available for congressional travel--

"* * * and any other local currencies owned by the United States in amounts not to exceed \$50 per day per person exclusive of the actual cost of transportation * * *."

The conference report to Pub. L. No. 88-633, H. Rep. No. 1925, 88th Cong., 2nd Sess. 17-18 (1964), explained that this addition to the Fulbright amendment was intended to place a limitation on the use of local currencies not covered by the Senate language.

The use of foreign currencies owned by the United States for congressional travel expenses was later considered by the Congress in connection with the Department of State Appropriations Authorization Act of 1973, Pub. L. No. 93-126, approved October 18, 1973, 87 Stat. 451. In section 5 thereof, Congress further amended section 502(b) of the Mutual Security Act of 1954 by, among other things, increasing the currency allotted to authorized travelers from \$50 to \$75 per day. In its report on S. 1248, 93d Congress, a derivative source of Pub. L. No. 93-126, the Senate Committee on Foreign Relations recognized the instant practice and recommended a change therein:

"The foreign currencies in other countries are in the 'non-excess' category, meaning that the supply is not adequate to meet U.S. requirements for two years. In most of these 'non-excess' currency countries the United States Government must use dollars to purchase foreign currencies from commercial sources to pay for part of its operating expenses. Thus, when these foreign currencies are used in connection with Congressional travel, as has been done in the past, an equivalent amount of additional currency must be purchased with appropriated dollars to satisfy the expenditure requirements. During Fiscal Year 1972, for example, approximately \$950,000 was used for this purpose. Needless to say, the purchase of such currencies with appropriated dollars constitutes a balance of payments drain and also a net budgetary drain on the United States Government.

"Subsection (a) of Section 18 provides that in the so-called 'excess' currency countries the equivalent of not to exceed \$75 per day (exclusive of transportation costs) could be made available to each Member or employee to meet his subsistence expenses. This subsection also prohibits the use of excess currencies to pay the expenses or fees of witnesses appearing before Congressional committees in the United States. This latter provision would require Congressional committees to pay witness fees out of their own funds at rates authorized by the Senate or the House of Representatives, as the case may be.

"Subsection (b) of Section 18 provides that appropriations made available to committees of the Congress could be used to reimburse Members and employees of such committees a per diem allowance, in lieu of actual subsistence expenses incurred, for travel abroad in amounts not exceeding \$75 per day, exclusive of the actual cost of transportation. In other words, this subsection would have the effect of requiring expenditures made in connection with overseas travel to be financed directly out of funds appropriated to Congressional Committees for their operating expenses." S. Rep. No. 93-176, 93d Cong., 1st Sess. 44 (1973).

The Senate accepted its committee's recommendation, but the conference committee did not, and this proposal was not enacted into law.

It is, then, clear that, at least as of the enactment of the most recent amendment to section 502, the Congress was aware of the subject practices; however, in our view, this alone is not sufficient to authorize them. The provisions of 31 U.S.C. § 627 (1970) require that no act shall be construed to make an appropriation out of the Treasury "unless such Act shall in specific terms declare an appropriation to be made * * *." Authority for the use of public monies cannot rise by inference without clear terms requiring it. 18 Op. Atty. Gen. 176 (1885). In this context, we think section 502(b) of the Mutual Security Act of 1954 is, for all practical purposes, an appropriation of foreign currencies owned by the United States within the Treasury to be used for the purposes and in accordance with the limitations set forth therein.

There is nothing within section 502(b), however, which even purports to appropriate funds from the Treasury (or to authorize expenditures from the CCC's revolving fund) for the purpose of purchasing foreign currencies for congressional travel expenses. Neither does the legislative history of Pub. L. No. 88-633, supra, indicate that such a result was intended. Rather, the section explicitly controls only those foreign currencies already owned by the United States and can in no way be read as authorizing a new method of acquiring such currencies.

Accordingly, it is our view that the use of purchased foreign currencies for congressional travel needs, without reimbursement from congressional appropriations, is improper.

B-129650

In instances where there exist foreign currency balances generated by foreign assistance loans, sales of surplus commodities and other government program activities, section 502(b) divides these currencies into two categories: "excess" and "any other". The section makes available without limitation for congressional travel only those currencies which are in excess of the amounts reserved under 22 U.S.C. § 2362(a) and the amounts required for payment of Government obligations outside the United States. The section makes an amount "not to exceed the equivalent of \$75 per day per person exclusive of the cost of transportation" available from "any other" currencies for congressional travel. It appears from our review of the legislative history of this provision that Congress did not consider the question of priorities between congressional travel needs and various agencies' needs for foreign currencies for their dollar appropriated programs, in instances where local currencies owned by the United States are not in excess of reserves and other Government needs. However, to the extent foreign currencies have been disbursed for other Government needs, such funds obviously would not be available for congressional travel needs: nothing in the section or its legislative history suggests that funds be set aside for contingent congressional travel. Conversely, to the extent foreign currencies have not been disbursed to other agencies for their needs, the section unambiguously requires that these currencies be made available for congressional travel, subject to the \$75 per day, per person maximum.

We also note that neither the section in question or its legislative history defines the phrase "any other local currencies owned by the United States." On its face the phrase would appear to include un earmarked foreign currencies which would eventually be expended for various Government needs, as well as foreign currencies reserved under 22 U.S.C. § 2362(a). However, as currencies reserved under 22 U.S.C. § 2362(a) are not generally available for future agency needs, we do not believe they can be said to be available for congressional travel either.

With respect to the non-reserved funds, we have stated that they are generally available for congressional travel within the prescribed limits. However, nothing in the legislative history leads us to believe that the Congress intended to make these funds available under circumstances where such use would lead to the need to buy local currencies with dollars to meet other authorized needs of the United States in those countries. If therefore, use of non-reserved funds on hand for congressional travel would so deplete the supply of foreign currencies available for anticipated agency needs so as to necessitate a dollar purchase of such funds from

B-129650

commercial sources when an agency program need arose, the Department of the Treasury would be justified in regarding the funds as unavailable for congressional travel.

Notwithstanding the above conclusions, we would agree that the scope of the phrase, "any other local currencies owned by the United States" is unclear, and that legislative clarification should be obtained.

While we conclude that the past practice of purchasing foreign currencies for congressional travel expenses is not authorized, in view of the long standing practice of making such purchases, with the concurrence of both the Department of the Treasury and the Department of State, we suggest that the practice not be discontinued until the Congress has an opportunity to consider specifically such practice in the light of this decision. A reasonable time for congressional action to be taken would be until the end of this session of Congress.

F. B. Atch
Comptroller General
of the United States