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Survey

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

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B-207186

June 3, 1982

The Honorable Richard L. Ottinger
Chairman, Subcommittee on Energy
Conservation and Power
Committee on Energy and Commerce
House of Representatives

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Dear Mr. Chairman:

This responds to your letter dated May 10, 1982, in which you expressed concern with our letter to you of May 5, 1982, which analyzed the legality of executive impoundments of funds appropriated for the Solar Energy and Energy Conservation Bank. In our May 5 letter we addressed the issue of the impoundment's legality in terms of our December 31, 1981, report of an earlier impoundment of Bank funds (deferral D82-184, proposed on October 29, 1981). We explained at some length our disagreement on the issue with OMB, and why we had concluded in light of the fourth disclaimer of the Impoundment Control Act that a withholding of Bank funds is unauthorized. You point out that we should have but did not explicitly state that the withholding of the same funds pursuant to the President's rescission proposal R82-22 was also unauthorized. An explicit statement to that effect is contained at page 7 of our report on the President's eighth and ninth special messages, copy enclosed, which was issued the day following our letter to you.

You also were troubled by a statement in our letter to you that "the issue of the legality of OMB's withholding of the Bank's funds now is academic." Given your perception that we had not informed the Congress that the withholding was illegal, I can readily understand your apprehension that we might appear to dismiss as merely "academic" the subject of your concern and the effect the illegal impoundment had on the Bank's operation. In point of fact, our decision to attach considerable importance to the fourth disclaimer is a controversial one which we take quite seriously. However, our belief in the correctness of our interpretation of the law had no practical application to the unauthorized withholding of funds from the Bank. Indeed, the period of 45 legislative days normally authorized for withholding funds proposed for rescission had expired and the funds

had been released by the time we received your letter asking for a decision on the matter. We intended to suggest nothing more than the fact that the release of illegally withheld funds dissolved any basis for our having sued for release of those funds at the expiration of the 45-day period.

Finally, you express a concern about the timliness of our impoundment reviews. I share your concern, and recently emphasized to my staff the especial need for timely responses in impoundment matters. We had experienced some delays in issuing reports in response to impoundments proposed during the time the the first continuing resolution was in effect (October 1 - November 20). During this time, the President submitted six impoundment messages containing approximately 221 impoundments. This unprecedented level of impoundment activity within such a short timeframe necessarily resulted in some delay in issuing our impoundment reports. The delay in issuing our report on the message containing the rescission proposal for the Bank was caused by the complexity of legal issues affecting various impoundment proposals contained therein. That message contained 43 impoundment proposals. We concluded that for ten of those proposals, the withholding of funds was unauthoized.

We are exploring ways in which we can reduce delays in issuing impoundment reports. We have increased the number of our legal staff involved in the impoundment process. Also, if a controversy over individual impoundment proposals in a special message is delaying the issuance of our impoundment report, we will consider segregating those proposals from the rest of the message. This should enable us to more timely respond to the bulk of the impoundment proposals.

In any event, the delay in our impoundment report of May 6, however unfortunate in other respects, did not affect our authority to bring suit under section 1016 to release funds proposed for rescission. Our authority to have implemented section 1016 would have been based on the requirement in section 1012(b) that funds be made available on the expiration of the 45-day period, and not on the issuance of our section 1014(b) report. In the case of the proposed rescission of Bank funds, our ability to bring a section 1016 lawsuit would have materialized only if OMB had not released the withheld funds after April 23, 1982, the 45th legislative day after the rescission was proposed on February 5.

We hope this adequately addresses the concern expressed in your May 10 letter. I was pleased to have your observation that

my staff ppeared to be closely monitoring the situation and was helpful to your staff. It is my expectation they will continue to prove helpful, and promptly so, in any future matter you may bring to our attention.

Sincerely youra,

for Milton J. Socolar
Comptroller General
of the United States

Enclosure