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B-223278

June 12, 1986

The Honorable William Lehman
Chairman, Subcommittee on
Transportation
Committee on Appropriations
House of Representatives

Dear Mr. Chairman:

In your letter of May 30, 1986, you asked our opinion whether the Secretary of Transportation has complied with the requirements of section 320 of the Department of Transportation and Related Agencies Appropriations Act, 1986, 99 Stat. 1185, 1287 (1985), in conducting negotiations with local government authorities in Los Angeles, Miami, and Seattle, for full funding contracts to construct mass transit projects in those localities.

We have not had sufficient time to determine the facts regarding the contacts between representatives of the Department and the three local governments or to obtain their comments. Therefore, in this letter we shall set forth our interpretation of the requirements of section 320 without actually concluding whether or not the Secretary complied with the law.

The best indication of the intent of the Congress is the language of the statute itself.

Section 320 of the fiscal year 1986 Department of Transportation Appropriations Act provides:

"The Secretary of Transportation shall enter into negotiations for full funding contracts with the appropriate local governmental authorities to construct (1) the minimum operable segment, MOS-1, of the downtown Los Angeles to San Fernando Valley Metro Rail project; (2) the north and south legs of the downtown component of metrorail in Dade County, Florida; and (3) the downtown transit project (bus tunnel) in Seattle, Washington; Provided, That the Secretary shall commence negotiations with appropriate local authorities to enter into such contracts no later than 30 days after enactment and shall conclude such negotiations no later than 90 days

after enactment: Provided further, That such contracts shall cover total project costs including federal financial participation consisting of fiscal year 1984 and fiscal year 1985 discretionary grants funding made available pursuant to section 331 of this Act, fiscal year 1986 discretionary grants funding in accordance with the accompanying Joint Explanatory Statement of the Managers, and future funding as made available by the Congress." 99 Stat. at 1287.

Looking at the section as a whole, we think it is clear that the Congress intends that the Secretary of Transportation actually enter into contracts with the three jurisdictions. The statute not only mandates negotiations, but also specifies the type of contract to be entered, the specific projects to be built, and the funds to be used to finance the contracts. We consider it unlikely that the Congress would have given such detailed instructions unless it intended that the negotiations result in contracts to build the three projects.

Further, an examination of the individual mandates contained in the statute leads us to conclude that the Congress intended both the Secretary and the individual jurisdictions to continue negotiating until agreements were reached and contracts executed. The Secretary is mandated to "enter into negotiations" with the three local jurisdictions "for full funding contracts." Thus, the negotiations are not to be meaningless exercises but rather are for the purpose of producing contracts for the three projects. Next, the Secretary is directed to "commence negotiations * * * to enter into such contracts" within 30 days of the passage of the statute and to "conclude such negotiations" within 90 days of passage. Thus the purpose of the negotiations clearly is to enter into contracts.

The requirement that negotiations "conclude" within 90 days indicates congressional intent that the agreements be reached within that period of time, not that negotiations be abandoned if the parties have not yet reached agreement. The latter interpretation would clearly be contrary to the overall purpose of the statute--to induce the parties to enter into contracts. Rather, even with the express mandate that negotiations conclude within 90 days, we are convinced that the Congress intended that negotiations continue until agreement between the Secretary and the local jurisdiction is reached, if such an agreement is possible.

This interpretation of the 90-day requirement is confirmed by an examination of the legislative history of section 320. In addressing this requirement, the Joint Explanatory Statement of the Committee of Conference explained:

"The conferees fully expect the Secretary and the designated cities to reach agreement within the 90-day time limit. This deadline may only be extended upon agreement by both parties. If the deadline is not met, the conferees expect the parties to report to the House and Senate Committees on Appropriations on the reason for any delays and to continue reporting on the status of the negotiations at regular intervals until each contract is executed." (Emphasis added.) H.R. Rept. No. 450, 99th Cong., 1st sess. 335 (1985)

In using the word "negotiations" in section 320, we assume that the Congress intended the ordinary meaning of that word. The American Heritage Dictionary defines "negotiation" as the act or procedure of treating with another or others in order to come to terms or reach an agreement. In our view, the process of negotiation, as mandated by the Congress, requires that the parties each act in good faith to try to reach agreement. In fact, we consider this requirement of good faith negotiation to be the critical factor in any determination of whether the Secretary was in compliance with the statute.

As we indicated above, we do not have sufficient information (nor can we obtain it within the time constraints of your request) to determine whether representatives of the Secretary or the municipalities were negotiating in good faith pursuant to the mandate of section 320. We understand, however, that staff of the Appropriations Committee is currently investigating this question. We trust that the following observations will be helpful:

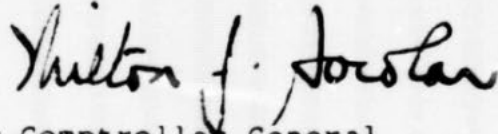
1. Should the investigation indicate that the local jurisdiction was negotiating in good faith but that the representatives of the Secretary were not, we would conclude that the Secretary had not and was not in compliance with section 320 and that the statute required that she immediately resume negotiations in good faith.

2. Should the investigation indicate that representatives of the Secretary were acting in good faith but that the local jurisdiction was not, we would conclude that the Secretary had complied with the law and that she was required to take no further action under section 320 until the local jurisdiction resumed negotiations.

3. Should the investigation indicate that both the local jurisdiction and the representatives of the Secretary were negotiating in good faith, we would conclude that both had complied with the law until negotiations were suspended, but that section 320 now required both to resume good faith negotiations.

We trust this letter is responsive to your request. As we agreed with a member of your staff, this letter will be made available to the public 5 days from today.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Milton J. Jordan". The signature is written in a cursive, flowing style with a large initial "M".

Acting Comptroller General
of the United States