



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

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May 6, 1986

B-211149

The Honorable Sidney R. Yates
House of Representatives

Dear Mr. Yates:

Your letter dated April 30, 1986, asked two questions relating to the powers of the former Chairperson of the Holocaust Memorial Council to appoint a "Museum Executive Board" or other committee made up of non-Council members, to plan, design, and construct the memorial museum. The questions arise because the authority to appoint members of such committees, as provided in Pub. L. No. 99-190, December 19, 1985 (99 Stat. 1262) is given to the Chairperson of the Council. The former Chairperson's term of office expired on January 15, 1986 (see 36 U.S.C. § 1402(d)(2)), and the President has neither reappointed him nor appointed a successor to date.

The answer to your first question, as suggested above, is that no one can appoint a non-Council committee member to build the museum at the present time since such appointments may be made only by the Council Chairperson, and that position is vacant.

Note that the former Chairperson may continue to serve as a member of the Council, even though his term as a member also expired on January 15, 1986. 36 U.S.C. § 1402(b). This is because the statute specifically provides that a non-congressional member may continue to serve after the expiration of his term until his successor has taken office. There is no comparable provision for continuation in office for the Council Chairperson and Vice Chairperson in existing law. We have, however, enclosed some draft language to provide this authority since you indicated that such continuity would be desirable.

Your second question was whether the committee could act when appointed or whether it would be necessary for the appointments to be confirmed by the Council. (I am assuming that the legislation is amended to allow the former Chairperson to continue to act as Chairperson until the President makes a new appointment, and that he duly appoints a committee.) The statute has no requirement whatsoever for confirmation or approval by the Council. The legislative history on

this point is very scant, consisting solely of a single sentence in the Conference Report on the Continuing Resolution for FY 1986, which became Pub. L. No. 99-190. The sentence reads:

"Language is included which provides authority for the Chairman of the United States Holocaust Memorial Council to appoint persons who are not members of the Council to committees associated with the Council."

It is possible that some provision in the Council's by-laws may provide the Council with the power to disapprove one or more of the Chairperson's appointments. I do not have a copy of the by-laws, however, and can only rely on the plain wording of the statute.

I was also uncertain whether the statutory reference to persons being "designated" as members of committees, subject to "appointment by the Chairman of the Council" was meant to assure that the Council would have the opportunity to nominate prospective committee members, from among whom the Chairman would make his appointment. (If this was not the intent, it does seem a bit awkward to have the Chairman designate members who are then "subject to" his own appointment.) I have also enclosed some legislative alternatives designed to clear up the ambiguities, depending on the result you prefer. It is designed as an amendment to the substantive legislation establishing the Council. If left as a provision of a continuing resolution, it might well be regarded as temporary legislation which would have no force and effect after the close of the fiscal year.

You mentioned informally a third question concerning the validity of any checks the Council Chairperson may have signed after January 15, 1986, when he no longer held that office. As we look over the statute, we see no duties (other than the appointment authority discussed above) which are specifically assigned to the Chairperson. Most of the duties which would involve expenditures of the donated funds are assigned to the Council or to the Executive Director. Again, I am unable to give you a definitive answer because I do not know what the by-laws provide by way of a designated paying official. There would, of course, be no occasion for the Chairperson to sign checks for expenditures of appropriated funds. Such checks would be issued by the Department of the Treasury, after certification by a designated official employed by the Council.

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If I can be of any further help, please let me know.

Sincerely yours,

A handwritten signature in cursive script that reads "Milton J. Socolar". The signature is written in dark ink and is positioned above the typed name.

Milton J. Socolar
Special Assistant to the
Comptroller General

Enclosure

(1) Section 2 of Public Law 96-388, 36 U.S.C. § 1402 is amended by adding the following sentence at the end of paragraph (d)(1):

"A Chairperson or Vice Chairperson, including the initial Chairperson or Vice Chairperson as designated in paragraph (2), may serve after the expiration of his or her term until a successor has taken office."

(2) The first and second provisos of section 101(d) of Public Law 99-190, 36 U.S.C. § 1404 note, are deleted and section 4 of Public Law 96-308, 36 U.S.C. § 1404, is amended by adding at the end thereof a new subsection to read as follows:

[Alternate 1]

"(f) The Chairperson may appoint persons other than members of the United States Holocaust Memorial Council as members of committees associated with the Council. Persons so appointed shall serve without cost to the Federal Government."

[Alternate 2]

"(f) Persons other than members of the United States Holocaust Memorial Council may serve as members of committees associated with the Council. Such committee members shall be appointed by the Chairperson subject to the approval of the Council. Persons so appointed shall serve as committee members without cost to the Federal Government."

[Alternate 3]

"(f) Persons other than members of the United States Holocaust Memorial Council may serve as members of committees associated with the Council. Such committee members shall be appointed by the Chairperson following nomination by a majority vote of the Council. Persons so nominated and appointed shall serve as committee members without cost to the Federal Government."