

COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON

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APR 3 1942

Liaison Officer,

APR 3

Office for Emergency Management,

Executive Office of the President.

My dear Mr. Coy:

I have your letter of March 25, 1942, as follows:

"The Office of the Coordinator of Inter-American Affairs desires to submit for your consideration a case involving the question of what constitutes a 'legal obligation' of appropriated funds subject to a fiscal year limitation.

"The situation is briefly, as follows:

"At the recent Conference of Foreign Ministers convened at Rio de Janeiro, Brazil, the following resolution was introduced and unanimously adopted by the representatives of each of the twenty-one American Republics:

WHEREAS:

1. The American Republics are now undertaking measures for the development of certain common objectives and plans which will contribute to the reconstruction of world order;
2. The American Republics are now undertaking measures seeking to conserve and develop their resources of critical and strategic materials, to maintain their domestic economies and eliminate economic activities prejudicial to the welfare and security of the American Republics;
3. The defense of the Western Hemisphere requires the mobilization of the vital forces, human and material, of the American Republics; and
4. Adequate health and sanitary measures constitute an essential contribution in safeguarding the defensive powers and the ability to resist aggression of the peoples of the American Republics.

"The Third Meeting of the Ministers of Foreign Affairs of the American Republics

RESOLVES:

1. To recommend that the Governments of the American Republics take individually, or by complementary agreements between two or more of them, appropriate steps to deal with problems of public health and sanitation, by providing, in accordance with ability, raw materials, services and funds.
2. To recommend that to these ends there be utilized the technical aid and advice of the national health service of each country in cooperation with the Pan American Sanitary Bureau.

(Resolution XXX - Improvement of Health and Sanitary Conditions)

Thereafter on February 20, 1942, the President of the United States in Letter of Allocation No. 42-84, allocated from the 'Emergency Fund' contained in the Independent Offices Appropriation Act 1942, approved April 5, 1941, the amount of \$25,000,000 to the Office for Emergency Management for the use of the Coordinator of Inter-American Affairs to enable the latter Office to institute and carry out a large-scale Health and Sanitation Program in the other American Republics.

"This program has been cleared with, and has the approval of, the President, the Vice President, the Secretary of State, the Under Secretary of State, the Secretary of War, Chief of Staff of the United States Army, Secretary of the Navy, the Chief of Naval Operations, the War Plans Division of the General Staff of the War Department, the War Plans Division of the General Staff of the Navy Department, the Surgeon-General of the Army Medical Corps, the Surgeon-General of the Navy, the Military Intelligence Division of the War Department, the Office of Naval Intelligence, the Federal Bureau of Investigation, the Coordinator of Defense Housing, the Federal Security Administrator, the Office for Emergency Management, the War Production Board, and the Board of Economic Warfare.

"The Health and Sanitation Program contemplated involves (a) immediate strategic objectives of a military character, and (b) long-range political objectives in the maintenance of solidarity

among the peoples of the twenty-one American Republics and the continuance of the 'good Neighbor' policy of the President and the Department of State. From the standpoint of immediate strategic objectives, it is essential that provision should be made forthwith for the adequate and effective control and prevention of diseases, water supply and sewage disposal in areas in the other American Republics which may possibly become theaters of war in the near future.

"Another short-range aspect of the program, which partakes more of a political than of a strategic nature, although it has elements of both, is the propaganda value of such a program in creating a favorable reaction among the peoples of the other American Republics. The humanitarian nature of the work to be done will speak for itself and provide a most effective counter-propaganda weapon in countries which are being subjected to wide-spread Axis propaganda.

"From the long-range point of view the economic and social well-being of the peoples of the Western Hemisphere is a sine qua non for any permanent and mutually beneficial union. It is, of course, impossible to obtain the Western Hemisphere solidarity which our national policy requires when large areas throughout the Western Hemisphere are afflicted with bad health and sanitary conditions which hamper the productivity and capacities of the peoples inhabiting them. Over a period of years the Health and Sanitation program will not only correct these conditions and bring about a proper regard for public health and sanitation measures, but will create firm and lasting relations, socially, economically, and politically, between this country and the other American Republics. So much for the objectives of the program.

"Turning to the program itself, provision will be made for (a) effective control and prevention of insect-borne, contagious and communicable diseases, (b) adequate and safe housing conditions, water supplies and sewage disposal, including auxiliary facilities, (c) adequate hospital facilities, (d) health centers, laboratories and clinics, (e) mobile clinics, laboratories and sanitary units, (f) drugs and medical and surgical supplies and equipment, including research equipment, (g) a corps of trained physicians, nurses, public health officers, technicians and sanitary engineers, (h) training schools and field units, and (i) ample and proper nutrition through adequate and safe supplies and distribution of essential foods, and encouraging additional local production of such foods. To carry out

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this important work the United States Army has made available the services of its most outstanding public health and sanitation expert, General George C. Dunham, who will direct all the technical details of the program.

"It is, of course, very difficult under war-time conditions to project the entire program in detail, project by project, for one year into the future. However, the Department of State has already made certain commitments concerning the program by diplomatic exchanges with the Republics of Ecuador, Chile, and Brazil, and similar commitments with other Republics are contemplated. As of the date of this submission, the proposed budget for the program is, as follows:

Brazil - \$5,000,000

The sum of \$5,000,000 will be spent in disease control, provision of good water supply and waste disposal systems, construction of hospitals, and training personnel. It is contemplated that the greatest part of this sum will be spent in the northeast portion of the country, where health and sanitation conditions are the worst, and where strategic interest is greatest. It is also contemplated that a part of this sum will be spent in the Amazon Basin in connection with production plans affecting that area.

Chile - 5,000,000

Contingent upon the Chilean Government taking certain action, the sum of \$5,000,000 will be spent, with the cooperation of the Chilean Government, in the improvement of public health conditions and, in particular, in the improvement of sanitation conditions. While Chile does not have the tropical diseases prevalent in other areas, a certain amount of control of communicable diseases is anticipated. Water supply and waste disposal in the port areas of military importance, and of importance as production centers, will comprise the greater part of this program.

Ecuador - 2,000,000

The \$2,000,000 project in Ecuador, which has been agreed to by Mr. Welles, will involve the

entire range of health and sanitation, concentrating on disease control, provision of adequate water supply systems and waste disposal systems. Ecuador is afflicted with all the tropical diseases and communicable diseases, and, furthermore, is of the greatest strategic importance at the present time to the State Department, Army, Navy, and those agencies interested in the production of strategic and critical materials.

As the nature of the work to be done in each country is practically the same, and as the initial sum of \$25,000,000 will enable us to clean up only the most urgent situations, for brevity we are listing the remaining projects only by country and amount:

<u>Mexico</u> -	\$2,000,000
<u>Peru</u> -	2,000,000
<u>Colombia</u> -	2,000,000
<u>Venezuela and Guianas</u> -	2,000,000
<u>Central America</u> -	2,000,000
<u>Caribbean Area</u> -	1,000,000
<u>Other Countries</u> -	1,249,380

In addition to the foregoing amounts, the tentative administrative budget for the program totals \$750,620, in which provision is made for personnel to the extent of 190 people, travel, equipment, and supplies.

"It is proposed to carry out the actual operating details of the program through the medium of a non-profit corporation, to be formed under the laws of the State of Delaware, pursuant to the authority granted to the Office of the Coordinator of Inter-American Affairs in clause (5) of the appropriation for the Office for Emergency Management contained in the Third Supplemental National Defense Appropriation Act, 1942, Public No. 353, 77th Congress, approved December 17, 1941. The decision to operate through a corporation was arrived at only after the most careful consideration of the entire question by representatives of the Coordinator's Office, the Department of State, and other interested departments and agencies. Among

the reasons for this decision are (a) the fact that land will have to be acquired in the other American Republics and it is deemed by the Department of State to be unwise to have the title thereto registered in the name of the United States of America; (b) the fact that the Office of the Coordinator of Inter-American Affairs is an emergency organization, and it is both desirable and necessary to assure the continuity of the Health and Sanitation Program; and (c) the fact that it is preferable from the point of view of the governments of the other American Republics to deal with a non-profit corporation rather than directly with the Government of the United States.

"The proposed corporation will have no capital stock, but working capital will be made available to it through the medium of a grant-in-aid made under the authority vested in the Coordinator by the Act of July 3, 1941, Public No. 150, 77th Congress, and the Act of December 17, 1941, Public No. 353, 77th Congress. The effective date of the grant will, of course, be prior to the end of the fiscal year, June 30, 1942. In form, the application by the corporation for the grant will describe the program, set forth a work plan and budget, and contain certain express conditions and agreements which will constitute definite obligations and commitments upon the part of the corporation-grantee. The conditions and agreements will be in substantially the following form:

1. The applicant shall initiate the health and sanitation program referred to herein immediately following the approval of this application, and carry out such program for a period of one year from the date hereof.
2. The applicant shall provide all labor, materials, supplies and equipment for the program.
3. The applicant may enter into sub-contracts which may be necessary or proper for the effective carrying out of the program.
4. The applicant may, where necessary, create subsidiary corporations in the other American Republics to assist in carrying out the program.
5. The program shall at all times be under the broad general control of the Coordinator of Inter-American Affairs or his successor; and all personnel of the applicant, as well as all proposals, work plans and

detailed budgets for particular projects shall at all times be satisfactory to, and subject to the approval of the Coordinator or his successor, who may direct the applicant to make personnel changes and amend, revise, expand or otherwise modify, or abandon any particular project, or all or part of the program where in his judgment such action is in the best interests of the United States of America. Where a particular project or a part of the program is abandoned, the unexpended balance of any monies allocated to such project or part of the program from the funds granted as a result of this application shall first be used to discharge outstanding non-cancellable commitments made previous to the effective date of such abandonment, and any balance remaining thereafter shall become available for expenditure on other particular projects or parts of the program. In the event that the Coordinator or his successor shall determine to abandon all of the program, the unexpended balance of any funds granted hereunder shall first be used to discharge outstanding non-cancellable commitments made previous to the effective date of such abandonment, and any balance remaining thereafter shall be refunded to the Treasurer of the United States within thirty days after such abandonment.

6. The funds granted as a result of this application shall be expended by the applicant solely for the purposes set forth hereinabove, provided, however, that the Coordinator or his successor may expand or modify such purposes where in his judgment such action is in the best interests of the United States of America.
7. The funds granted as a result of this application shall be made available to the applicant in accordance with the following schedule:

\$4,970,000 immediately following the approval of this application; and

\$2,000,000 on the first day of every month beginning July 1, 1942, and ending April 1, 1943.

The foregoing schedule may from time to time be modified by the Coordinator or his successor where in his judgment such action is in the best interests of the United States of America.

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8. The work of the applicant in carrying out such program shall at all reasonable times be open to inspection by such person or persons as the Coordinator or his successor may designate from time to time.
9. The books of account, as well as all files and records of the applicant shall at all reasonable times be open to inspection by such person or persons as the Coordinator or his successor may designate from time to time. The applicant's books of account shall conform to such specifications as the Comptroller General of the United States may from time to time prescribe, and such books shall be audited by the Comptroller General of the United States.
10. The applicant shall submit such reports and financial statements of operations as the Coordinator or his successor may from time to time request.
11. The applicant shall not undertake or agree to undertake any additional or different work than that covered by the Health and Sanitation Program referred to herein, as it may be amended or modified by the Coordinator or his successor, during the term for which this grant or any renewal or extension thereof is made without the prior written authorization of the Coordinator or his successor.

"The precise question which it is desired to submit for your consideration is whether a grant made to the corporation which contains the undertakings on the part of the corporation listed above will be deemed to constitute a 'legal obligation' of the entire amount granted with the result that no part of the amount will lapse on June 30, 1942.

"In closing, the Office of the Coordinator of Inter-American Affairs desires me to point out that it is not practicable to award separate contracts in each country for the carrying out of projects in that country prior to the close of the fiscal year, and to submit (a) that the transfer of the funds in question from it to the proposed Delaware corporation is the same as a transfer to a private corporation would be from the standpoint of removing such funds from the fiscal year limitation in the appropriation, and (b) that the grant to the proposed corporation plus the



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corporation's undertakings and commitments in the grant constitute a sufficient obligation of the fund in question to bring it within the accepted definition of a 'legal obligation'."

The funds proposed to be used in carrying out the program which you have outlined were allocated to the Office of Emergency Management pursuant to the President's Allocation letter No. 42-64, dated February 20, 1942, to the Secretary of the Treasury, as follows:

"By virtue of the authority vested in me by the provisions of the appropriation entitled 'Emergency Fund for the President' contained in the Independent Offices Appropriation Act 1942, approved April 5, 1941, I hereby allocate from the fund of \$100,000,000 and the contract authorization of \$25,000,000 provided by said Act as follows:

<u>To</u>	<u>Appropriation</u>	<u>Contract Authorization</u>
Office for Emergency Management	\$25,000,000	\$20,000,000

said funds to be expended and obligations to be incurred under said contract authorization by the Office for Emergency Management for the Coordinator of Inter-American Affairs in connection with emergencies affecting the national security and defense.

"The funds hereby allocated may be expended and obligations under said contract authorization may be incurred for all the objects and by all the methods authorized in the appropriation to the Office for Emergency Management contained in the 'Third Supplemental National Defense Appropriation Act 1942.'"

Thus, the funds so allocated to the Office for Emergency Management from the appropriation and the contract authorization may be expended or obligated for the objects and by the methods authorized in the Third Supplemental National Defense Appropriation Act, 1942, under the heading Office for Emergency Management.

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The Third Supplemental National Defense Appropriation Act, 1942, approved December 17, 1941, 55 Stat. 810, 818, under the heading "Office for Emergency Management", contains the following language, insofar as pertinent, with respect to appropriations available to the Coordinator of Inter-American Affairs:

"\* \* \* Provided further, That moneys from this appropriation made available to the Coordinator of Inter-American Affairs (successor to the Coordinator of Commercial and Cultural Relations between the American Republics), together with moneys previously made available to the Coordinator of Inter-American Affairs, shall, without regard to the limitation of \$1,600,000 specified in the second proviso clause in the appropriation to the Office for Emergency Management contained in the Second Deficiency Appropriation Act, 1941 (which proviso is amended in accordance herewith), be available to the Coordinator of Inter-American Affairs, for the purpose of (a) furthering the national defense, (b) taking such action as may be necessary under the existing state of war, and (c) strengthening the bonds between the United States and the other American republics by (1) grants to governmental and private nonprofit institutions and facilities in the United States and the other American republics, (2) the free distribution of publications, phonograph records, radio transcriptions, art works, motion-picture films, educational material, and such material and equipment as the coordinator may deem necessary and appropriate to carry out his program, (3) such other gratuitous assistance as he deems advisable in the fields of the arts and sciences, education and travel, the radio, the press, and the cinema, (4) employing in the District of Columbia and elsewhere in the United States and abroad, experts, special advisers, and other persons, who are not citizens of the United States, and paying their salaries or other compensation and expenses, including the expense of transporting them, their dependents, and their effects from their homes to their place of employment, and (5) causing corporations to be created under the laws of the District of Columbia, any State of the United States, or any of the other American republics, to assist in carrying out the Coordinator's program, and capitalizing such corporations: \* \* \*"

The above-quoted language gives to the Coordinator not only the authority to make grants to Governmental nonprofit institutions

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and facilities in the United States and other American republics, but, also, the power to cause the creation of corporations under the laws of the District of Columbia, any State of the United States, or any other American republic and to capitalize such corporation for the purpose of assisting in carrying out the Coordinator's program. As used in the quoted legislation, "to capitalize" evidently means to furnish with capital, to provide capital for the operation of such corporations. See Webster's New International Dictionary, Second Edition.

It is thus apparent that within the limit of funds available, and subject to the qualifications stated in the act, the Coordinator may make grants either to existing Governmental institutions and facilities or to corporations which he has caused, or hereafter may cause, to be organized to assist in carrying out his program. See decision of March 24, 1942, B-24752, <sup>21 Comp. Gen. 892</sup> to the Coordinator of Inter-American Affairs.

As was stated in a decision of April 16, 1940, 19 Comp. Gen. 363, it is recognized that:

"When an appropriation by its terms is made available until a specified date, the general rule is that the period of availability relates to the authority to obligate the appropriation, after which payment may be made at any time within two years after the end of the fiscal year current at the time of such specified date. \* \* \*

Also, it has been held that an appropriation is obligated when a definite commitment is made or liability incurred to pay funds

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from such appropriation, even though the duty to pay the obligation may not arise until later.

Having in view the authority given by the Congress to the Coordinator to make grants to governmental institutions and facilities and to furnish capital for such corporations, the conclusion appears justified that funds so granted or furnished to those institutions, facilities, or corporations were not intended to remain subject to the fiscal year limitation of the appropriations from which the funds were derived; and that, insofar as concerns the Coordinator of Inter-American Affairs, such funds are legally obligated when formally granted to an authorized grantee or when furnished, or formally agreed to be furnished, in the process of capitalizing a corporation created pursuant to the quoted act. Cf. 21 Comp. Gen. <sup>84</sup>498.

Consequently, I have to advise that if the Coordinator of Inter-American Affairs shall, before June 30, 1942, conclude a definite agreement with the proposed corporation granting or undertaking to supply funds to it for the purposes and subject to the commitments on the part of the corporation outlined in your submission—as authorized by the act of December 17, 1941, supra—the amounts so granted or undertaken to be supplied will be regarded by this office as having been obligated prior to the expiration of the fiscal year. Compare 20 Comp. Gen. 370.

Respectfully,  
Lindsay C. Warren

Comptroller General  
of the United States.