

Office of the General Counsel

B-248284.2

September 1, 1992

Alberto Mora, Esq.  
General Counsel  
United States Information Agency

Dear Mr. Mora:

In conjunction with our recent audit of TV Marti (GAO/NSIAD-92-199), we discovered that the United States Information Agency (USIA) reprogrammed \$4.6 million of fiscal year 1990 Radio Construction appropriations allocated to TV Marti, for use to support the United States exhibits at the 1992 Seville, Spain, and Genoa, Italy, expositions commemorating the 500th anniversary of Columbus' voyage to America. The purpose of this letter is to express our concern about the propriety of the reprogramming; we already have discussed the matter with your staff, and we understand that USIA is pursuing statutory authority to ensure the propriety of any future inter-appropriations exchanges of this kind.

In June 1990 letters, the Chairmen of the Subcommittees on Commerce, Justice, State, the Judiciary and Related Agencies, House and Senate Appropriations Committees, advised USIA that the Committees did not object to USIA's proposal to reprogram the \$4.6 million for use as start-up construction costs for the exhibits. The reprogramming was carried out soon after USIA received the Subcommittees' letters. Although USIA expositions abroad normally are funded from its Salaries and Expenses appropriation, at the time of the reprogramming there reportedly were no funds available in that appropriation for that purpose. USIA does not have transfer authority that would have allowed transfer of funds from the Radio Construction appropriation to the Salaries and Expenses appropriation.

The reprogramming appears to have contravened 31 U.S.C. § 1301, the "purpose" statute, and may have violated the Antideficiency Act, 31 U.S.C. §§ 1341-1351. The "purpose" statute provides that public funds may be used only for the purposes for which they are appropriated. The statute prohibits charging authorized items to the wrong appropriation, and unauthorized items to any appropriation. See 36 Comp. Gen. 336, 338 (1956); B-143536, Aug. 15, 1960.

The language in the Radio Construction appropriation evidences no relationship between its purposes and the construction expenditures for the Seville and Genoa

expositions, nor do the accompanying congressional committee reports show an intention to broaden the purposes beyond that described by the quoted language. Although the House and Senate appropriations subcommittees did not object to the reprogramming, informal congressional approval of an unauthorized transfer of funds between appropriation accounts does not have the force and effect of law. See 55 Comp. Gen. 307, 317-19 (1975); B-196854.3, Mar. 19, 1984.

The reprogramming action also may have violated the Antideficiency Act, 31 U.S.C. §§ 1341, 1351, which prohibits officers or employees of the United States from spending funds or incurring obligations exceeding amounts available in an appropriation for expenditure or obligation. The Act is violated when an expenditure is charged to an improper appropriation and there are no funds available in the appropriation that should properly be charged. See 63 Comp. Gen. 422, 424 (1984). Consequently, if there were no funds available in the Salaries and Expenses appropriation to cover the expenditure for the expositions, the Antideficiency Act would have been violated.

These kinds of inter-appropriation exchanges would be proper if USIA had the appropriate transfer authority. Your staff advises that USIA in fact intends to request that authority from Congress.

Sincerely yours,

Robert H. Hunter  
Associate General Counsel