

UNITED STATES INTERNATIONAL DEVELOPMENT COOPERATION AGENCY
AGENCY FOR INTERNATIONAL DEVELOPMENT
WASHINGTON, D.C. 20523

File
Endowments

213

*Fiscal Acts Funds
x Local Currency*

OFFICE OF
THE GENERAL COUNSEL

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MEMORANDUM

TO : LAC/DR, Dwight B. Johnson
FROM : GC/LAC, *Robt B Meighan* Robert B. Meighan
SUBJECT: The Legal Authority of A.I.D. to Fund a ~~an~~ Endowment

An endowment is a permanent fund established so that the income or interest generated by the fund can be used for the support of an institution. The principal authority involving endowments established with appropriated funds is found at 42 Comp. Gen. 289 (1962). There the Department of State under its program of assistance to American-sponsored schools abroad requested an opinion on its authority to use grant funds to establish endowments under the program. In answer to the question the decision states:

This proposition apparently is based on the belief that the authority to provide financial assistance to the schools by grants, contracts, or otherwise includes authority to establish endowment funds by grants-in-aid as a permanent fund to be invested and the interest or other income of which is to be used for support of the schools. We find nothing in the language of the enabling legislation quoted above or in its legislative histories to support this proposition. In view of the fact that it constitutes an innovation in the methods generally authorized by the Congress with respect to the financial transactions of the United States, we feel that the matter should be submitted to the Congress for specific legislative authority, if it be planned to adopt this funding procedure.

A.I.D. funds have been used on a number of occasions to establish endowments, and the requisite specific legislative

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authority has taken various forms. The St. John's Medical College in Bangalore, India received an endowment pursuant to a specific appropriation of funds contained in the Foreign Assistance and Related Programs Appropriations Act of 1976. In 1965 the Administrator of A.I.D. wanted to use excess Indian Rupees to endow the India Binational Foundation. In treating the subject of required legislative authority prior to making grants for endowments with public funds

the Comptroller General in his letter dated May 21, 1965 (B156766) noted that Congress had established procedures for the transmission of grant proposals involving PL-480 foreign currencies to the Senate and House Agricultural Committees, and that the procedure required that further action on the proposals then be deferred for a period of thirty days. Legislative history indicated that this reporting procedure was established in lieu of other congressional proposals to require specific appropriations for use of the funds for grant purposes. The Comptroller General in discussing the procedure stated:

In light of the legislative history of Public Law 88-638, and if pursuant to the procedures established by Section 104 of Public Law 480, as added by Public Law 88-638, the Public Law 480 ~~Advisory Committee and Senate Committee on Agriculture and Forestry~~ and the House Committee on Agriculture are fully informed as to the present proposal and specifically advised that the grant will be made pursuant to Section 104 (e) of Public Law 480 to endow a binational foundation in the fields of education and science in order to promote balanced economic development and neither of the latter two committees oppose such grant in the manner provided in Section 104(e), as amended, we will not be required to object to a grant of excess foreign currencies to endow a binational foundation as proposed in your letter, if otherwise legally proper.

Agreement between A.I.D. State and Congressional Committees was also sufficient to endow the American University in Cairo with U.S. owned local currency. See B-156766 February 17, 1978. The Continuing Resolution for FY 1985 in appropriating Economic Support Funds provides that not less than \$1,200,000,000 shall be available for Israel, which sum shall be available on a grant basis as a cash transfer and shall be provided before January 1, 1985. The Report of the Committee on Foreign Affairs on the International Security and Development Cooperation Act of 1984 (HR 5119) states in part:

Also the committee approved the \$1.2 billion with the understanding that Israel will contribute at least \$65 million of this amount together with its own matching funds to capitalize the endowment of four existing United States-Israeli binational foundations dealing with industrial research and development, science, agricultural research and education, which contribution would satisfy all U.S. commitments to these endowments. The committee expects the executive branch to confirm Israel's intention to make such contributions and to achieve and implement mutually agreed upon terms and conditions, including interest rates, governing these endowments.

The A.I.D. cash transfer agreement with the Government of Israel dated October 31, 1984 contains Section 4.1 which provides that Israel will contribute not less than \$65,000,000 of grant funds to capitalize endowments for the foundations, and that if this is not done A.I.D. may require a refund up to that amount.

Of course, a host country could always set up an endowment with its own funds. The United States presently have a cash transfer program in Portugal. As with a typical cash transfer, use of the funds once disbursed is not specified in the agreement. The United States does maintain military base facilities in the country. The Government of Portugal is presently setting up a foundation called the LUSA-American foundation. The foundation will be established by special statute in Portugal. Its purpose is to foster scientific and cultural interchange between the United States and Portugal. The Government of Portugal will endow the foundation with its own funds to furnish it with working capital.

There is no problem should a Host Country desire to use its own funds to establish an endowment. The question arises when there is a desire to use United States appropriated funds for such a purpose. It would be sufficient if the specific appropriation expressly authorizes the endowment. There is also authority supporting the position that clear agreement on the part of concerned congressional committees would be sufficient. It is being suggested that perhaps such agreement could be inferred from a normal A.I.D. Congressional Notification clearly specifying the endowment feature of the assistance, if the notification period were to expire without unfavorable committee comment on the notification. The problem with this approach is that the congressional consent has to be inferred from silence, which is certainly more problematical than express agreement in a document such as a committee report. The only way to finally settle this question would be to send a sample case over to the GAO for an advisory opinion before the project is approved.

In approaching this matter, two additional points seem worthy of mention. Most of the A.I.D. history in making endowments involved U.S. owned local currency in countries where it was plentiful, or the endowments were established in countries known to receive special interest. U. S. dollar funded endowments if allowed to proliferate in our general program may well get a closer scrutiny. Also, the recent Basic Village Services case in Egypt (B-213909, November 28, 1984), though it did not involve an endowment but interest earned on grant funds disbursed for program purposes, gives some indication that the GAO may feel that the Agency has more latitude in the expenditure of Economic Support Funds over other types of appropriated funding.