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Federal Payments to District of Columbia Water and Sewer Authority, B-285919, July 25, 2000



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July 25, 2000

The Honorable Ernest J. Istook, Jr.
Chairman, Subcommittee on District of Columbia
Committee on Appropriations
House of Representatives

Subject: Federal Payments to District of Columbia Water and Sewer Authority

Dear Mr. Chairman:

This responds to your July 21, 2000, request for a legal opinion concerning the responsibility of Federal departments, agencies, or independent establishments ("Federal agencies") to pay for water and sewer services ("water services") provided them by the District of Columbia Water and Sewer Authority (WASA). You also asked what legal powers are available to the Department of the Treasury to obtain payment from agencies that are delinquent in making deposits into the United States Treasury account established to facilitate Federal payments to WASA.

Section 133 of the District of Columbia Appropriations Act, 1990, Pub. L. No. 101-168, 103 Stat. 1280-1282 (1989), amended the District of Columbia Public Works Act of 1954, Pub. L. No. 364, ch. 218, 68 Stat. 101 (1954), to establish a new process for accounting, allocating the cost, and paying for water services that WASA provides Federal agencies. [1] Under the new process, beginning with the second quarter of fiscal year 1990, the Secretary of the Treasury is to pay the District of Columbia Government from a United States Treasury account entitled "Federal Payment for Water and Sewer Services" for water services provided to Federal agencies. The Federal agencies are to make payments to the United States Treasury account from funds appropriated or otherwise available to them.

The District is not to bill Federal agencies directly. Rather, for billing and budgeting purposes, the law sets forth the following process. By April 15 of each calendar year, the District is to provide the Office of Management and Budget an annual estimate of the cost of water services to Federal agencies for the fiscal year commencing October 1st of the following calendar year. The District's April 15 estimates of the cost of water usage for the fiscal year beginning in the next calendar year are to reflect any adjustments necessary to account for actual usage variances from the estimates for the preceding fiscal year. The estimate shall be itemized by individual agency for inclusion in the President's budget of the respective agencies. The law states that each agency receiving water services shall pay to the United States Treasury account an amount equal to the quarterly estimate and shall make the payment on the first day of each fiscal quarter from funds appropriated or otherwise available to it.

The Secretary of the Treasury then is to pay the District Government one-fourth of the annual estimate prepared by the District government not later than the second day of each quarter. The Secretary's payment

is to come from funds deposited by Federal agencies in the United States Treasury account. The law contemplates the possibility that the amount in the account may not be sufficient to make a payment. If this occurs, the Secretary is to pay the District with "funds available to the United States Treasury," which "shall be reimbursed promptly by the user agencies."

Some Federal agencies have not made their deposits to the United States Treasury account. This has not affected WASA because, to the extent there were insufficient funds in the "Federal Payment for Water and Sewer Services" account, the Secretary of the Treasury paid WASA from "funds available to the United States Treasury." To the extent, however, that a delinquent agency spent funds that were budgeted for water services payments for other purposes, there has been a necessary effect on the United States Treasury with a corresponding benefit to the agency's appropriation.

Nothing in the statute authorizes Federal agencies to treat the deposits described above as discretionary rather than required. Nor does the process established by section 133 provide a mechanism to resolve billing disputes between WASA and the Federal agencies or between the Federal agencies and the Secretary of the Treasury that affects the Federal agencies' obligation to make required deposits. Accordingly, under the process established by the District of Columbia Public Works Act of 1954, as amended, Federal agencies owe the United States Treasury any amounts they were required to, but did not, deposit to the "Federal Payment for Water and Sewer Services" account. We are, however, unaware of any law that grants the Secretary of the Treasury the power to unilaterally transfer from an agency's appropriation to the

United States Treasury any amount the agency was required to but did not deposit to the "Federal Payment for Water and Sewer Services" account.

We trust this responds to your request.

Sincerely yours,

/s/Robert P. Murphy
General Counsel

Notes

1. Section 133 established this process on a 12-month trial basis. After a number of annual extensions, this process was made permanent by section 128 of the District of Columbia Appropriations Act, 1995, Pub. L. No. 103-334, 108 Stat. 2586 (1994). The provisions of the District of Columbia Public Works Act of 1954 concerning water services supplied for the government of the United States are codified in section 43-1552 of the D.C. Code, and those concerning sewer services are codified in section 43-1612 of the D.C. Code. However, the current edition of the D.C. Code does not reflect the new process established by section 133 of the District of Columbia Appropriations Act, 1990, and made permanent by section 128 of the District of Columbia Appropriations Act, 1995.