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FM SECSTATE WASEDC
TO AMEMBASSY GEORGETOWN IMMEDIATE
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E.O. 11652: N/A

TAGS: CASC, GY

SUBJECT: REQUEST FOR INFORMATION

REF: FORTUNE/KOZAK TELECON OF 11/29/78

FOR T. FORTUNE

1. PER YOUR REQUEST, FOLLOWING IS TEXT OF DECISION OF THE
COMPTROLLER GENERAL CONCERNING DISPOSITION OF EFFECTS OF
U.S. CITIZENS DYING ABROAD (43 COMPTROLLER GENERAL 52):

TITLE: PROPERTY--PRIVATE--CITIZENS DYING ABROAD--DISPOSI-
TION

BEGIN TEXT: "A PROPOSED DISPOSITION OF THE UNIDENTIFIED
EFFECTS (UNITED STATES AND FOREIGN CURRENCIES) OF A GROUP
OF AMERICAN CITIZENS WHO DIED IN AN AIRPLANE ACCIDENT OVER-
SEAS TO TWO CHARITABLE ORGANIZATIONS BECAUSE THE NEXT OF
KIN WERE UNABLE TO AGREE ON THE DISPOSITION OF THE EFFECTS

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MAY NOT BE APPROVED UNDER 22 U.S.C. 1175 WHICH SPECIFIES
THAT, IF A REPRESENTATIVE OF THE STATE DEPARTMENT CANNOT
DISPOSE OF THE EFFECTS WITHIN 1 YEAR FROM THE DATE OF DEATH
ACCORDING TO THE LAW OF THE DECEDENT'S DOMICILE, HE IS
REQUIRED TO TRANSFER THE EFFECTS TO THE GENERAL ACCOUNTING
OFFICE FOR THE COMPTROLLER GENERAL TO HOLD THE PROPERTY IN
TRUST FOR THE LEGAL CLAIMANTS AND, IF THE PARTIES IN IN-
TEREST DO NOT RESOLVE THEIR DIFFERENCES AFTER 6 YEARS THE
PROPERTY IS REQUIRED TO BE TURNED OVER TO THE STATE OF THE
LAST DOMICILE OF THE DECEASED CITIZENS.

TO THE SECRETARY OF STATE, JULY 12, 1963:

THIS IS IN RESPONSE TO A LETTER DATED APRIL 24, 1963,
WITH ENCLOSURES, FROM THE HONORABLE WILLIAM J. CROCKETT,
ASSISTANT SECRETARY FOR ADMINISTRATION, DEPARTMENT OF STATE.
THE LETTER OF THE ASSISTANT SECRETARY SUBMITTED FOR OUR
CONSIDERATION A PROPOSED DISPOSITION OF "UNIDENTIFIED
EFFECTS", UNITED STATES AND FOREIGN CURRENCIES VALUED AT
DOLLARS 631.47, WHICH HAD BEEN TURNED OVER TO THE AMERICAN
EMBASSY AT PARIS BY THE FRENCH AUTHORITIES. THE MONIES
WERE RELEASED TO THE AMERICAN EMBASSY AS BELONGING TO,
ALTHOUGH INDIVIDUAL OWNERSHIP COULD NOT BE ESTABLISHED, THE

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DEPARTMENT OF STATE A/CDC/WR	
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ONE HUNDRED AND TWENTY PASSENGERS WHO PERISHED IN AN AIR-PLANE CRASH NEAR PARIS ON JUNE 3, 1962. THE VICTIMS WERE AMERICANS, MAINLY FROM ATLANTA, GEORGIA. AMONG THE ENCLOSURES WITH THE LETTER OF THE ASSISTANT SECRETARY IS A COPY OF A LETTER DATED OCTOBER 8, 1962, FROM THE MAYOR OF ATLANTA TO THE AMERICAN CONSUL GENERAL AT PARIS. IT APPEARS THE MAYOR, PURSUANT TO CORRESPONDENCE WITH THE CONSUL GENERAL, CONTACTED THE NEXT OF KIN OF THE CRASH VICTIMS AS TO THE DISPOSITION OF THE "UNIDENTIFIED

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EFFECTS." ALL BUT FOUR AGREED TO TURNING THE MONIES OVER TO THE ART ASSOCIATION MEMORIAL FUND. OF THE FOUR EXPRESSING DIVERGENT VIEWS, THREE WISHED THE RECIPIENT TO BE THE CHILDRENS MEDICAL RESEARCH MEMORIAL, THE FOURTH PREFERRED PUTTING THE MONIES INTO THE UNITED STATES TREASURY. THE ART ASSOCIATION MEMORIAL FUND AND THE CHILDRENS MEDICAL RESEARCH MEMORIAL ARE UNDERSTOOD TO BE CHARITABLE ORGANIZATIONS IN THE CITY OF ATLANTA.

UNDER THE CIRCUMSTANCES, AND APPARENTLY AS A PRACTICAL SOLUTION TO THE DILEMMA PRESENTED BY MONIES WHOSE INDIVIDUAL OWNERSHIP CANNOT BE ASCERTAINED, THE EMBASSY AT PARIS PROPOSES THAT THE UNIDENTIFIED MONEY, DOLLARS 631.47, BE DIVIDED INTO TWO PARTS, DOLLARS 50 TO BE DONATED TO THE CHILDRENS MEDICAL RESEARCH MEMORIAL, AND THE REMANDER, DOLLARS 581.47, TO BE GIVEN TO THE ART ASSOCIATION MEMORIAL FUND, WHICH ARE THE TWO CHARITIES SUGGESTED AS BENEFICIARIES.

ESSENTIALLY THE LETTER OF THE ASSISTANT SECRETARY PRESENTS THE QUESTION OF WHETHER THE EMBASSY'S PROPOSAL IS AUTHORIZED, AND, IF NOT WHAT CONDITIONS WOULD HAVE TO BE MET BEFORE IT COULD BE AUTHORIZED.

SECTION 1175, TITLE 22 OF THE UNITED STATES CODE, IMPOSES UPON A CONSULAR OFFICER OR, IN HIS ABSENCE, A DIPLOMATIC OFFICER THE DUTY, UNDER SUCH PROCEDURAL REGULATIONS AS THE SECRETARY OF STATE MAY PRESCRIBE, "TO TAKE POSSESSION AND TO DISPOSE OF THE PERSONAL ESTATE LEFT BY ANY CITIZEN OF THE UNITED STATES WHO SHALL DIE

WITHIN HIS JURISDICTION . . . THE CONSULAR OFFICER "SHALL ACT AS THE PROVISIONAL CONSERVATOR OF THE PERSONAL PROPERTY WITHIN HIS JURISDICTION OF A DECEASED CITIZEN OF THE UNITED STATES . . . HE SHALL RENDER ASSISTANCE IN

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GUARDING, COLLECTING, AND TRANSMITTING THE PROPERTY TO THE UNITED STATES TO BE DISPOSED OF ACCORDING TO THE LAW OF THE DECEDENT'S DOMICILE." IF AFTER EXPIRATION OF 1 YEAR FROM THE DATE OF DEATH, THE CONSULAR OFFICER CANNOT MAKE PROPER DISPOSITION OF THE PROPERTY, HE IS REQUIRED UNDER THE SECTION, AS IMPLEMENTED BY THE REGULA-

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TIONS OF THE SECRETARY OF STATE (7 FOREIGN AFFAIRS MANUAL 445), TO TRANSMIT THE PERSONAL ESTATE TO THE GENERAL ACCOUNTING OFFICE, "TO BE HELD IN TRUST FOR THE LEGAL CLAIMANT." THE SECTION FURTHER PROVIDES THAT "THE COMPTROLLER GENERAL OF THE UNITED STATES SHALL ACT AS CONSERVATOR OF SUCH PARTS OF THESE ESTATES AS MAY BE RECEIVED BY THE GENERAL ACCOUNTING OFFICE"; AND, "IF NO CLAIM TO THE EFFECTS SHALL HAVE BEEN RECEIVED FROM A LEGAL CLAIMANT OF THE DECEASED WITHIN SIX YEARS FROM THE DATE OF THE RECEIPT OF THE EFFECTS BY THE GENERAL ACCOUNTING OFFICE, THE FUNDS SO DEPOSITED, WITH ANY REMAINING UNSOLD EFFECTS SHALL BE TRANSMITTED BY THAT OFFICE TO THE PROPER OFFICER OF THE STATE OR TERRITORY OF THE LAST DOMICILE IN THE UNITED STATES OF THE DECEASED CITIZEN

NOTWITHSTANDING THE PRACTICAL AND ETHICAL CONSIDERATIONS GIVING RISE TO THE EMBASSY'S PROPOSED DISTRIBUTION, WE CANNOT VIEW THE CONTEMPLATED ACTION AS A PROPER EXTENSION OF THE DUTIES AND RESPONSIBILITIES IMPOSED BY SECTION 1175, BOTH UPON THE FOREIGN SERVICE AND OUR OFFICE. IN THE ABSENCE OF UNANIMOUS CONCURRENCE BY THE VARIOUS POTENTIAL LEGAL CLAIMANTS, EFFECTUATION OF THE PROPOSED DISTRIBUTION WOULD NOT BE AUTHORIZED. RATHER, UNDER THE SECTION AND THE APPLICABLE REGULATIONS, THE MONIES INVOLVED SHOULD NOW BE TRANSMITTED TO OUR OFFICE, "TO BE HELD IN TRUST FOR THE LEGAL CLAIMANT," AND ULTIMATELY DISTRIBUTED, IF THE

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PARTIES IN INTEREST DO NOT RESOLVE THEIR DIFFERENCES, TO THE STATE "OF THE LAST DOMICILE IN THE UNITED STATE OF THE DECEASED CITIZEN", APPARENTLY HEREIN THE STATE OF GEORGIA. END TEXT.

2. FOLLOWING IS TEXT OF JUNE 30, 1966 LETTER FROM L.F.S. BURNEAM, PRIME MINISTER OF GUYANA, TO HIS EXCELLENCY MR. U. THANT, SECRETARY-GENERAL TO THE UNITED NATIONS, CONCERNING GUYANA'S SUCCESSION TO TREATIES WITH THE U.K.: BEGIN TEXT. "SIR,

I HAVE THE HONOUR TO INFORM YOU THAT THE GOVERNMENT OF GUYANA, CONSCIOUS OF THE DESIRABILITY OF MAINTAINING EXISTING LEGAL RELATIONSHIPS, AND CONSCIOUS OF ITS OBLIGATIONS UNDER INTERNATIONAL LAW TO HONOUR ITS TREATY COMMITMENTS, ACKNOWLEDGES THAT MANY TREATY RIGHTS AND OBLIGATIONS OF THE GOVERNMENT OF THE UNITED KINGDOM IN RESPECT OF BRITISH GUIANA WERE SUCCEEDED TO BY GUYANA UPON INDEPENDENCE BY VIRTUE OF CUSTOMARY INTERNATIONAL LAW.

2. SINCE, HOWEVER, IT IS LIKELY THAT BY VIRTUE OF CUSTOMARY INTERNATIONAL LAW CERTAIN TREATIES MAY HAVE LAPSED AT THE DATE OF INDEPENDENCE OF GUYANA, IT SEEMS ESSENTIAL THAT EACH TREATY SHOULD BE SUBJECTED TO LEGAL EXAMINATION. IT IS PROPOSED AFTER THIS EXAMINATION HAS BEEN COMPLETED, TO INDICATE WHICH, IF ANY, OF THE TREATIES WHICH MAY HAVE

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LAPSED BY CUSTOMARY INTERNATIONAL LAW THE GOVERNMENT OF
GUYANA WISHES TO TREAT AS HAVING Lapsed.

3. AS A RESULT, THE MANNER IN WHICH BRITISH GUIANA WAS
ACQUIRED BY THE BRITISH CROWN, AND ITS HISTORY PREVIOUS
TO THAT DATE, CONSIDERATION WILL HAVE TO BE GIVEN TO THE
QUESTION WHICH, IF ANY, TREATIES CONTRACTED PREVIOUS TO

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1804 REMAIN IN FORCE BY VIRTUE OF CUSTOMARY INTERNATIONAL
LAW.

4. IT IS DESIRED THAT IT BE PRESUMED THAT EACH TREATY
HAS BEEN LEGALLY SUCCEEDED TO BY GUYANA AND THAT ACTION
BE BASED ON THIS PRESUMPTION UNTIL A DECISION IS REACHED
THAT IT SHOULD BE REGARDED AS HAVING LAPSED. SHOULD THE
GOVERNMENT OF GUYANA BE OF THE OPINION THAT IT HAS LEGALLY
SUCCEEDED TO A TREATY AND WISHES TO TERMINATE THE OPERA-
TION OF THE TREATY, IT WILL IN DUE COURSE GIVE NOTICE OF
TERMINATION IN THE TERMS THEREOF.

5. THE GOVERNMENT OF GUYANA DESIRES THAT THIS LETTER BE
CIRCULATED TO ALL STATES MEMBERS OF THE UNITED NATIONS AND
THE UNITED NATIONS SPECIALISED AGENCIES, SO THAT THEY WILL
BE EFFECTED WITH NOTICE OF THE GOVERNMENT'S ATTITUDE.

ACCEPT, SIR, THE ASSURANCE OF MY HIGHEST CONSIDERATION."
END TEXT.

3. L/T HAS INFORMED US THAT GUYANA HAS NOT NOTIFIED US OF
THE TERMINATION OF ANY TREATIES WITH U.K. VANCE

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