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LOAN BY
OCT. - DE

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LOAN BY A.M.G. IN VENEZIA GIULIA
OCT. - DEC. 1946

CC 851

11 December 1946.

SUBJECT: Pump Priming of Industry in Venezia Giulia.

TO : G-5 Section, AFHQ.

1. There are enclosed herewith a memorandum from the Financial Adviser, Allied Commission, and a memorandum from the Chief Legal Adviser, Allied Commission, at the end of which are appended joint recommendations of both officers.
2. I concur in and recommend approval of the above-mentioned recommendations.
3. For convenience, copies of directives and documents referred to are enclosed herewith. Return of such enclosures is requested.

Ernest W. Stone

ERNEST W. STONE
Rear Admiral, USNR
Chief Commissioner

Incl. 1- ltr Fin Adviser, AC
2- ltr CLA, AC
3- Directive & documents.

Copy to: Financial Adviser ✓
Chief Legal Adviser
Ex Commr
CC files

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HEADQUARTERS ALLIED COMMISSION

SUBJECT: Venezia Giulia

10 December 1946

TO : Chief Commissioner

A. Following your instructions the question of

Loans to Industry

made by A.I.G., Venezia Giulia, was discussed at length with the C.F.O. and the C.I.C. of V.G. The C.F.O., V.G. states the procedure adopted was based on the following:

1. AFHQ issued Directive AG 307/207 333-0 dated 26 June 1945 to the Commander of the 8th Army regarding the creation of the Venezia Giulia Region, in which it is stated, among other things, that Venezia Giulia would be administered as a SEPARATE ENTITY.
2. It also states that the laws of the Italian Government as on the 9th of September 1943, would be the basic law for this Region.
3. Further, that "NO PARTS will be TAKEN" which Support or may appear to Support or prepare for any ultimate disposition of the area to any claimant nation."
4. By the same AFHQ order the Italian Government was "excluded" from the territory.
5. In that part of Italy formerly administered by A.I.G. Italian decrees were implemented in the territory so administered by endorsement; the endorsement specifically excluded the decrees from being operative in Venezia Giulia.
6. In Venezia Giulia any new Italian Government decree that it is considered desirable to apply in Venezia Giulia, is enacted not by "Implementation" but by the issue of a regional order.
7. The choice of decrees to be enacted in Venezia Giulia, is left to A.I.G. (para 7 AFHQ Directive).

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8. Regarding rehabilitation loans to Industry: the procedure in Italy, by an Italian decree, is that the loans are made by a Bank and the Bank is guaranteed by the Government. In case of default the Italian Government has the right to reimburse the Bank and take possession of the security given for the loan. The G.S.C. considers that if this Italian decree were implemented in Venezia Giulia, it would give the Italian Government, in case of default, the right to take possession of Industry in Venezia Giulia, and this obviously would be in conflict with the clause referred to in (3).

9. Under the Italian decree, the Italian Government voted a credit to cover its possible liabilities under guarantee. Venezia Giulia is barred from using an Italian Government credit, as to do so would also be in conflict with the instructions referred to in para (3).

In addition, the Banks in Venezia Giulia - with Head Office in Italy - were not disposed to make advances of lire funds under the guarantee of A.M.G. Therefore, in view of the different situation existing in Venezia Giulia, if it was desirable to finance Industry, - and that is not disputed, - it could only be done by the issuing of an independent order, which was the reason why order no. 124 was issued.

10. The Finance Sub-Commission were aware of the procedure, and this was stated by the Director of the Finance Branch of the Economic Section - Lt. Col. Timmons - in his report to the Acting Vice President of the Economic Section on the 20th of April 1946.

B. The comments of the F.A. are:-

1. In A.M.G. territory advances to Industry were made from the local Treasury Section of Banca d'Italia by order of A.M.G. for the purpose of financing firms essential to the war effort. Usually these firms were creditors of the Italian Government either on "old" account or on account of goods supplied to or in course of production for the Allied and, as such, an occupational cost to be borne by the Italian Government.

2. It is felt down by Finance S/O that, in making such advances, the State Budget (S.B.) procedure is to be followed. This requires the submission of a Budget on the appropriate S.B. form, the approval of which by the R.S.C. authorizes the F.F.O. (or Budget Officer at Regional H.Q.) to issue an "order of credit" on the local Tesoreria (Banca d'Italia - Treasury Section) in favour of the Intendants di Finanze for the approved amount. The S.B. forms covering the advances are to be sent to A.C. for revision and onward transmission to the Italian Treasury.

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3. The Interdante, in paying over the advance, obtains a formal acknowledgment. No interest accrues on the advance and no mortgage is registered on the immovable property of the firm receiving the advance. The amount advanced is entered by the Interdante in and outstands on a "special account (Deposito)" in his books.

4. The Italian Decree, to which reference is made in a para 8 makes provision for rehabilitation loans to rehabilitate industry through the Banks, in the terms of the Decree and for the setting up of a fund by the Treasury, up to which amount the Treasury may guarantee the Banks. Only in the case of a default, therefore, are Government funds utilized.

5. Thus, two different ways of financing are apparent (a) advances from Treasury funds on accounts receivable from the Government (either received or to be accrued) and (b) loans by the Banks under Italian Government guarantee.

6. In V.G. Loans totalling L 158 million (approximately) were first made out of A.S.G. (A.S.G.) Public aid, not being a legitimate expenditure, were repaid to the extent of L 145 million in June and July 1946. - (The balance of L 12 million is expected to be repaid in the near future) out of so-called "State" funds, claimed by V.G. to be the "State" of V.G. The funds were obtained by an "cedar of credit" on the Banca d'Italia - Treasury Section and are, therefore, Italian Government funds until and unless the liability on the account with the Treasury Section is assumed by the ultimate Government of the area, if other than Italian.

7. Under the Italian Decree (A-Para 8) such loans would, in Italy, be made by Banks, even by the Commercial Banks (Banca Commerciale Italiana, Credito Italiano, Banco di Roma) which have in recent times obtained legal powers to make medium term loans, long term loans are made against property by those Banks with the powers of a "Credito Fondiario".

8. Recourse to the local Treasury was made by reason of the reluctance of the local Branches of the Banks to advance against the guarantee of A.S.G., either because of the Banks' constitution or the limitation of "local" lending powers under the Banks' internal regulations. 26

9. V.G. Order No. 124 was issued on the 1st August 1946. Under this order loans for a total of L 1,467,500,000 (inclusive of those mentioned in B Para 6) have been made. A list is attached showing the amounts and repayments to date.

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10. The Order differs from the Italian Decree in that it legislates for loans by A.M.G. from Treasury Funds. The S.B. procedure has been followed, but has been amended by the inclusion of a repayment date; an interest charge of 3%; by the inscription of a mortgage in the name of A.M.G. on the immovable property of the firm; and the issuance of a Policy of Insurance in favour of A.M.G. The relative S.B. forms have not, so far, been forwarded to A.G.

11. Under the Order, applications are first examined by a local Committee of experts which makes its recommendations to the C.F.C.

12. In the course of discussions with the Directors of the Banca d'Italia, Credito Italiano and other banking officials in Trieste I was informed that the Committee is punctilious in its preliminary examination. The general banking opinion there is favourable to the Order as it felt it supplies a much needed impetus to be given to local industry on terms favourable to the borrower. The interest, amortization and mortgage registration clauses are considered an incentive to repayment. In answer to a direct question as to whether A.M.G. was regarded as Trustee for the eventual Government I received the answer in the affirmative.

13. In my opinion, the applications are examined with care and discrimination and, financially, the loans are not questioned. I consider that Order No. 184 should have followed more closely on the lines of the Italian Decree and loans made by the Banks under the appropriate arrangements with the respective Central Administrations. Failure on the part of the local Banks to use their surplus banking funds in V.G. for this purpose is inflationary.

14. But, even if the Banks had refused to cooperate, for political fears, and A.M.G. is called upon to act in the emergency, in any case, it should have used the S.B. procedure as laid down by Finance S/C 1, i.e. as the "Government" for the time being and not a system which, rightly or wrongly, might give cause to the belief that Allied funds were involved.

15. Finally, figures given to me in Trieste of "Statal" account to 30 June 1946 show a Deficit of L 7,167 million made up of Revenue L 1,333 million, Ordinary Expenditure L 4,600 million, Extraordinary Expenditure L 1,100 million Total L 8,720 million. S.B. forms are not sent to A.G. and it follows that the limitation of the over-draft on the "Statal" account lies solely within the discretion of the C.F.C.

J. R. BENTLEY
Col.

J. R. BENTLEY
Colonel, G.I.
Financial Adviser

COPY

23. 11. 1946

LIST OF LOANS GRANTED TO INDUSTRY

Name	Amount	Amounts reimbursed
Cantieri S. Giorgio, Trieste	L 40.000.000.-	
ILNEA Impresa Lavori Navali, Trieste	" 9.000.000.-	
G. Beltrame S.A., Trieste	Clothing manufacturers"	6.000.000.-
Umberto Missaglia, Trieste	Ship Constructor	5.000.000.-
Jutificio e Canapificio Triestino, Trieste	Hemp/jute factory	117.000.000.-
Pastificio Triestino, Trieste	Pasta factory	40.000.000.-
Solvay & CO. Monfalcone	Chemical factory	100.000.000.-
AQUILA, Trieste	Oil refinery	150.000.000.-
Cantieri Riuniti dell'Adriatico, Trieste	Ship yards	900.000.000.-
Ettore Martinuzzi, Trieste	"	L 40.000.000.-
Enrico Sperco & Co., Trieste	"	" 11.000.000.-
Cantieri Felszegy, Trieste	"	20.000.000.-
Francesco Faccanoni, Trieste	Stone quarry	20.000.000.-
Various small shipyards (together)	"	6.500.000.-
Viotti & Co., Trieste	Chemical Factory	3.000.000.-
		L 1.467.500.000.-
		L 5.050.000.-

The reimbursement has just started.

MEMO TO THE CHIEF COMMISSIONER

1. As directed, I have made a trip to Trieste with Colonel Pattenby (B) for the purpose of inquiring into the position taken by Venezia Giulia in relation to the matter of loans to industry authorized to be made there. The whole situation was explored in a series of conversations, the subject matter of which was agreed upon and later reduced to writing. This position is reflected in paragraphs 1 to 10 of the written summary hereto attached (See Flag "A").
2. Briefly stated, the attitude of Venezia Giulia in this connection may be summarized as follows:
 - a. With the occupation of Northern Italy, including Venezia Giulia, the Supreme Allied Commander, by a directive dated 26 June 1945 A.G. 387/207 GEG-C, elected to constitute Venezia Giulia into a region separate and apart from the remaining portions of occupied Northern Italy. The reasons for such decision were not precisely stated therein, but it was fairly to be assumed that the uncertain political future of Venezia Giulia was the moving cause. (Use of the term "Venezia Giulia" in this memorandum with reference to times subsequent to the Morgan Agreement, dated 9 June 1945, is intended to include only that part of the whole region so named which is under Allied Military Government and known as Zone "A".)
 - b. Inasmuch as Italian law as it existed on 9 September 1943 was adopted as the basic law of Venezia Giulia, Italian decrees promulgated after that date were not to be implemented. Furthermore, the Italian Government was expressly excluded from Venezia Giulia. Owing to these premises, and the instruction in the directive that "no steps will be taken which support or may appear to support or prepare for any ultimate disposition of the area to any claimant nation", there was vested in Military Government, Venezia Giulia, an independence instituted, and by the same token an independence in the working of the substance thereof, which independence was to be exercised by Military Government, Venezia Giulia, in its sound discretion.
 - c. That changes in the substance of the decree of the Italian Government authorizing loans to industry were necessary for the purposes of Venezia Giulia, in that if loans were granted under the provisions of the Italian

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b. Inasmuch as Italian law as it existed on 9 September 1945 was adopted as the basic law of Venezia Giulia, Italian decrees promulgated after that date were not to be implemented. Furthermore, the Italian Government was expressly excluded from Venezia Giulia. Owing to these premises, and the instruction in the directive that "no steps will be taken which support or may appear to support or prepare for any ultimate disposition of the area to any claimant nation", there was vested in Military Government, Venezia Giulia, an independence instituted, and by the same token an independence in the wording of the substance thereof, which independence was to be exercised by Military Government, Venezia Giulia, in its sound discretion.

c. That charges in the substance of the decree of the Italian Government authorizing loans to industry were necessary for the purposes of Venezia Giulia, in that if loans were granted under the provisions of the Italian decree and default was thereafter made in the payment of a loan, the Italian Government would be entitled to foreclose a lien and would thus come into Venezia Giulia, though expressly excluded from the region by the directive of the Supreme Allied Commander. Therefore, to avoid such situation and to indicate clearly by its action that it was not concerned in the ultimate political disposition of the territory, it was deemed advisable that Venezia Giulia draw the order containing the features described by the Financial Adviser, Col. Battenby, in his report to the Chief Commissioner, incorporated in this file.

3. The foregoing raises the question as to whether Military Government, Venezia Giulia, was correct in assuming that its elected position regarding this matter was within the boundaries of the directive of the Supreme Allied Commander. After carefully reading that directive, and weighing the intent of the language used therein, I am lead to the conclusion that Military Government, Venezia Giulia, has given a greater breadth in its interpretation of the terms thereof than was really warranted. This conclusion is based upon the following:

a. With the collapse of enemy resistance the Supreme Allied Commander was confronted with the problem of establishing an occupational government for the newly liberated areas of Northern Italy under International Law. Included among such areas, of course, was Venezia Giulia. Though the Italian State continued as sovereign over all of such areas, including Venezia Giulia, the Supreme Allied Commander, as head of the occupying force, had power to and in fact did set up Allied Military Government therein in lieu of government by the Italian State.

b. It is of no legal consequence that in following this course the Supreme Allied Commander elected to treat Venezia Giulia as a region separate from the rest of Northern Italy for administrative purposes. The legal pattern of occupational government in all Northern Italy, including Venezia Giulia, remained the same. Italian sovereignty over all of this territory was fully recognized by establishing there as basic law the Italian law as it existed on 9 September 1943. In the case of Venezia Giulia the additional instruction that "no steps will be taken which support or may appear to support or prepare for any ultimate disposition of the area to any claimant nation" in no way altered the legal pattern to be followed in that area. The most that can be said of this instruction is that it was a timely warning by the Supreme Allied Commander to Allied Military Government (Italy) that administrative procedure to be followed in Venezia Giulia must rigidly adhere to the law of occupation with utmost political disinterest, leaving to the political agencies of the Allies the solution of the political future of Venezia Giulia. Under the plain language used by the directive, Venezia Giulia, like all other regions of occupied Italy, was to continue under the technical administration of the Allied Commission, which, in the chain of command to higher authority, acts for the Supreme Allied Commander.

c. The setting apart of Venezia Giulia as a separate region fell short of establishing it as an independent region clothed with the attributes of an "independent state". Any assumption, expressed or implied, that Venezia Giulia is an "independent state" violently collides with the mandate of the Supreme Allied Commander that "No steps will be taken which support or appear to support or prepare for any ultimate disposition of the

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c. The setting apart of Venezia Giulia as a separate region fell far short of establishing it as an independent region clothed with the attributes of an "independent state". Any assumption, expressed or implied, that Venezia Giulia is an "independent state" violently collides with the mandate of the Supreme Allied Commander that "No steps will be taken which support or appear to support or prepare for any ultimate disposition of the area to any claimant nation", for the obvious reason that thereby indication is given to the world that the territory in question is earmarked for ultimate possible disposition other than to Italian sovereignty.

d. Furthermore, it cannot be seriously contended that by making Venezia Giulia into a separate region it became an independent region. If it became an independent region it would have been independent for all purposes, including

personnel, supply, and administration, as well as legislation. Against such contention is a long course of dealing wherein the principle has been recognized that the region, while separate, has been fully answerable in the chain of command to higher authority.

e. Likewise the contention that an independent legislative power became vested in Military Government, Venezia Giulia, because of adoption there of Italian Law as it existed on 9 September 1943, with consequent non-implementation of Italian Decrees in the area thereafter, is untenable. Such premise loses sight of the conditions that:

(1) At all times during occupation the choice of decrees to be implemented in occupied territory has been vested in higher authority.

(2) The directive in this instance plainly stated that the separate region of Venezia Giulia was to function under the technical guidance of the Allied Commission.

f. In consideration of all factors bearing upon this matter together, it becomes apparent that though for special reasons, no doubt political in character, Venezia Giulia was set apart from the remainder of Northern Italy to be operated as a separate region, like other regions it was under the technical supervision of the Allied Commission; that to foreclose political agitation, in lieu of implementing Italian decrees by endorsement thereon as was done in other regions, implementation there was to be accomplished by regional orders that the regional orders of Venezia Giulia were to contain the subject matter of Italian decrees decided upon by higher authority for implementation; and that to avoid political implications, no steps would be taken in the wording of such regional orders which would support, or appear to support, or prepare for, any ultimate disposition of the area to any claimant nation.

4. Upon examination the reasons advanced in support of the loan procedure authorized by the order of Military Government, Venezia Giulia, fail to have the merit claimed for them. As one example of this, it is urged that had such loans been made after the pattern of the Italian decree, upon default in payment the Italian Government would be entitled to foreclose liens and seize the properties concerned, though the Italian Government was expressly excluded from Venezia Giulia. This conclusion is considered to be erroneous. Under International Law, during occupation, the government of the Italian State was excluded not only from Venezia Giulia but from all of occupied Italy. In all of such territory, within the framework of its authorized powers under International Law and the Armistice terms, occupational government acted under its own right of control. If, in the exercise of such control it

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5. However, aside from all of this, and perhaps more important, is the question whether it was the intent of the original Italian enabling decree that in disbursing funds thereunder the unqualified legal relationship of debtor and creditor was to be established. The contrary would appear to be the case. In Republican Italy, as in the case of every state, there are broad powers vested in Government known as "police powers". Broadly defined, these permit Government to do any act within constitutional boundaries that has for its object the preservation of the life, health, morals and well-being of the people of the state. If the people of the state are protected, the state is protected, the state being "We, the people". Threatened with grave unemployment disorders, serious enough to challenge the very existence of the state, under the broad police powers vested in Government, and the mandatory duty to exercise them, the Italian Government justifiably might have percolated out Italian funds either as a "dole" (this was done in Britain, as I recall), through a W.P.A. (this was done in the United States), or as loans to private industry (subsidiaries), for the purpose of relieving unemployment unrest (as seemingly was contemplated by the Italian decree). The last plan of course, had the virtue that to the extent that ventures thereunder were successful moneys would come back into the Italian Treasury for further use. On the other hand, if loans so made proved uncollectible, as moneys expended lawfully, within the range of permitted choice of methods, no one could complain thereof. Liens and their foreclosure under such circumstances necessarily would become matters of secondary, not primary, importance. The Italian decree with which we are concerned, without doubt, was passed under the broad police powers vested in the Italian Government. It was optional to Allied Military Government whether the decree should be implemented in Venezia Giulia, admittedly under Italian sovereignty. If decided in the affirmative, transactions thereunder would not be "loans" in the true sense, according to best interpretation, but, rather, expenditures by way of subsidy made for the Italian state in the region of Venezia Giulia. By following the decree (observed elsewhere by Government in Republican Italy), unquestionably such authorized expenditures by Allied Military Government could never be successfully challenged by the Italian state. Thus construed, Allied Military Government simply would be following a plan authorized for the expenditure of Italian funds by government under authority of the Italian state.

6. Therefore, while Venezia Giulia has proceeded with transactions of this kind as though lending out taxpayers' money on security, careful study of all considerations in this connection reveals the circumstance that disbursement of such moneys was actually made under an authority of much broader intent, and this seems to have been understood by all except, perhaps, Venezia Giulia. The Italian decree, in terms, refers to loans, but it is believed that thereunder the relation of lender - borrower, with its incidents of liens and foreclosures, was but collateral to the main purpose of granting a subsidy to industry for the relief of unemployment, and that in promulgating the subject matter of the decree in Venezia Giulia it would have been better to have followed it closely rather than to substitute therefor that which was contained in the order issued.

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6. Therefore, while Venezia Giulia has proceeded with transactions of this kind as though lending out taxpayers' money on security, careful study of all considerations in this connection reveals the circumstance that disbursement of such moneys was actually made under an authority of such broader intent, and this seems to have been understood by all except, perhaps, Venezia Giulia. The Italian decree, in terms, refers to loans, but it is believed that thereunder the relation of lender - borrower, with its incidents of liens and foreclosures, was but collateral to the main purpose of granting a subsidy to industry for the relief of unemployment, and that in promulgating the subject matter of the decree in Venezia Giulia it would have been better to have followed it closely rather than to substitute therefor that which was contained in the order issued.

7. It is interesting to observe that there is distinct evidence that two conflicting viewpoints exist side by side and at the same time at Venezia Giulia concerning the present status thereof. In an envelope hereto attached (see File "B") will be found two revenue stamps which I personally obtained from civilians who purchased cigarettes in Trieste.

These stamps recite, "Monopoly of the State Venezia Giulia". Unquestionably, these stamps have been issued with knowledge, if not design, on the part of Military Government, Venezia Giulia. The other view is set out in a statement of educational policy, given to the press, and published in "Basic News", (88th Division), Page 13, which I attach for information (see Flag "C"). Thus, both of these views having been brought to public attention, the question arises as to which of them the world at large should believe. From the long and illuminating discussions in which I participated at Trieste, I came to the conclusion that whatever reference has been made to the "State of Venezia Giulia" in prior local writings and discussions was a resort to terms employed in describing the independence of Venezia Giulia not only from Italian sovereignty, but sub-consciously from other authority. In this connection it is considered unnecessary that I refer again to the position I have heretofore taken on the distinction between "State" and "Government". In my opinion my views on this subject are in accord with the proclamation of General Alexander, as referred to in the educational news item (Flag "C") and the language and intent of the pertinent directive. If it is seriously contended that the directive making Venezia Giulia a separate region was broad enough to make it an independent region and, by virtue of that fact, a "state", then only by the operation of mystic powers could this be true, for it was beyond the powers of the Military Governor by use of military orders to create a "state" where none existed. If, on the other hand, local reference to the "State of Venezia Giulia" was made to convey the idea that Venezia Giulia was independent of Allied Control, an equally false position was taken, if my interpretation of the Supreme Allied Commander's directive is sound.

R E C O M M E N D A T I O N S

8. The remedy to be applied in this case is simple. If what has been said regarding educational policy of Allied Military Government is correct (see Flag "C"), the acceptance thereof by all concerned is all that is presently required. In my opinion, the well-considered directive issued by the Supreme Allied Commander to the Eighth Army leaves little to be desired. Therein the position of Venezia Giulia is described as that of a separate region, functioning like other regions under a chain of command to higher headquarters. For political reasons, in the discharge of legislative functions by Venezia Giulia, Italian decrees decided upon by higher authority for implementation therein should be contained in its regional orders, in lieu of conventional implementation by enforcement on the decrees themselves. In shaping regional orders containing the subject-matter of such decrees, care should be taken not to indicate therein any preference or leaning in favor of any nation claiming that territory.

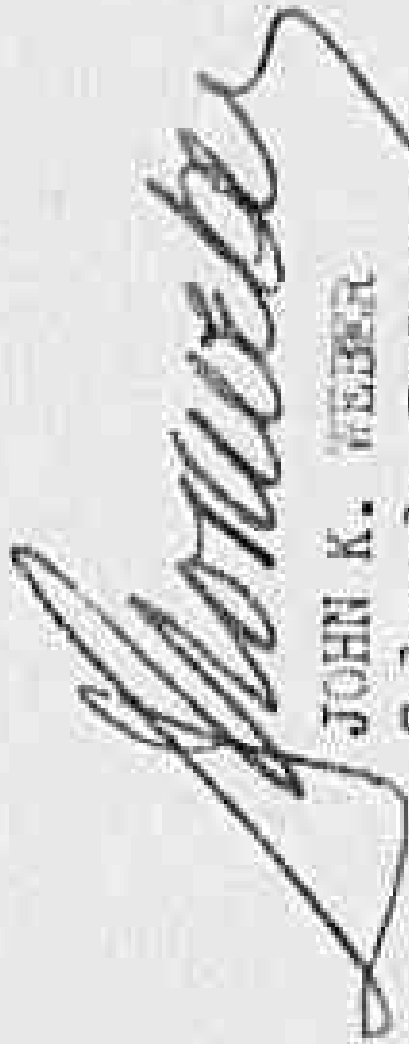
only from Italian sovereignty, but sub-consciously from other authority. In this connection it is considered unnecessary that I refer again to the position I have heretofore taken on the distinction between "State" and "Government". In my opinion my views on this subject are in accord with the proclamation of General Alexander, as referred to in the educational news item (Flag "C") and the language and intent of the pertinent directive. If it is seriously contended that the directive making Venezia Giulia a separate region was broad enough to make it an independent region and, by virtue of that fact, a "state", then only by the operation of mystic powers could this be true, for it was beyond the powers of the Military Governor by use of military orders to create a "state" where none existed. If, on the other hand, local reference to the "State of Venezia Giulia" was made to convey the idea that Venezia Giulia was independent of Allied Control, an equally false position was taken, if my interpretation of the Supreme Allied Commander's directive is sound.

R E C O M M E N D A T I O N S

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9. If and when problems arise, the solution of which may not be arrived at by use of this simple guide, it will then be necessary that a different formula be prescribed. As shown from the discussion herein, the legislative decree in question presented no such problem. It is not considered necessary that the language of this directive be clarified by additional writing. In unusual situations an oral explanation of the reasons for the language used in the directive, and its intent, would go far in establishing a uniform understanding. As the necessity might arise, this could well be done at a conference of personnel duly assembled for such purpose.

10. Concerning loans already made in Venezia Giulia, to avoid future controversy it is desirable that they be regularized under the procedure which should have been followed there in the first instance. Such procedure contemplated getting authorization from the Italian state for expenditures to be so made in its behalf, and the consent of higher Allied authority to expend these funds. Too much care cannot be taken in protecting our Government from claims occasioned by irregular action in this regard. As these loans were made, germs of future controversy were definitely planted. It is highly desirable that they now be eradicated. This can but be attempted as outlined below in ~~a~~ recommendations made by the financial director, in which I join.



JOHN K. WEBER
Colonel, Infantry
Chief Legal Adviser

ADDITIONAL JOINT RECOMMENDATIONS AND REMARKS

1. That further loans to industry under V.C. Order No. 184 be forthwith suspended.
2. That supporting papers for the loans already made by A.M.G. from the local Treasury (V.C.) be forwarded to Allied Commission.
3. On receipt of these papers it is planned to approach the Italian Government, through the Banca d'Italia, with a view to the transfer of these loans to the banks under guarantee of A.M.G.
4. It is our opinion that funds taken from the Local Treasury by A.M.G. are in fact, Italian Government funds, and that the Government will recognize this.
5. We propose that the Italian Government be asked to " earmark " an amount in favour of A.M.G. from the funds allocated under the Italian Decree covering rehabilitation loans to industry.
6. The amount to be so " earmarked " should be sufficient to cover

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 6. The amount to be so " earmarked" should be sufficient to cover guarantees to be given by A.M.G. to the banks for loans already granted, or to be approved in the future.
 7. V.G. Order No. 184 should be rescinded and a new order issued following the subject matter of the Italian Decree.
 8. If the Italian Government does not accept these proposals, a re-examination of the position of these loans will then be necessary.

9. In any case, any future loans to industry in Venezia Giulia should be subject to technical control of Allied Commission as laid down in AFHQ A.C. 387/207 G.E.-0 of 26 June 1945.
10. Turning from the question of loans to that of the overdraft account in the name of A.M.G. with the Banca d'Italia Trieste, we consider that the Provincial, Comunal, State and "Special Expenditure" Budgets approved by A.M.G., and charged to this account, should be sent to the Allied Commission for official communication to the Italian Government.

[Handwritten signature]

[Handwritten signature]

1916

Monrovia
col. ind.

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AMG loans to Private
Industry V.G.
cc ltr. 12 Oct.
sent Col. Webber's opinion
which was enclosure

2 CC
ALCOM

G-5 12
AFHQ Oct.
Att: 46
Colonel
Hamblen

My comments on the attached are given in the insertions and deletions which I have made in pencil and underlined in red.

I am supported in these views by an opinion received from my Chief Legal Advisor, which is attached hereto as part of this indorsement.

Erbery W. Stone

ERBERY W. STONE
Rear Admiral, USNR
Chief Commissioner

Copy to: Chief Legal Advisor ✓
Ex Com
CC

DRAFT

SUBJECT: Pump-priming of Industry Venezia Giulia.

TO : S.C.A.O. AMG Venezia Giulia.

1. In conformity with instructions of the Supreme Allied Commander, a conference among representatives of AMG Venezia Giulia, the Allied Commission, the British and United States Embassies, and G-5 AFHQ, was held in Rome on 27 September 46 to examine the policies and procedures under which AMG Venezia Giulia had made loans to commercial companies in Venezia Giulia.

2. It was ascertained that the policy of AFHQ to assist key industries necessary to preserve minimum economy of an area, and to assist in overcoming unemployment has been carried out in Venezia Giulia.

3. The procedure followed in the remainder of Italy whereby banks made loans to industry backed by a Governmental guarantee has not been followed due to the fact that the banks have not been willing to make such loans even on any guarantee which AMG Venezia Giulia was authorized to give.

4. ^{So far as is known} AMG Venezia Giulia did not seek guidance or instructions either from the Allied Commission, or AFHQ, as to the possibilities of securing a guarantee acceptable to the banks, from the Allied Governments, but elected instead to make direct loans from AMG funds. In Order No. 154, AMG-13 Corps, there appears in the preamble the words "that loans should be made by the 'State'". It is presumed that this "State" refers to a fictional state of Venezia Giulia. Within this "State of Venezia Giulia" there was established a Treasury. No other "State" Department appears to have been established. While funds expend-

ed from this Treasury were controlled by legislation (decrees, orders) such legislation was in fact AMG legislation and the funds AMG funds. In addition certain expenditures of funds were made by AMG without

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It would appear that the provisions of paragraph 15 b, Directive for Allied Military Government in that Part of Venezia Giulia Occupied by Allied Forces, AFHQ file AG 387/207/GES-O dated 26 June 1949, should have been followed prior to the establishment of the State of Venezia Giulia, and its Treasury.

5. While it is possible that some other procedure more desirable could have been evolved it is considered that at this late date no compensating advantage would offset the obvious disadvantages of changing the present set-up and procedures for allocation and accounting of AMG funds.

6. In the present inquiry which has been for the purpose of inquiring into basic policies and procedures there has been no effort to determine the commercial soundness of loans, the regularity of financial transactions or accountancy methods.

It is noted that the above should be considered in connection with the report on the subject of the above mentioned and the report on the subject of the above mentioned.

A. I. HARRIS
Colonel, U.S.C.

Assistant Chief of Staff, G-5

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by [unclear]

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found that the CO's should be advised of the
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A. L. HAMILTON
Colonel, U.S.C.

Assistant Chief of Staff, G-5

14

Changes by Admiral [unclear]

TO: The Chief Commissioner

I have read with interest the report Ref. 130/AMG/FDI/O/I/MTB, 24 September 1946 of the C.F.O., AMG XIII Corps on the subject of Financing of Industry in Venezia Giulia. I must confess that I have experienced difficulty in following some of the premises therein set out.

There is a vast difference between a "State" on the one hand and "Government" on the other. A "State", as correctly said in the first three words of the U.S. Constitution, is "We, the people". "Government" on the other hand is but an agency or vehicle created by the "State" which is granted certain powers by the "State," usually embodied in a written constitution, as in the U.S., or an unwritten one, such as in the U.K. But "Government" has and has only such powers as the "State" permit it to have. Usually, as in the U.S. and U.K., such powers are carefully defined and definitely restricted. Hence, when "Government" acts beyond its powers, it does so unauthorized or unconstitutional.

There is a "State" in Venezia Giulia. Whether the "State" in Venezia Giulia is Italy at the moment, and hereafter may be an independent state, the fact remains that such "State" is not the Allies, nor its agency, Allied Military Government, known as AMG XIII Corps. The latter is not, nor can it ever pretend to be the "State" of Venezia Giulia. It began and will end as "Government".

This is important. In Venezia Giulia, as elsewhere in occupied Italy, the acts of Allied Military Government must at all times be within the permitted limits authorized to "Government". Certainly it is ultra vires the power of "Government" to constitute itself as the "State", and to act as if it were "We, the people".

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As long as Venezia Giulia military "Government" acts as "Government" within permitted limits, its acts are binding and it becomes unnecessary to conjecture on what the future "State" of Venezia Giulia may be or do. Let that bridge be crossed when it is reached by those whose duty it will be to solve the problems of that day.

The position which "Government" in Venezia Giulia has assumed herein is obscure. From the reference report it might be concluded that, in the financing of industry it has exercised sovereign powers of a "State" as distinguished from permitted powers to "Government". On the other hand, in seeking loans after all, loans were made, it tacitly admits that its powers are not sovereign after all, but only "Governmental". It is admitted the letter, it follows that it is not enough that it secure such loans, but that all the mechanics prescribed for observance by "Government" should be followed.

Nothing I have said in any manner collides with the powers of the Allies to act in a given factual situation with regard to what they may feel politically or economically expedient even beyond their rights as an occupying power under Articles 18 to 20 of the "Long Terms" Armistice of September 29, 1945. But even in so exceeding their legal rights, this distinction is to be noted. The Allies do not pretend to act as the "State" of an Alien people nor to bind them. Quite to the contrary they act in their own behalf and on their own liability. While in so doing they may hope or expect to be reimbursed for liabilities incurred beyond their contractual rights to recover, the settlement, if any, is a result of a supplementary contractual agreement of the respective States after the liability is incurred, and is not predicated on prior pretended powers, actual or asserted.

12 October 1946

JOHN K. WHEELER,
Colonel, Infantry,
Chief Legal Advisor

TO : The Chief Commissioner.

I have read with interest the report Ref. 13C/AMG/FIN/D/I/NTB, 24 September 1946 of the C.F.C., AMG XIII Corps on the subject of Financing of Industry in Venezia Giulia. I must confess that I have experienced difficulty in following some of the premises therein set out.

There is a vast difference between a "State" on the one hand and "Government" on the other. A "State", as correctly said in the first three words of the U.S. Constitution, is "We, the people". "Government" on the other hand is but an agency or vehicle created by the "State" which is granted certain powers by the "State", usually embodied in a written constitution, as in the U.S., or an unwritten one, such as in the U.K. but "Government" has and has only such powers as the "State" permit it to have. Usually, as in the U.S. and U.K., such powers are carefully defined and definitely restricted. Hence, when "Government" acts beyond its powers, it does an unauthorized or unconstitutional act.

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As long as Venezia Giulia military "Government" acts as "Government" its acts are lawful and it becomes unnecessary to conjecture on what the future "State" of Venezia Giulia may be or do. Let that bridge be crossed when it is reached by those whose duty it will be to solve the problems of that day.

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12 October 1946

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C.F.O.,
AMG XIII Cap*

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11 Oct 1946.

Sumner

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11 Oct 1945.

John K. Weber
JOHN K. WEBER,
Colonel, Infantry,
Chief Legal Advisor.

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as and occupying power under
Articles 18 to 20 of The "Four Big Powers"
Amistice of September 29, 1943*

TO : The Chief Commissioner.

I have read with interest the 'exhaustive report' on the subject of Financing of Industry in Venezia Giulia. I must confess that I have experienced difficulty in following some of the premises therein set out.

There is a vast difference between a 'State' on the one hand and 'Government' on the other. A 'State', as correctly said in the first three words of the U.S. Constitution is "We, the people". 'Government' on the other hand is but an agency or vehicle created by the State which is granted certain powers by the State, - "We, the people", - usually embodied in a written constitution, as in the U.S., or an unwritten one, such as in the U.K. But 'Government' has and has only such powers as the State, 'we, the people', permit it to have. Usually, as in U.S. and U.K., such powers are carefully defined and definitely restricted. Hence, when 'Government' acts beyond its powers, it does an unauthorized or unconstitutional act.

There is a 'State' in Venezia Giulia. Whether the 'State' in Venezia Giulia is Italy at the moment, and hereafter may be an independent state, the fact remains that such 'State' is not the Allies, nor its agency, Allied Military Government, - better known as A.M.G. 13 Corps. The latter is not, nor can it ever pretend to be the 'State' of Venezia Giulia. It began and will end as 'Government'.

This is important. In Venezia Giulia, as elsewhere in occupied Italy, the acts of Allied Military 'Government' must at all times be within the permitted boundaries authorized to 'Government'. Certainly it is ultra vires the power of 'Government' to constitute itself as the 'State', and to act as if it were 'We, the people'.

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It is my distinct impression that elsewhere than in Venezia Giulia, Allied Military Government in Italy rigorously has at all times acted within its powers as 'Government' and has carefully adhered to the mechanics prescribed for 'Government' action. I do not understand that at any time it has acted as if it were above and beyond such powers and mechanics, which are exercised by 'We, the people' in their capacity as a 'State'. If it is seriously contended in

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the 'exhaustive report' that by some magic, Occupational 'Government' in Venezia Giulia has been annointed with the powers of a 'State' to make such rules and adopt such mechanics as it in its wisdom may ordain, then the laws of mankind has taken a twist with which I am not presently familiar.

As long as Venezia Giulia military 'Government' acts as 'government', its acts are lawful and it becomes unnecessary to conjecture on what the future 'State' of Venezia Giulia may be or do. Let that bridge be crossed when it is reached by those whose duty it will be to solve the problems of that day.

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10 Oct 1946.

John K. Weber
JOHN K. WEBER,
Colonel, Infantry,

within permitted borders,

day.

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John K. Weber
JOHN K. WEBER,
Colonel, Infantry,
Chief Legal Advisor.

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HEADQUARTERS ALLIED COMMISSION

Office of the Chief Commissioner

APO 947 794

FILE

22 Nov 46

TO: Executive Commissioner me

POLADS (A) & (B) have seen this. Would you please forward to Chief Legal Advisor when you have finished with it?

EDS

H. ALCOM
RECD
hrs 10 15
NOV 23 1946
LEGAL DIVISION

To Director

Legal Division. Passed to
for filing and retention.

22/11 McCann Bay

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M.F.C.
CLH.
PNR
4/11/46 MS

H.F.H. [A. Potensky]
Head AG
Head B

3/14

C. G. ...
LCAT

NOV 1 1946

ALLIED FORCE HEADQUARTERS
 G-5 Section
 APO 512

G-5: 973.12

30 October 1946

Rec'd for spuz.

SUBJECT: Pump-priming of Industry, Venezia Giulia.

TO : Senior Civil Affairs Officer,
AMG Venezia Giulia.

961.46 - AMG-Venezia Giulia - Loans

1. In conformity with instructions of the Supreme Allied Commander, a conference among representatives of AMG Venezia Giulia, the Allied Commission, the British and United States Embassies, and G-5 AFHQ, was held in Rome on 27 September 1946, to examine the policies and procedures under which AMG Venezia Giulia had made loans to commercial companies in Venezia Giulia.
2. It was ascertained that the policy of AFHQ to assist key industries necessary to preserve minimum economy of an area, and to assist in overcoming unemployment, has been carried out in Venezia Giulia.
3. The procedure followed in the remainder of Italy whereby banks made loans to industry, backed by a Governmental guarantee, has not been followed due to the fact as reported by your office that the banks have not been willing to make such loans even on any guarantee which AMG Venezia Giulia was authorized to give. It is presumed that written confirmation of the attitude of the banks is available in your records.
4. So far as is known, AMG Venezia Giulia did not seek guidance or instructions either from the Allied Commission, or AFHQ, as to the possibilities of securing a guarantee acceptable to the banks, from the Allied Governments, but elected instead to make direct loans from AMG funds. In Order No. 184, AMG 13 Corps, there appears in the preamble the words "that loans should be made by the 'State'." It is presumed that this "State" refers to a fictional state of Venezia Giulia. Within this State of Venezia Giulia there was established a Treasury. No other "State" Department appears to have been established. While funds expended from this Treasury were controlled by legislation (decrees, orders) such legislation was, in fact, AMG legislation and the funds AMG funds. In addition, certain expenditures of funds were made by AMG without passing thru the State Treasury. Whether the creation of the fictitious State of Venezia Giulia, and the artificial segregation of funds by this creation into two categories was necessary or even desirable is debatable. Fundamentally, there was and is only one governing

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authority (AMG) and one type of funds (AMG). Whether the attempted segregation of authority and funds by the method adopted will prejudice the final responsibility for occupational costs depends upon the full knowledge of the fact that AMG Venezia Giulia and the State of Venezia Giulia are identical. It would appear that the provisions of paragraph 15 b, Directive for Allied Military Government in that part of Venezia Giulia occupied by Allied Forces, AFHQ file AG 387/207/ORG-0, dated 26 June 1945, should have been followed prior to the establishment of the "State of Venezia Giulia", and its Treasury.

5. While it is possible that some other procedure more desirable could have been evolved, it is considered that at this late date no compensating advantage would offset the obvious disadvantages of changing the present set-up and procedures for allocation and accounting of AMG funds.

6. In the present inquiry which has been for the purpose of inquiring into basic policies and procedures, there has been no effort to determine the commercial soundness of loans, the regularity of financial transactions, or accountancy methods.

7. In connection with the use of the words "State" and similar words denoting sovereignty which appear from time to time in recent publications and particularly in the preamble of orders, your attention is invited to the enclosed opinion of the Legal Advisor, Allied Commission. It would appear most desirable that such usage be avoided in the future and that corrective action is strongly indicated. Your comments thereon are desired.

BY COMMAND OF LIEUTENANT GENERAL MORGAN:



A. I. HARRIS
Colonel, G.S.C.
Assistant Chief of Staff, G-5

Copy to:

Chief Commissioner,
Allied Commission,
APC 794

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TO: The Chief Commissioner

I have read with interest the report Ref. 130/AMG/FIN/D/1/WFB, 24 September 1946 of the C.F.O., AMG XIII Corps on the subject of Financing of Industry in Venezia Giulia. I must confess that I have experienced difficulty in following some of the premises therein set out.

There is a vast difference between a "State" on the one hand and "Government" on the other. A "State", as correctly said in the first three words of the U.S. Constitution is "We, the people". "Government" on the other hand is but an agency or vehicle created by the "State" which is granted certain powers by the "State," usually embodied in a written constitution, as in the U.S., or an unwritten one, such as in the U.K. But "Government" has and has only such powers as the "State" permit it to have. Usually, as in the U.S. and U.K., such powers are carefully defined and definitely restricted. Hence, when "Government" acts beyond its powers, it does an unauthorized or unconstitutional act.

There is a "State" in Venezia Giulia. Whether the "State" in Venezia Giulia is Italy at the moment, and hereafter may be an independent state, the fact remains that such "State" is not the Allies, nor its agency, Allied Military Government, known as AMG XIII Corps. The latter is not, nor can it ever pretend to be the "State" of Venezia Giulia. It began and will end as "Government".

This is important. In Venezia Giulia, as elsewhere in occupied Italy, the acts of Allied Military Government must at all times be within the permitted limits authorized to "Government". Certainly it is ultra vires the power of "Government" to constitute itself as the "State", and to act as if it were "we, the people".

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Nothing I have said in any manner collides with the powers of the Allies to act in a given factual situation with regard to what they may feel politically or economically expedient even beyond their rights as an occupying power under Articles 18 to 20 of the "Long Terms" Armistice of September 29, 1945. But even in so exceeding their legal rights, this distinction is to be noted. The Allies do not pretend to act as the "State" of an Alien people nor to bind them. Quite to the contrary they act in their own behalf and on their own liability. While in so doing they may hope or expect to be reimbursed for liabilities incurred beyond their contractual rights to recover, the settlement, if any, is a result of a supplementary contractual agreement of the respective States after the liability is incurred, and is not predicated on prior pretended powers, actual or asserted.

/s/ JOHN K. WELPER
Colonel, Infantry,
Chief Legal Advisor

12 October 1946

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