

UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON 25, D. C.

CIVIL ACCOUNTING AND  
AUDITING DIVISION  
~~XXXX PAPERWORK~~

NOV 5 1956

The Comptroller General

During our audit of the Jacksonville District, Corps of Engineers, for the fiscal year 1956, we noted that surcharges, included in rental receipts derived from leases of Government-owned plant to qualified parties other than Federal agencies, were retained in the Corps' Revolving Fund, established under the Act of July 27, 1953, 10 U.S.C. 190b, instead of being covered into the Treasury as miscellaneous receipts.

Surcharge receipts are retained in the Revolving Fund in accordance with prescribed procedure. Paragraph 7116.71 of the Orders and Regulations, Corps of Engineers, provides that a surcharge of 25 percent be made in computing charges for rental of Government-owned plant to certain qualified parties. This surcharge is required to be added to the estimated cost base—comprised of all elements of cost, including overhead, insurance, depreciation, and accrued leave—established for the plant rented. Par. 207.8(o) of the Corps' Programming and Accounting Manual requires that all receipts applicable to the established cost base be credited to a corresponding cost account within the Revolving Fund, and that receipts applicable to the 25 percent surcharge be credited to a nonoperating income account of the Fund.

During the fiscal years 1955 and 1956, the Jacksonville District rented the dredge "Hyde" to private parties for dredging operations in Venezuela and Puerto Rico under authority of the act of August 5, 1947, (10 U.S.C. 1270) cited in both leases. Collections under the two leases totaled \$160,591, of which \$118,282 was credited in the Revolving Fund as a recovery of costs incurred and \$42,309, representing 25 percent surcharges, was credited to a nonoperating income account in the Fund.

The Corps' practice of augmenting the Revolving Fund with collections applicable to rental surcharges has been in existence since at least 1953. In our "Report on Programming and Accounting Under the New System Installed July 1, 1953," for the fiscal year 1954, transmitted to the Chief of Engineers (B-118634), we stated in connection therewith that, "The 25 percent surcharge imposed on such loans is in addition to the revolving fund costs of making the loan and is not intended as a recovery of cost, rather it is to assure that the Corps does not compete with private enterprise" and recommended that collections from this source

be returned to the Treasury as miscellaneous receipts. The Chief of Engineers in commenting on this recommendation disagreed with our findings, and stated that the 25 percent surcharge was included as an estimated cost factor, "for the protection of the government against unforeseeable costs and increases in price levels \*\*\*. The amounts paid \*\*\* are credited to the Revolving Fund pursuant to Public Law 153, 83rd Congress, 1st Session, approved 27 July 1953, and pursuant to 33 U.S.C. 559." Reply to our inquiry relative to the "Hyde" transactions calls attention to these comments and states that the views of the Chief of Engineers on the subject remain unchanged.

The Act of August 5, 1947, cited as authority for the lease agreements, provides that:

"In the event utilities or services shall be furnished by the Department to the lessee in connection with any lease, payments for utilities or services so furnished may be covered into the appropriation or appropriations from which the costs of furnishing any such utilities or services to the lessee was paid. Except as otherwise hereinabove provided, any money rentals received by the Government directly under such lease shall be deposited and covered into the Treasury as miscellaneous receipts."

The Act of July 27, 1953, established the Revolving Fund, and provides in connection therewith that:

"The fund shall be credited with reimbursements or advances for the cost of equipment, facilities, and services furnished at rates which shall include charges for overhead and related expenses, depreciation of plant and equipment and accrued leave."

Section 13 of the River and Harbor Act of August 8, 1917, 33 U.S.C. 559, provides as follows:

"Amounts paid by private parties or other agencies for rental of plant owned by the Government in connection with the prosecution of river and harbor works shall be deposited in each case to the credit of the appropriation to which the plant belongs."

After considering the above statutory authorities cited by the Corps, we are of the opinion that the surcharges in question should be deposited into the Treasury as miscellaneous receipts for the following reasons:

1. There appears to be a clear intention in the Act of August 5, 1947, cited in the "Hyde" leases to require collections in excess of applicable costs of plant maintenance to be so deposited.
2. Section 101 of the Act of July 27, 1953, which establishes the revolving fund, is a special statute, and we believe controlling with respect to fund activities to the exclusion of other legislation which may be in conflict with it. This act specifically provides that the fund shall be reimbursed for all costs including overhead, depreciation, and accrued leave. Our analysis of the cost basis used for leasing Corps' plants disclosed that all elements specified in the act were included therein and that the 25 percent surcharge was superimposed on this base. Collection of the "base" would, therefore, satisfy the statute and fully protect the corpus of the fund.
3. We do not consider the Revolving Fund an "appropriation" in contemplation of section 13 of the act of August 8, 1917, and, therefore, do not believe that this act is applicable to plant owned by the fund. Furthermore, we are of the opinion that collections of surcharges should not be retained in the fund, even if the 1917 act was found applicable. This act, we believe, contemplates that "amounts paid \*\*\* for rental of plant" be limited to cost reimbursement items and does not permit augmentation of appropriations by authorizing profit making elements to be retained therein. If this premise is correct it follows that the surcharge should be considered separately, as an item representing profit and not part of the fund's cost reimbursable "rental." (See E-127137-O.M., March 30, 1956 and E-177-O.M., January 18, 1939.)
4. We do not believe that the lease covering the use of the "Hyde" in Venezuela, a foreign country, is a rental of Government-owned plant "in connection with the prosecution of river and harbor works" so as to bring it within the purview of the 1917 act.

Retention of collections applicable to surcharges represents a permanent increment to the corpus of the revolving fund. Inasmuch as the revolving fund is not intended to operate on a profit or loss

basis, and since the surcharges are shown to be in addition to all other charges included to recover every element of cost involved, we believe that they should be deposited in the Treasury as miscellaneous receipts. Since the Chief of Engineers deems otherwise, the matter is submitted for your consideration and instructions.

(Signed) E. H. Morse, Jr.

E. H. Morse, Jr.  
Director, Civil Accounting  
and Auditing Division

Enclosures:

- ✓ Work paper file - Atlanta
- ✓ Abstract of Comments to Report  
on Programming and Accounting  
Under the New System Installed  
July 1, 1953
- ✓ Report on Programming and  
Accounting Under the New System  
Installed July 1, 1953, for  
fiscal year 1954

B-129718-O.M.

January 3, 1957

Director, Civil Accounting and Auditing Division

Returned. The act of August 8, 1917, Public No. 37, 40 Stat. 268, codified as 33 U. S. C. 559, provides as follows:

"Amounts paid by private parties or other agencies for rental of plant owned by the Government in connection with the prosecution of river and harbor works shall be deposited in each case to the credit of the appropriation to which the plant belongs."

At the time of the enactment of the foregoing provision of law plants owned by the Government in connection with the prosecution of river and harbor works were leased under the acts of July 28, 1892, and August 29, 1916, codified as 40 U. S. C. 303 and 34 U. S. C. 522. These were general provisions of law for the leasing of all property under the control of the Secretary of the Army and the Secretary of the Navy, and moneys received under such leases were required to be deposited into the Treasury as miscellaneous receipts. Prior to the 1917 act, the rental received from the leasing of river and harbor plants as well as other property of the War and Navy Departments were deposited as miscellaneous receipts, but the 1917 act specifically authorized the amounts received from the leasing of river and

harbor plants to be credited to the appropriation to which the plant belonged.

The provisions of law codified as 40 U. S. C. 303 and 34 U. S. C. 522 were repealed by the act of August 5, 1947, Public Law 364, 61 Stat. 774, which also provided generally for the leasing of all property of the War and Navy Departments. This 1947 act did not specifically repeal the 1917 act and there is nothing in its legislative history to indicate any congressional intent to do so. Since a general statute is not to be construed as affecting operation of an earlier special statute unless the special statute is expressly repealed or is so wholly inconsistent that its repeal of necessity must be implied, it must be concluded that the 1917 act was not repealed by the 1947 act. The amounts received from leases of river and harbor plants were properly for credit to the appropriation to which the plant belonged at the time the Corps of Engineers' revolving fund was established by the act of July 27, 1953, Public Law 153, 67 Stat. 199, and the only question is whether this act supersedes the 1917 act.

The provision of law establishing the revolving fund did not specifically nor otherwise repeal or supersede the 1917 act. The revolving fund was established primarily as an accounting device through which the various appropriations would be more properly charged with the cost of equipment, facilities, and services. The law specifically authorized the crediting of the revolving fund with certain costs and it did not preclude the crediting of the fund with amounts otherwise authorized by law to be credited thereto.

The 1917 act is applicable to any "appropriation" to which any leased river and harbor plant belongs. The Corps' revolving fund was established in an annual appropriation act by an appropriation of \$100 plus certain assets, liabilities, obligations, and unexpended balances of appropriated funds. We see no basis for distinguishing the revolving fund from any other appropriation insofar as the 1917 act is concerned.

There is no requirement in the 1917 act that the plant be leased solely for use in the prosecution of river and harbor works. The phrase "in connection with the prosecution of river and harbor works" is a limitation on the plant which can be leased with the right to credit the rental proceeds to an appropriation. In other words, it is only the amounts received from the leasing of a plant owned in connection with river and harbor works that can be credited to an appropriation.

It must be concluded that the surcharges here involved are properly for credit to the revolving fund. There is a limitation of \$140,000,000 on the amount of the capital of the fund.

FRANK H. WEINER

Assistant Comptroller General  
of the United States

Attachment