

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

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FILE: B-114874

DATE: SEP 16 1975

MATTER OF: Library of Congress liability for increased 1973
postage charges

DIGEST: Failure of Congress to approve deficiency appropriation request by Library of Congress to fully satisfy amount due Postal Service for additional fiscal year 1973 postage charges does not extinguish such liability as matter of law. Thus Library should restore and apply expired 1973 appropriation balances to Postal Service debt. However, to extent that debt cannot be fully paid thereby, it must remain unsatisfied since no source other than 1973 appropriation balances is available for this purpose.

By letter of March 19, 1975, the Acting Librarian of Congress requested our opinion on certain questions which have arisen during the course of the Library's negotiations with the United States Postal Service concerning payment of increased postage charges assessed for fiscal year 1973.

In a decision dated August 17, 1973, the General Counsel of the Postal Service advised the Library of Congress that it could not use special subsidized rates and "phasing in" of increases provisions under the Postal Reorganization Act, approved August 12, 1970, Pub. L. No. 91-375, 84 Stat. 719, which enacted the present title 39, United States Code (1970). According to the General Counsel's decision, mailings by the Library of the type here involved were treated as penalty mail under former 39 U.S.C. § 4152 (1964) prior to enactment of Pub. L. No. 91-375. While such mailings were therefore subject to reimbursement to the predecessor Post Office Department at the equivalent amount of postage due, 39 U.S.C. § 4156(a) (1964), it appears that, in fact, the Library offered--and the Post Office Department accepted--reimbursement in amounts equivalent to the special fourth class rate and "library rate" specified in former 39 U.S.C. §§ 4554(a) and (b) (1964 & Supp. V), respectively. However, in view of his conclusion that the Library was not technically entitled to special subsidized rates under former title 39, the General Counsel held that it

could not benefit by the provisions of present title 39 concerning such rates as enacted by Pub. L. No. 91-375:

"* * * Since the Postal Reorganization Act reflects a general policy against cross-subsidization of mail rates, section 2401(c) of title 39 authorizes appropriations to the Postal Service to cover the amount of revenue forgone by the Service because of rates kept artificially low by statute, including section 3626. However, the phasing and attributable cost ceiling provisions in section 3626 and the corresponding subsidy provisions in section 2401(c) are, by their terms, limited to mail entitled to be sent under the provisions of former title 39 referred to in section 3626. Since penalty mail of the Library of Congress was not sent under the designated sections of former title 39 (all the Library's penalty mail was sent under section 4152 of the former title rather than, for example, under the 'library' rate provided in section 4554), such mail is not, in our opinion, entitled either to phasing nor to enjoy any 'full rate' permanently set at a subsidized level, and no subsidies would be authorized to be appropriated to make up the revenue forgone were the Library to be given the benefit of these rates."

The Library accepted this Postal Service decision, but initially considered it applicable only for fiscal year 1974 and thereafter. However, the Postal Service subsequently advised that the General Counsel's August 1973 decision represented in effect a reaffirmation of prior Postal Service positions and thus applied also to fiscal year 1973. Accordingly, postage charges for fiscal years 1973 and 1974 were recomputed by the Library, and a deficiency supplemental appropriation request of \$300,000 for 1973 and a supplemental appropriation request of \$510,000 for 1974 were submitted to the Congress. The \$300,000 deficiency request represented the difference between the full additional amount due in 1973 postage charges as a result of the August 1973 decision (\$539,956) and an amount (\$239,956) which the Library planned to absorb through restoration of expired 1973 appropriation balances.*/

*/ Apparently the latter two figures were subsequently adjusted since the Acting Librarian's letter to us, infra, refers to them as \$545,459 and \$245,459, respectively.

In enacting the Second Supplemental Appropriations Act, 1974, approved June 8, 1974, Pub. L. No. 93-305, 88 Stat. 195, 215, the Congress approved the \$510,000 supplemental request for 1974 increased postage charges, but it denied funding for increased charges as applied to 1973. See H.R. Rep. No. 93-1070, 17 (1974); S. Rep. No. 93-814, 83 (1974). Members of the Senate Appropriations Committee were critical of the Postal Service decision, principally in the different treatment accorded the Library of Congress as opposed to other libraries, and of the Library's acquiescence in the decision. See Hearings before the Senate Committee on Appropriations, Second Supplemental Appropriations for Fiscal Year 1974, 93d Cong., 2d Sess., 1059-1072 (particularly 1067-69) (1974).

On the basis of the foregoing, the Acting Librarian presents to us the following three questions:

"1. In view of the refusal of the Congress to appropriate additional funding for postage in fiscal 1973 due to higher rates based on a Postal Service determination, is the Library of Congress required to make any further payments to cover these higher rates to the Postal Service for its 1973 postage?

"2. If the Library is required to make an additional payment, will a payment of \$245,459.00 from funds available to the Library from lapsed appropriations discharge the Library's obligation?

"3. If full payment of \$545,459.00 is required, may the Library properly use future year appropriations to discharge the obligation?"

The Library mailings here involved are treated as penalty mail reimbursable pursuant to 39 U.S.C. § 3206(a) (1970), which provides in part:

"* * * executive departments and agencies, independent establishments of the Government of the United States, and Government corporations concerned, shall transfer to the Postal Service as postal revenue out of any appropriations or funds available to them, as a necessary expense of the appropriations or funds and of the activities concerned, the equivalent amount of postage due, as determined by the Postal Service, for matter sent in the mails by or to them as penalty mail under authority of section 3202 of this title."

While the result of the August 1973 Postal Service decision that the Library of Congress cannot benefit by special provisions applicable to other libraries may seem incongruous from a practical or policy viewpoint, it does not appear to be legally erroneous under 39 U.S.C. § 3206(a).^{*} Accordingly, the decision serves in effect to create a valid obligation against the Library for fiscal year 1973 in the amount of \$545,459.

With reference to the first two questions presented, the action of the Congress in failing to approve the Library's 1973 deficiency appropriation request did not, in our view, discharge this obligation as a matter of law. As noted, we believe that the obligation arose by the proper application of substantive statutory provisions. As such, it is not in theory extinguished by the absence of a liquidating appropriation. Moreover, the congressional action here involved did not specifically purport to overrule the Postal Service decision or actually discharge the obligation. It is notable in this regard that, while the requested 1973 deficiency appropriation was denied, a supplemental appropriation was made for 1974 to fund increased charges which were based largely on the same Postal Service decision. Accordingly, it is our opinion that the Library should still make the \$245,549 payment toward this obligation by restoration of expired 1973 appropriation balances. See 31 U.S.C. § 701(a)(2) (1970).

Although the full 1973 obligation theoretically remains valid, it is fundamental that such obligation can only be liquidated to the extent of available appropriations. U.S. Const., art. I, § 9, cl. 7. Also, except as provided in 31 U.S.C. §§ 701 et seq., obligations chargeable to a particular fiscal year may generally be paid only from appropriations available for the service of that fiscal year. While obligations attributable to prior fiscal years lose their identity as such once the obligated balances for those years are transferred to applicable "M" (merged) accounts, see 31 U.S.C. §§ 701, 702 (1970), the Library's fiscal year 1973

^{*}/ While our Office generally lacks authority to consider the validity of Postal Service determinations, see, e.g., 39 U.S.C. §§ 404(2), 410(a) (1970), the instant questions were submitted to us in terms of the availability and use of funds appropriated to the Library. Also, the Postal Service appears to treat this controversy as, in effect, the referral to us, pursuant to 39 U.S.C. § 2601(a) (1970), of a matter uncollectable through administrative action.

obligation to the Postal Service here involved cannot be paid from the "W" accounts due to the pendency of this claim prior to transfer of the 1973 appropriation balances into such "W" accounts.

It is noted that 39 U.S.C. § 3206(a), supra, refers to reimbursement by agencies to the Postal Service "out of any appropriations or funds available to them * * *." However, this language predates the Postal Reorganization Act, supra, e.g., 39 U.S.C. § 6156(a) (1964), and was presumably never intended to alter the basic rules concerning the payment of fiscal year obligations. Therefore, in response to the third question, the Library's remaining 1973 obligation to the Postal Service of \$200,000 cannot be paid from future appropriations unless the Congress should specifically so indicate.

R. T. MILLER
Deputy } Comptroller General
of the United States