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B-114874

October 5, 1972

Dear Mr. Postmaster General:

In looking into the values of assets and amounts of liabilities transferred to the Postal Service from the former Post Office Department, by letter of April 12, 1972, we requested your views regarding the disposition of refunds of certain transportation charges paid from funds appropriated to the former Post Office Department for fiscal year 1970. Also, we requested your views as to the disposition of funds remaining where obligations incurred in fiscal year 1970 and prior years are liquidated in amounts less than the amounts originally obligated (deobligations). The amounts originally obligated in those prior years but not expended were transferred to the Postal Service at the time of commencement of operations for the purpose of liquidating such obligations incurred by the former Post Office Department.

In reply thereto, your General Counsel by letter of September 12, 1972, states it to be the view of the Postal Service that both--the refunds and deobligations--are for payment into or remain a part of the Postal Service Fund (Fund), respectively, rather than to be subject to reversion to the general fund of the Treasury.

At the outset the General Counsel points out that one of the major purposes of postal reorganization was to eliminate restraints imposed on postal operations by laws relating to budgets and funds having Government-wide application as evidenced by 39 U.S.C. 410(a) of the Postal Reorganization Act which provides in pertinent part that "no Federal law dealing with \* \* \* budgets, or funds \* \* \* shall apply to the exercise of the powers of the Postal Service." Consequently, he states that if refunds or deobligations are subject to reversion to the general fund of the Treasury, a provision of law in the Postal Reorganization Act must be found which establishes the requirement that the funds revert. He notes that not only is there no such provision in the Postal Reorganization Act but that the Act provides for the intermingling of moneys in the Fund and for the availability of moneys in the Fund generally "to carry out the purposes, functions, and powers authorized by this title." 39 U.S.C. 2003(a)."

Concerning specifically the disposition of refunds the General Counsel refers to 39 U.S.C. 2003 which establishes the Fund and to 39 U.S.C. 2003(b)(5) which provides for deposit into the Fund of "any other receipts of the Postal Service." He contends that these refunds on postal contracts represent receipts of the Postal Service and thus are required to be deposited into the Fund and, once so deposited, may be withdrawn only "to carry out the purposes, functions, and powers" of the Postal Service.

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39 U.S.C. 2003(a). In addition, he points out that the Postal Reorganization Act transferred to the Postal Service "all contracts" and "all other property and assets of the former Post Office Department." 39 U.S.C. 2002(c)(5), (6).

In summary, it is stated these refunds constituted assets which, in the opinion of the Postal Service, were transferred to the Postal Service at the time of commencement of operations on July 1, 1971, and for the reasons stated above, must therefore remain with the Service.

The General Counsel states that the result as to deobligated funds is similar. Relative to such deobligations it is stated that--

"Section 2002(a)(2) of title 39, United States Code, provides for the transfer to the Postal Service at the time of the commencement of operations of certain appropriated funds and all liabilities chargeable thereto, which 'shall become assets and liabilities, respectively, of the Postal Service.' The Act explicitly provided for the deposit of the transferred appropriated funds in the Postal Service Fund, requiring that there 'shall be deposited in the Fund, subject to withdrawal by check by the Postal Service . . . the balance in the Post Office Department Fund . . . .' 39 U.S.C. §2003(b)(6). As indicated above, the Act provides that moneys in the fund are available to the Postal Service 'to carry out the purposes, functions, and powers authorized by this title.' 39 U.S.C. §2003(a). Obviously, one of the 'purposes, functions, and powers authorized by this title' would be the liquidation of liabilities chargeable to appropriations transferred to the Postal Service under section 2002(a)(2). There is, however, clearly no requirement that all liabilities be liquidated in the amount at which they were valued at the time of the commencement of operations. To the extent that liabilities can be liquidated for lesser amounts, moreover, transferred funds would be available for expenditure on other valid postal purposes. The continuing availability of the moneys in the Postal Service Fund is underscored, moreover, by the provision in section 2003(a) that the moneys are available for expenditure for valid postal purposes 'without fiscal-year limitation'. It would appear that a requirement that deobligated funds revert to the general fund of the Treasury would have the effect of imposing a fiscal-year limitation on some of the moneys in the Postal Service Fund."

The matters here under consideration are closely related to the disposition of obligated and unobligated balances of fiscal year 1970 and prior appropriations made to the former Post Office Department, considered in our decision of June 28, 1971, 50 Comp. Gen. 863.

In that decision we referred to section 1(a) of the act of July 25, 1956, 70 Stat. 647, as amended, 31 U.S.C. 701, which provides as follows:

"(a) The account for each appropriation available for obligation for a definite period of time shall be closed as follows:

"(1) On June 30 of the second full fiscal year following the fiscal year or years for which the appropriation is available for obligation, the obligated balance shall be transferred to an appropriation account of the agency or subdivision thereof responsible for the liquidation of the obligations, in which account shall be merged the amounts so transferred from all appropriation accounts for the same general purposes; and

"(2) Upon the expiration of the period of availability for obligation, the unobligated balance shall be withdrawn and, if the appropriation was derived in whole or in part from the general fund, shall revert to such fund, but if the appropriation was derived solely from a special or trust fund, shall revert, unless otherwise provided by law, to the fund from which derived: Provided, That when it is determined necessary by the head of the agency concerned that a portion of the unobligated balance withdrawn is required to liquidate obligations and effect adjustments, such portion of the unobligated balance may be restored to the appropriate accounts."

In construing the above provisions of law we stated that--

"Since the obligated balances of such prior year appropriations can be used only to liquidate such prior year obligations and since the unobligated balances thereof have reverted to the general fund of the Treasury, and thus are not available to the Post Office Department except as such amounts may be needed to liquidate such prior year obligations, the unobligated balances may not be withdrawn from the Treasury except pursuant to an appropriation made by law. See Article I, section 9, Clause 7, of the Constitution of the United States. Consequently, and since section 2002(a)(2) does not in specific terms appropriate to the Postal Service the unexpended unobligated balances of fiscal year 1970 and

prior year appropriations made to the Post Office Department and returned to the general fund of the Treasury as required by law, it may not be construed as having done so in view of section 9 of the act of June 30, 1906, 34 Stat. 764, 31 U.S.C. 627, which provides that no act of Congress shall be construed to make an appropriation out of the Treasury of the United States 'Unless such act shall, in specific terms, declare an appropriation to be made.' See 13 Comp. Gen. 77 (1933). The Postal Service, however, may exercise the right to have such unobligated balances restored to the extent provided in the cited act of July 25, 1956, for the liquidation of valid obligations against prior year appropriations. \* \* \*

With respect to the purpose of section 2002(a)(2) of the Postal Reorganization our views are stated therein as follows:

"In view of the fact that under the provisions of section 15(a) of the Postal Reorganization Act, the Board of Governors could have provided that the Postal Service begin operations during the course of a fiscal year as well as at the beginning of a fiscal year, it seems evident that the language contained in section 2002(a)(2) was primarily intended to permit the Postal Service to utilize the obligated and unobligated portion of appropriations that on the date of transition were otherwise available to the Post Office Department in order that the Postal Service might liquidate the obligations incurred against such appropriations and that it might finance its operations to the end of the fiscal year from the unobligated portion."

Concerning such decision the General Counsel states that--

"Insofar as the argument for the reversion of funds under sections 701 and 703 of title 31, United States Code, rests upon the decision of the Assistant Comptroller General cited above that withdrawn unexpended unobligated balances are available to the Postal Service only as restorations and as limited by the provisions of sections 701-708 of title 31, United States Code, the position of the Postal Service would not be in agreement with the opinion of the Assistant Comptroller General. Section 2002(a)(2) requires the transfer to the Postal Service of all 'unexpended balances of appropriations . . . available to the former Post Office Department . . . .' The plain meaning of these words is, in our opinion,

that appropriations which the former Post Office Department had available to it — including any withdrawn unexpended unobligated balances of appropriations which were available for restoration — would be transferred without limitation to the new Postal Service."

While we agree with the General Counsel that under 39 U.S.C. 410(a) laws concerning funds and budgets do not apply to the Postal Service so that sections 701-708 of title 31 United States Code, are not applicable to funds of the Postal Service, section 410(a) was not effective until July 1, 1971, and consequently the appropriations of the former Post Office Department for fiscal year 1970 and prior years were subject to the provisions of law in effect prior to that date, section 410(a) having no retroactive effect.

Consequently, we cannot agree with the views of the General Counsel that 31 U.S.C. 701-708 is not applicable here in that the refunds and de-obligations here involved represent collections and unexpended-unobligated balances relating to fiscal year 1970 and prior year appropriations and therefore were not assets of the former Post Office Department (except that the amounts could be restored, if appropriate, to liquidate obligations) and could not therefore be transferred to the Postal Service.

As noted above 31 U.S.C. 701(a)(2) provides that upon expiration of availability for obligation [June 30, 1970, or June 30 of prior years] the unobligated balance of the appropriation shall revert to the general fund of the Treasury.

We believe it also pertinent that 31 U.S.C. 701(c) provides that the obligated balance of an appropriation account [see 31 U.S.C. 701(a)(1)] as of the close of the fiscal year shall be the amount of unliquidated obligations applicable to such appropriations, less the amount collectible as repayments to the appropriation, and that collections not received until after the transfer of the obligated balance as required by 31 U.S.C. 701(a) shall be credited to the account ["M" account] into which the obligated balance has been transferred, and that 31 U.S.C. 701(d) requires that the withdrawals made pursuant to subsection (a)(2) be accounted for and reported as of the fiscal year in which the appropriations concerned expire for obligation. It thus is necessary to credit the repayments to such prior year merged obligated balances so that the amount thereof will be equal to the recorded obligations under each prior year appropriation.

We believe that these provisions together with 31 U.S.C. 703(a) which requires that these accounts be reviewed at least each fiscal year and any

undisbursed amounts therein in excess of the obligated amounts pertaining thereto be transferred to the general fund of the Treasury, clearly require that any amounts otherwise properly creditable to the lapsed appropriations of the former Post Office Department may not be considered to be assets of the Postal Service. As indicated in our earlier decision referred to above we find no language in the Postal Reorganization Act that can be construed as making an appropriation of these unexpended and unobligated balances of prior year appropriations to the Postal Service.

To adopt the General Counsel's view that section 410(a) of the Postal Reorganization Act makes 31 U.S.C. 701-708 inapplicable to such lapsed appropriations of the former Post Office Department would be to require the nullification of all action theretofore taken with respect to such funds and to require that the unexpended and unobligated balances of all prior years' appropriations made to the Post Office Department transferred to the general fund of the Treasury since 1956 now be withdrawn from the general fund of the Treasury and credited to the Postal Service Fund. It also would follow from the General Counsel's view that all liabilities chargeable to such prior year appropriations would become liabilities of the Postal Service. It would be inequitable to permit the Postal Service to keep the repayments and excess obligations on individual transactions, but require that any deficiencies under such merged accounts remain as liabilities of the United States.

We find nothing in the Postal Reorganization Act or in its legislative history to suggest such results. Accordingly, it is our view that unexpended and unobligated balances of fiscal year 1970 and prior years' appropriations, and refunds or collections applicable thereto, become assets of the Postal Service only to the extent that they were assets of the Post Office Department subject to the provisions of 31 U.S.C. 701-708. In other words, these 1970 and prior year funds were assets of the Post Office Department only to the extent needed to liquidate prior year obligations; all collections related to such prior year funds were required to be deposited into such merged prior year funds; any excess amounts not needed to liquidate such obligations being for deposit into the general fund of the Treasury; and the right to restore any unobligated amounts to meet any deficiencies under such prior year merged account.

Sincerely yours,

(SIGNED) ELMER B. STAATS

Comptroller General  
of the United States

The Honorable  
The Postmaster General