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DECISION



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

[Authorization for Disposal of Surplus Personal Property]

FILE: B-201259

DATE: March 17, 1981

MATTER OF: Donation under 40 U.S.C. § 484(j) of surplus personal property of Federal Prison Industries, Inc.

DIGEST:

Prison Industries Fund, established by 18 U.S.C. § 4126 as operating fund of Federal Prison Industries (FPI), constitutes permanent or continuing appropriation even though amounts originally appropriated have been returned to Treasury and Fund is self-sufficient, in view of fact that statute authorizes deposit into Treasury to credit of Fund of receipts for prison industries products and services and authorizes use of such funds for operation of FPI. Surplus personal property acquired by the Fund thus is donable under 40 U.S.C. § 484(j), since it does not constitute non-appropriated fund property within meaning of regulation excluding such property from donation (41 C.F.R. § 101-44.001-3).

The General Counsel of the General Services Administration (GSA) asks whether surplus personal property under the control of Federal Prison Industries, Inc. (FPI) may be disposed of by donation in accordance with section 203(j) of the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. § 484(j) (1976) (Federal Property Act), and its implementing regulations, 41 C.F.R. Part 101-44 (1979).

Section 203(j)(1) of the Federal Property Act authorizes the Administrator of General Services to transfer surplus personal property under the control of any executive agency to State agencies for donation to qualified recipients. It provides that, in determining whether property is to be donated, "no distinction shall be made between property capitalized in a working-capital fund under [what is now 10 U.S.C. § 2208], or any similar fund, and any other property." FPI, as a wholly-owned Government corporation (31 U.S.C. § 846 (1976)), is included in the definition of "executive agency" for purposes of the Federal Property Act. 40 U.S.C. § 472(a) (1976).

The regulations (41 C.F.R. § 101-44.001-3), following the statute, define donable property in pertinent part as follows:

"Donable property" means surplus property under the control of an executive agency (including surplus personal property in working capital funds established under 10 U.S.C. 2208 or in similar management-type funds) except:

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"(d) Nonappropriated fund property."

The exclusion of nonappropriated fund property gives rise to the present inquiry. The Assistant Attorney General for Administration has expressed the view that the operating fund of FPI constitutes a nonappropriated fund, and thus that personal property acquired with FPI funds does not qualify as donable property under the regulation. For the reasons indicated below, we conclude that FPI's operating fund constitutes a continuing appropriation and that surplus personal property originally acquired with FPI funds is donable under section 203(j).

The prison industries program had its origins in the Act of July 10, 1918 (ch. 144, 40 Stat. 896) and the Act of February 11, 1924 (ch. 17, 43 Stat. 6). The 1918 Act established a program to equip the Federal penitentiary in Atlanta for the manufacture of textile products for the Government. Section 5 of that Act authorized creation of a "working capital" fund for carrying on the program. The Act of November 4, 1918 (ch. 201, 40 Stat. 1020, 1035) appropriated \$150,000 to the working capital fund. The 1924 Act established a similar program at the Leavenworth penitentiary, and likewise authorized a working capital fund to implement the program. Congress appropriated \$250,000 to that working capital fund by the Act of April 2, 1924 (ch. 81, 43 Stat. 33, 45).

The working capital funds for the Atlanta and Leavenworth programs were consolidated by section 4 of the Act of May 27, 1930 (ch. 340, 46 Stat. 391) as part of a grant of authority in section 3 of that Act to the Attorney General to extend the prison industries program to all Federal penal institutions. Section 5 of the 1930 Act provided for the capitalization of the consolidated fund:

"All money appropriated for, or now on deposit with the Treasurer of the United States to the credit of the said working-capital funds at Atlanta Penitentiary and Leavenworth Penitentiary, shall be credited to the consolidated prison industries working-capital fund herein authorized. All money received from the sale of the products or by-products of such industries as are now or hereafter established, or for the services of said United States prisoners, shall be placed to the credit of said prison industries working-capital fund, which may be used as a revolving fund. There are authorized to be appropriated such additional sums as may from time to time be necessary to carry out the provisions of this Act."

A major change in the form of the prison industries program was accomplished by the Act of June 23, 1934 (ch. 736, 48 Stat. 1211). Section 1 of that Act (codified at 18 U.S.C. § 4121 (1976)) authorized the President to establish FPI as a Government corporation. The change to corporate status was intended to allow existing prison industries to operate on a larger scale and to broaden the fields in which the program could operate. Such expansion of scale was considered necessary to accomplish the statutory purpose of providing employment to all inmates in Federal institutions. See, e.g., S. Rep. No. 73-1377, 73d Cong., 2d Sess. 2 (1934).

Section 4 of the 1934 Act (codified at 18 U.S.C. § 4126 (1976)) authorized creation of a "Prison Industries Fund" to be composed of "*** all balances then standing to the credit of the prison industries working capital fund." This new Fund was characterized as a "permanent and indefinite revolving fund" for the operation of FPI. S. Rep. No. 73-1377, supra.

The substance of the 1934 Act was retained in 18 U.S.C. § 4126, except for changes in phraseology and the omission of language directing the transfer of funds between the two working capital funds. The current version of the statute provides as follows:

"All moneys under the control of Federal Prison Industries, or received from the sale of the products or by-products of such Industries, or for the services of federal prisoners, shall be deposited or covered into the Treasury of the United States to the credit of the Prison Industries Fund and withdrawn therefrom only pursuant to accountable warrants or certificates of settlements issued by the General Accounting Office.

"All valid claims and obligations payable out of said fund shall be assumed by the corporation.

"The corporation, in accordance with the laws generally applicable to the expenditures of the several departments and establishments of the government, is authorized to employ the fund, and any earnings that may accrue to the corporation, as operating capital in performing the duties imposed by this chapter; in the repair, alteration, erection and maintenance of industrial buildings and equipment; in the vocational training of inmates without regard to their industrial or other assignments; in paying, under

rules and regulations promulgated by the Attorney General, compensation to inmates employed in any industry, or performing outstanding services in institutional operations, and compensation to inmates or their dependents for injuries suffered in any industry or in any work activity in connection with the maintenance or operation of the institution where confined. In no event shall compensation be paid in a greater amount than that provided in the Federal Employees' Compensation Act."

This Office has consistently regarded statutes which authorize collection of receipts and their deposit in a specific fund, and which make the fund available for a specific purpose, as constituting continuing or permanent appropriations. 57 Comp. Gen. 311, 313 (1978); 50 *id.* 323, 324 (1970); 35 *id.* 615, 618 (1956); 35 *id.* 436, 438 (1956). In this case, we conclude that, by authorizing deposit of receipts from sales of FPI products into a special account to be used for operation of FPI, 18 U.S.C. § 4126 in effect makes a continuing appropriation of those revenues for authorized expenditures of FPI.

Our decision in 35 Comp. Gen. 436 (1956) is particularly relevant. That decision involved the status of the Farm Labor Supply Fund, which was created as a source of working capital for expenses incurred by the United States in transporting and maintaining Mexican agricultural workers employed on a temporary basis in the United States. A total of \$1,000,000 was originally appropriated to the Fund, but the statute required that the employers who made use of the agricultural workers reimburse the Fund for the expenses incurred by the Government. As a result, the original appropriation was returned to the Treasury within one year. From that time on, the Fund was financed exclusively through collections from the employers.

Despite the fact that the Farm Labor Supply Fund was self-sufficient, this Office determined that the Fund constituted a permanent appropriation. The employers' payments were held to constitute money collected for the use of the United States, and, in the absence of the statute establishing the Fund, they would have been deposited to the Treasury as miscellaneous receipts (31 U.S.C. § 484 (1976)). Because Congress had by statute directed deposit of the payments into the Fund instead, it was regarded as having created a continuing appropriation of those funds.

The Prison Industries Fund originated with appropriated funds derived from the seminal programs at the Atlanta and Leavenworth penitentiaries. No direct appropriations were again made to the Fund, which became self-supporting soon after its creation. (By 1952, for example, a total of \$20,400,000 had been paid into the Treasury as dividends. See H.R. Doc.

No. 96, 83d Cong., 1st Sess (1953).) However, under the decisions cited above, the fact that the original amounts appropriated have been paid back into the Treasury does not change the character of the Prison Industries Fund as an appropriated fund.

A narrower interpretation of the term "appropriation" to include only moneys appropriated from the general fund of the Treasury for a specific purpose would not be consistent with our prior decisions or the statutory definition of the term in the Budget and Accounting Act of 1921, 31 U.S.C. § 2 (1976). That definition reads as follows:

"The term 'appropriations' includes, in appropriate context, funds and authorizations to create obligations by contracts in advance of appropriations or any other authority making funds available for obligation or expenditure."

To similar effect, we concluded that funds of the St. Lawrence Seaway Development Corporation, a Government corporation, constitute appropriated funds despite the fact that they derive from user fees. In that regard, we noted, "*** it is our view that any time the Congress specifies the manner in which a Federal entity shall be funded and makes such funds available for obligation or expenditure, that constitutes an appropriation, whether the language is found in an appropriation act or in other legislation." B-193573, December 19, 1979.

Since we conclude that the Prison Industries Fund is not a nonappropriated fund within the meaning of 41 C.F.R. § 101-44.001-3, personal property acquired through the Fund does not constitute "nonappropriated fund property." Donation of surplus personal property under the control of FPI in accordance with section 203(j) of the Federal Property Act, thus is not barred.



Acting Comptroller General
of the United States