

18227 *Parsons*



DECISION

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

FILE: B-200962

DATE: May 26, 1981

MATTER OF: Department of the Interior--Retention of Proceeds
from Sale of Excess Property.

DIGEST: Proceeds from sale of precious metals held by Department of Interior as successor to American Revolutionary Bicentennial Administration (ARBA) must be deposited in Treasury as miscellaneous receipts under 40 U.S.C. § 485 (1976). ARBA acquired metal from which bicentennial commemorative medals were struck by the Treasury Department. Authority to sell and expend proceeds is limited to proceeds from sale of commemorative medals and does not extend to proceeds resulting from sale of precious metal remaining after the medals are melted down.

The Assistant Secretary of the Interior for Fish and Wildlife and Parks has asked whether the proceeds from the sale of precious metal in possession of the Department of the Interior (Interior) as successor to the American Revolution Bicentennial Administration (ARBA) may be used to pay certain outstanding claims against ARBA or for further bicentennial commemorative activities. For the reasons given below, the proceeds of any such sale must be deposited in the Treasury as miscellaneous receipts unless it can be demonstrated that the metal was not acquired with appropriated funds.

This case concerns the disposition of silver and gold that Interior has as a result of melting down commemorative medals that were struck by the Department of the Treasury for the ARBA under Pub. L. No. 92-228, 86 Stat. 37, February 15, 1972 (the 1972 Act). As successor to the American Revolutionary Bicentennial Commission, the ARBA was specifically given responsibility for the commemorative medal program. Section 15, of the 1973 Act. According to Interior, medals that were provided ARBA under this act were sold by ARBA under authority provided in its organic legislation. Section 4(b)(4), Pub. L. No. 93-179, 87 Stat. 697, December 11, 1973 (the 1973 Act). ARBA retained the profits from the sale of the commemorative medals and applied these profits to authorized program activities. ARBA staff explained this procedure to the House and Senate Appropriation Committees. See Hearings before Senate Appropriations Subcommittee considering Department of Interior and Related Agencies Appropriation for Fiscal Year 1976, Part 4, p. 1181 and Hearings before House Appropriations Subcommittee considering Department of Interior and Related Agencies Appropriations for 1975, Part 2, pp. 867-869. Several million dollars of profit resulted from sales over the years the program was in effect.

[Proper Disposition of Proceeds From Sale of Excess Property]

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When the ARBA went out of existence its authorities were transferred to Interior under Executive Order 12001, 42 Fed. Reg. 33709 (July 1, 1977), as provided in section 7(b) of the 1973 Act. The authorities transferred to Interior are essentially co-extensive with those of the ARBA. The executive order directed the Secretary of the Interior to provide appropriate bicentennial commemorative events through 1983, administer existing contracts and grants of ARBA, and expend revenues received under these existing contracts.

Section 2(f) of the 1973 Act provides that:

"The Administrator, to such extent as he deems necessary, may procure supplies, services, and personal property; make contracts; expend funds appropriated, donated, or received in pursuance of contracts hereunder in furtherance of the purposes of this Act; and exercise those powers that are necessary to enable him to carry out efficiently and in the public interest the purposes of this Act."

The 1972 and 1973 acts can be read together with the legislative history as authorizing the ARBA not only to buy and sell the commemorative medals, but also to expend the proceeds on other authorized bicentennial program activities. See the hearings of the appropriation committees cited above and H. Rep. 92-795 accompanying H.R. 7987, 92d Cong. (1972) (the 1972 Act) at p. 2:

"It is your committee's understanding and intent that medals struck under the authority of this legislation will be made widely available to the American people at reasonable prices to assure the broadest possible public participation in this phase of the Bicentennial's many proposed activities marking the Nation's birth and development. Proceeds from the sale of the medals are to be used in the furtherance of the Bicentennial celebration." (Emphasis supplied.)

The 1973 act further provides at section 2(h):

"Any property acquired by the Administration and which remains upon its termination shall be transferred to the Secretary of the Interior for use by him under section 7(b) of this Act, or shall be disposed of by the Secretary as excess or surplus property as otherwise provided by law."

Under the sale contemplated by Interior, the gold and silver in possession of Interior must be sold as excess or surplus property since the sale would not be a function transferred to Interior under section 7(b) of the 1973 Act and Executive Order 12001. See 56 Comp. Gen 754 (1977). Sales of excess or surplus property are governed by 40 U.S.C. § 485 (1976). This section provides in subsection (a):

"All proceeds under this subchapter from any transfer of excess property to a Federal agency for its use, or from any sale, lease, or other disposition of surplus property; shall be covered into the Treasury as miscellaneous receipts, except as provided in subsections (b), (c), (d), and (e) of this section."

Accordingly, unless one of the exceptions applies to the contemplated sale, the proceeds must be treated as miscellaneous receipts.

The only exception that arguably applies to the circumstances presented by the Assistant Secretary is subsection (c) which provides:

"Where the property transferred or disposed of was acquired by the use of funds either not appropriated from the general fund of the Treasury or appropriated therefrom but by law reimbursable from assessment, tax, or other revenue or receipts, then the net proceeds of the disposition or transfer shall be credited to the reimbursable fund or appropriation or paid to the Federal agency which determined such property to be excess * * *."
(Emphasis added.)

The last question then becomes whether the authority of 2(f) of the 1973 Act can satisfy the exception contained in subsection (c). As we read Interior's authority, funds resulting from the sale of the gold and silver could be used by Interior for program functions if the sales were of a commemorative nature as provided in section 4(a)(4) of the 1973 Act. The sale contemplated by Interior is not of commemorative materials authorized by section 4(a)(4) of the 1973 Act and accordingly does not satisfy the authority to expend proceeds which is conditioned on the proceeds having been received "* * * in furtherance of the purposes of this Act * * *." (Section 2(f) of the 1973 Act.) Since this is the most straightforward reading of Interior's authority and we have found no indication that Congress had any other intent, there is no basis upon which to apply the exception contained in

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40 U.S.C. § 485(c) to the contemplated sale unless the metals were not acquired with appropriated funds. However, that does not appear to be the case in this instance. Accordingly, since the medals have been melted down, a sale of the metal itself will be merely the disposal of excess property to which 40 U.S.C. § 485(a) applies. Under this subsection, the proceeds of the sale of the gold and silver must be treated as miscellaneous receipts, not available for obligation by the Interior for authorized bicentennial activities or claims.

Milton J. Aroslaw

Acting Comptroller General
of the United States