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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON 25

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B-116731

NOV 4 1953

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The Honorable

The Secretary of the Interior

My dear Mr. Secretary:

Further reference is made to letter of August 19, 1953, from the Administrative Assistant Secretary of the Interior, in which a decision is requested as to certain questions arising out of the application of the Federal Property and Administrative Services Act, as amended, on the Department's operations under the Helium Act of March 3, 1925, as amended, 50 U.S.C. 161-166, and on the effect of a proposed revision of section 1(d) of the latter act.

Prior to the amendment of section 1(d) of the Helium Act by section 3(13) of the act of October 31, 1951, 65 Stat. 708, the proceeds of the disposition of byproducts of helium production were deposited in the special helium production fund established by section 3(c) of the act. Since enactment of section 3(13) of the 1951 act—which struck out the specific authority in the Helium Act to dispose of such byproducts—they have been disposed under the Federal Property and Administrative Services Act, as amended. The letter requests a decision as to whether the proceeds of the disposition of byproducts of helium operations, the costs of production of which are borne by the special helium production fund, may be deposited to that fund under section 204(b)

of the Federal Property and Administrative Services Act or are required to be deposited as a miscellaneous receipt of the Treasury.

Section 204(b) of the Federal Property and Administrative Services Act, 40 U.S.C. 485(b), provides as follows:

"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: * * *"

Since the fund established by section 3 of the Helium Act appears to be a reimbursable account within the meaning of section 204(b) of the Federal Property and Administrative Services Act, as amended, the proceeds of the disposition of the byproducts of the helium operations may be credited to the special helium production fund. Question 1 is answered accordingly.

The letter of the Administrative Assistant Secretary also refers to Office letter dated May 11, 1953, B-114021, to the Chairman, Committee on Government Operations, United States Senate, commenting upon a draft of proposed legislation to restore to the Department of the Interior certain authority which was deleted by section 3(13) of the act of October 31, 1951. In the said letter, consideration was suggested to the enactment of certain language in lieu of that deleted by that act. Such language was designed to clarify the respective disposal authorities of the Secretary of the Interior and the General Services Administration in the matter. It is stated in the Administrative Assistant Secretary's letter that the language suggested was the subject

of conferences between representatives of your department and of this Office and that it was tentatively agreed the matter would be considerably clarified if section 1(d) of the Helium Act was amended to read as follows:

"To dispose, by lease or sale, of property, including wells, lands, or interests therein, oil, gas, and byproducts of helium operations, except that property determined by the Secretary of the Interior to be 'excess' within the meaning of sec. 3(e) of the Federal Property and Administrative Services Act, as amended, 40 U.S.C., sec. 472(e), shall be disposed of in accordance with the provisions of that Act; and to issue leases to the surface of lands or structures thereon for grazing or other purposes when the same may be done without interfering with the production of helium."

The letter states that this tentative language appears adequate if the property determined to be "excess" does not include property, the disposition of which is necessary to accomplish the Helium Act; and, (b) if the language would permit your Department to perform certain types of action, specifically set forth therein, stated to be necessary in carrying out its responsibilities under the Helium Act and to deposit any proceeds from such activities to the credit of the special helium production fund.

The language tentatively agreed upon would appear to leave to the Secretary of the Interior the determination of what property should be considered excess to the helium production program and it is the view of this Office that the word "excess" therein would not include property the disposition of which is necessary to accomplish the purposes of the Helium Act. Also, it is the view of this Office that such language would enable the accomplishment of the specific actions referred to in the letter and, when considered in connection with section 3 of the Helium Act, would permit the proceeds from such operations to be deposited to

the credit of the special helium production fund.

In view of the interests of the General Services Administration in the matter, the views of that agency were requested as explained in Office letter dated September 10, 1953, B-116731, to you. A copy of the report of that agency concurring generally with the views herein expressed is attached for your information.

Sincerely yours,

FRANK H. WEITZEL

Acting Comptroller General
of the United States

Enclosure