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DECISION

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

*Addresser - Deposit
Per DLG*

*of Pay Telephone Commissions From
Federal Prisons*

FILE: B-193037

DATE: January 15, 1980

MATTER OF: Disposition of Commissions from Pay Telephones
at Federal Prisons

DIGEST:

Commissions received by the Bureau of Prisons, based on collections from pay telephones provided for the exclusive use of inmates at penal and correctional institutions of the Bureau must be deposited into the general fund of the Treasury as miscellaneous receipts. No substantial outlay from Bureau appropriations is made for installation and provisions of pay telephone service. Therefore, 18 U.S.C. 4011, providing an exception to 31 U.S.C. 484, is not applicable.

AG-COO056

DLG 03324

~~*AG-COO056*~~

This decision is in response to a request for an opinion from the Assistant Attorney General for Administration (AAGA), Department of Justice, on whether commissions received from telephone companies based on their receipts from pay telephones provided for the exclusive use of inmates at institutions of the Bureau of Prisons (Bureau) must continue to be deposited in the miscellaneous receipts account of the United States Treasury (Treasury), or whether they may be used by the Bureau for any of the following alternative dispositions:

- (1) For deposit in the various prison Inmate Welfare Funds;
- (2) For credit against Bureau telephone bills, to offset maintenance and operating costs incurred in providing telephones for inmates; or
- (3) For reimbursement to Bureau appropriations for the care and well-being of prisoners.

For the reasons discussed below, we believe that the Bureau must continue to deposit the commissions into the miscellaneous receipts account of the Treasury. The Bureau has arranged for the provision of telephone services to inmates pursuant to its general responsibility to provide suitable quarters and to provide for the care and subsistence of all inmates in Federal penal and correctional institutions, 18 U.S.C. §§ 4001, 4042 (1976). Bureau Policy Statement 7300.79A (August 4, 1978), setting forth telephone regulations for inmates, states that "Constructive, wholesome contact

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with the community, particularly with family members, is a valuable tool in the overall correctional process," and provides that "Ordinarily, an inmate shall make collect calls or, where pay telephones are available, shall assume the cost of all calls."

The pay telephones are designated for local calls only. Inmates pay for their own calls at the same rate as with any other pay telephone. The Bureau does not pay a service charge to the telephone company for the installation or use of the pay telephones. Commissions are paid to the Bureau by the telephone company, based on receipts from pay telephone calls.

Bureau expenses for telephone services arise from the installation and maintenance within each institution of lines which connect with the pay phones and which also connect with separate phones that provide inmates with long distance telephone service. There are additional costs associated with the provision of long distance telephone service (such as maintenance of a switchboard, a monthly service charge, administrative expenses etc.) which are paid from Bureau appropriations. However, no commissions are paid by the telephone company for long distance calls and it is therefore not appropriate to consider the local pay phone commissions as reimbursements for expenses incurred in providing long distance service.

Where monies are paid to a Government agency or department for the use of the United States, the disposition of such monies -- from whatever source they are received -- is governed by 31 U.S.C. § 484 (1976), which provides, in essence, that such receipts shall be paid into the United States Treasury as miscellaneous receipts, with an exception not relevant here.

The applicability of this statute to commissions from pay telephones in public buildings has been considered in the past. Since such commissions are received "in return for a privilege incident to the operation of a public building," the funds must be deposited "into the general fund of the Treasury as miscellaneous receipts, unless otherwise specifically provided by law." 14 Comp. Gen. 203, 204 (1934); 5 id. 354 (1925). Accord, 44 id. 449 (1965); 23 id. 873, 874 (1944).

In his letter to us, the AAGA recognized the general rule but suggests that an exception may exist for the particular commissions at issue here:

"In the case of the Bureau of Prisons, the operation of pay phone stations for inmates is an integral part of the Bureau's mission.* * * It is the position of the Attorney General that providing telephone service to inmates is a bonafide responsibility and function of the Bureau of Prisons in accordance with 18 U.S.C. 4001."

Our decision at 44 Comp. Gen. 449, supra, enunciated an exception to the general rule in terms similar to this but that case is easily distinguished. The Bureau of Old Age and Survivors Insurance, a division of the Department of Health, Education, and Welfare, occupied a building, the construction of which was financed solely with monies derived from a trust fund. The cost of operating the building, including electricity for lighting the pay telephone stations and maintenance costs, was also being financed by trust fund monies. At issue was whether the pay telephone commissions could be deposited to the credit of the trust fund. We stated:

"The test as to whether such commissions may be otherwise deposited [i.e. not in miscellaneous receipts] is * * * whether the operation of telephone pay stations may be considered as an activity prescribed by statute for the agency involved." 44 Comp. Gen. at 450.

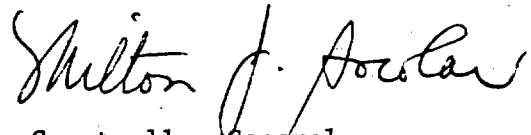
This test, however, must be read in light of the fact that the expenses were financed by a trust fund which, by virtue of its organic legislation, was authorized to retain revenues arising from its prescribed statutory activities. Similarly, in 14 Comp. Gen. 203, supra, the argument for retaining the telephone commissions was that they were postal revenues which the Post Office Department was authorized by law to retain. The same test does not apply when the agency does not operate on a trust or revolving fund basis and lacks any other authority to retain receipts from its operations. Hence, even if operation of pay telephones was considered an activity prescribed by statute for the Bureau, the commissions could not be deposited into Bureau appropriations since we are not aware of any provision in the Bureau's authorizing legislation that permits it to credit to its appropriation revenues resulting from such services for inmates.

We are aware that section 4011 of title 18, United States Code, allows deposit to the credit of the Bureau's appropriation of "[c]ollections in cash for meals, laundry, barber service, uniform equipment, and other items for which payment is made originally from appropriations* * *." However, this covers reimbursements for outlays by the Bureau. As noted earlier, most of the expenses paid from Bureau appropriations were incurred for provision of long distance telephone services on separate phones. The costs for the pay phone service, according to informal advice from the Bureau, consists of bringing trunk lines (which the telephone company has brought to the institution) inside the institution walls, after which the telephone company completes all the hookups at no charge to the Government. Therefore, the outlays are negligible and the commissions in question should not

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be considered to be reimbursements but rather as fees for the privilege of installing a profitable device on Government property.

* We conclude that commissions received by the Bureau from telephone companies based on inmate payments for pay telephone calls must continue to be deposited into the general fund of the Treasury as miscellaneous receipts.



For the Comptroller General
of the United States