



Decision

AF

Matter of: Commission on the Bicentennial of the United States
Constitution--Use of Proceeds of Licenses and Sales

File: B-228777

Date: August 26, 1988

DIGESTS

1. The Commission on the Bicentennial of the United States Constitution (Commission) has statutory authority to retain and spend commercial licensing revenues but the legislative language does not include revenues from sales of publications prepared by the Commission with appropriated funds. The Commission must deposit sales revenues in the Treasury as miscellaneous receipts. 31 U.S.C. § 3302(a).

2. The Commission on the Bicentennial of the United States Constitution (Commission) may spend commercial licensing revenues for authorized Commission purposes. However, such revenues are considered to be appropriated funds and are subject to the various restrictions and limitations applicable to appropriated funds.

DECISION

The General Counsel of the Commission on the Bicentennial of the United States Constitution (Commission) has requested our decision on the legality of the Commission's proposed use of funds derived from the licensing of the Commission's logo and from sales of publications bearing that logo. As explained in more detail below, we conclude that the Commission has no authority to retain the proceeds from the sale of publications directly to the public and that such proceeds must be deposited into the Treasury as miscellaneous receipts. However, the Commission is authorized by its statute to retain and expend proceeds from the commercial licensing of its logo for authorized Commission purposes, subject to the same restrictions and limitations applicable to the use of all appropriated funds.

BACKGROUND

Public Law 98-101, ¹⁹⁷ Stat. 719 (the Act), established the Commission as a government entity "to promote and coordinate

Sept 29, 1982

100 Stat. 3063

activities to commemorate the bicentennial of the Consti-
tution." Sec. 3, 97 Stat. 719. The Act authorized funding
for the Commission from two sources: appropriations and
private donations. Secs. 5(b)(1) and (8), 97 Stat. 721 and
723. On October 27, 1986, Public Law 99-549/amended
subsection 5(j) of the Act to provide an additional source
of funding for the Commission by authorizing the Commission
to license the use of its bicentennial logo and to charge a
fee therefor, as follows:

"(2) The Commission may, in accordance with rules
and regulations which the Commission shall
prescribe, authorize the manufacture, repro-
duction, use, sale, or distribution of the
Bicentennial logo. . . . The purpose of the
Commission in authorizing use of the logo shall
not be primarily or exclusively to raise funds.

.

"(3) Rules and regulations referred to in
paragraph (2) shall include provisions under
which--

"(A) fees may be charged for any authorization
under this subsection (including circumstances
under which any such fee may be waived);

.

"(5) Amounts charged under paragraph (3)(A) shall
be available to the Commission."

In addition, the Commission has itself undertaken the
production of bicentennial calendars and booklets about the
Constitution, each carrying the Commission's logo.
According to the General Counsel's submission, it used its
appropriated funds for the writing and printing of these
materials. These items were then sold directly to the
public, bringing in sales proceeds, which, we are told in
the Commission's submission, are growing in volume.

ANALYSIS

The General Counsel of the Commission has asked the
following questions, which we will answer in the order
presented:

1. Can the Commission use these funds [funds
earned by licensing the Commission's logo, or from
direct sales of publications and other products
prepared by the Commission] for the purchase of

additional services or goods designed to help the Commission carry out its statutory mission "to promote and coordinate activities to commemorate the bicentennial of the Constitution?"

Answer: Yes, for funds derived from licensing its logo, but no, for funds received from direct sales of its publications and other products prepared with appropriated funds.

a. Licensing revenues

The Congress has authorized the Commission to license commercial or nonprofit organizations or persons to manufacture, reproduce, use, sell, or distribute the Bicentennial logo, and to charge a fee, in its discretion, for such use. Amounts derived from these fees are made available to the Commission by subsection 5(j)(5) of the Act, presumably to carry out its statutory mission.

b. Direct sales revenues

There is no specific mention in the Act of the production and sale of calendars, booklets, and other publications providing information relating to the Constitution or its bicentennial celebration. Nevertheless, we do not question the Commission's authority to prepare and disseminate these materials in view of the broadly stated mission of the Commission in section 3 of the Act. Moreover, there is authority in 31 U.S.C. § 9701 for government agencies to charge nongovernment recipients for "each service or thing of value provided."

However, 31 U.S.C. § 9701¹ does not authorize an agency to retain such proceeds. Further, subsection 5(j)(5) makes available to the Commission only the funds derived from its licensing fees. Therefore, in the absence of any other statutory authority to retain the sales proceeds, the Commission is required by 31 U.S.C. § 3302 to deposit promptly all sales revenues in the Treasury as miscellaneous receipts. These proceeds are not available to the Commission for any purpose.

2. In carrying out its statutory mission, can the Commission use these funds for payment of authorized Commission expenses for which appropriated funds could not be used? (An example would be meals and entertainment at Commission meetings, receptions, or related functions.)

Answer: No. As stated above, the funds received from direct sales of publications, calendars, etc., may not be retained for any use. Moreover, the fees derived from

licensing the Bicentennial logos are appropriated funds and are therefore subject to all the restrictions and limitations applicable to other appropriated funds.

We have long held that statutes which authorize the collection of fees and their deposit into a particular fund, and which make the fund available for expenditure for a specified purpose, constitute a continuing or permanent appropriation; that is, the money is available for obligation or expenditure without further action of the Congress. See, for example, B-193573, January 8, 1979, in which we held that toll charges collected by the Saint Lawrence Seaway Development Corporation were appropriated funds. In affirming this holding on December 19, 1979, we stated:

"[A]ny 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."

With respect to the example posed above, federal agencies are generally prohibited from using appropriated funds for entertainment expenses except when specifically authorized by statute. See, e.g., 43 Comp. Gen. 305 (1963). Since the Commission has no such specific authority, it may not use its licensing revenues for entertainment expenses.

3. Is there any difference in permitted uses between (a) those monies collected by the Commission as license fees or royalties, and (b) those funds paid to the Commission for purchase of goods printed or manufactured for sale by the Commission with the use of appropriated funds? (For example, Bicentennial calendars and Bicentennial Constitutions.)

As discussed earlier, the Commission does not have authority to retain proceeds from the sale of products to the public. These proceeds must be deposited in the Treasury as miscellaneous receipts. The Commission may retain licensing revenues and may spend these revenues, subject to the same restrictions that apply to the use of other appropriated funds.

Milton J. Foster

Comptroller General
of the United States