

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

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FILE: B-114877

DATE: NOV 11 1975

MATTER OF: Availability of Appropriations For Grants to Eisenhower College

- DIGEST:
1. 1976 appropriation for \$1 million payment to Eisenhower College (and Rayburn Library) based on percentages of proceeds from sale of \$1 proof coins bearing Eisenhower likeness "as provided by Public Law 93-441" must be construed as having meaningful effect. Thus, since only proceeds during availability period of this appropriation will be from sales of \$1 proof coins bearing Bicentennial design on reverse side, rather than Apollo 11 design originally provided for by Pub. L. No. 93-441, such proceeds may be used for payments to College and Library pursuant to 1976 appropriation.
 2. Appropriation for payments to Eisenhower College, contained in Supplemental Appropriation Act, 1975, does not provide for availability beyond fiscal year. Section 201 of Act provides that no appropriation contained therein shall remain available for obligation beyond fiscal year unless expressly so provided. Appropriation in Act for Eisenhower College is therefore not available for obligation in fiscal year 1976.

The General Counsel of the Department of the Treasury has requested our decision as to whether certain funds appropriated to the Bureau of Government Financial Operations are available to make payments to Eisenhower College and the Sam Rayburn Library as grants under the provisions of Pub. L. No. 93-441, 88 Stat. 1261, October 11, 1974. The circumstances giving rise to the situation, and the question presented, are stated by the General Counsel as follows:

"Section 201 of the Bank Holding Company Act Amendments of 1970, approved December 31, 1970 (Public Law 91-607), added a subsection (d) to section 101 of the Coinage Act of 1965 (31 U.S.C. 391) which authorized the Secretary of the Treasury to mint and issue not more than 150 million silver-clad dollars. Section 203 of that Act required that the dollars initially minted under section 101 of the

Coinage Act of 1965 bear the likeness of the late President of the United States, Dwight David Eisenhower, and on the other side, a design which is emblematic of the symbolic eagle of the Apollo 11 landing on the moon.

"Section 4 of the Act of October 18, 1973 (Public Law 93-127) required that, notwithstanding any other provision of law with respect to the design of coins, the Secretary of the Treasury mint prior to July 4, 1975, for issuance on and after such date, 45 million silver-clad alloy coins authorized under section 101(a) of the Coinage Act of 1965 commemorating the Bicentennial of the American Revolution. The section provided that the coins were to be of such design, such denomination, and contain such quantities of other metals as the Secretary determined appropriate. In addition, the section authorized the Secretary to issue not more than an additional 15 million of such coins if he determined such coins are needed to meet the public demand; and provided that the coins minted under the section be distributed by the Secretary only as proof or uncirculated coins at such prices as he determined. Section 5 of the Act of December 26, 1974 (Public Law 93-541) extended the expiration date for minting such coins to July 1, 1976.

"Section 2 of the Act of October 11, 1974 (Public Law 93-441) authorized the Secretary of the Treasury to take one-tenth of all the moneys derived from the sale of \$1 proof coins minted and issued under section 101(d) of the Coinage Act of 1965 (31 U.S.C. 391(d)) and section 203 of the Bank Holding Company Act Amendments of 1970 (31 U.S.C. 324(b)) which bear the likeness of the late President of the United States, Dwight David Eisenhower, and transfer such amount of moneys to Eisenhower College, Seneca Falls, New York. The Act authorized appropriations not to exceed \$10 million and provided that 10 percent of the total moneys received by Eisenhower College shall be transferred to the Samuel Rayburn Library.

"The Supplemental Appropriation Act, 1975, approved December 27, 1974 (Public Law 93-554), appropriated \$9 million to the Bureau of Government Financial Operations, Department of the Treasury, for 'payments to Eisenhower College as provided by Public Law 93-441.' The Treasury,

Postal Service, and General Government Appropriation Act, 1976, approved August 9, 1975 (Public Law 94-91), appropriated an additional \$1 million to the Bureau of Government Financial Operations for 'payments to Eisenhower College as provided by Public Law 93-441.' This appropriation brought the total appropriation for grants up to the \$10 million ceiling established by the enabling statute.

"Pursuant to section 101(d) of the Coinage Act of 1965 and section 203 of the Bank Holding Company Act Amendments of 1970, supra, proof silver-clad dollars bearing the Eisenhower-Apollo 11 design were minted by the Bureau of the Mint between 1971 and 1974. The dollars were sold in sets consisting of one coin for \$10 a set. As of December 27, 1974, the date of the approval of the Supplemental Appropriation Act, 1975, supra, the proceeds from the sales of the Eisenhower-Apollo 11 proof silver dollar sets totaled \$83,330,520. The Department issued checks in the amount of \$7,499,747 to Eisenhower College and \$833,305 to the Rayburn Library, for a total of \$8,333,052. This was the equivalent of one-tenth of the proceeds from the sale of the dollars as authorized by Public Law 93-441.

"Prior to the end of 1974, the minting of the Eisenhower-Apollo 11 silver-clad dollar was discontinued and silver-clad proof coins were issued under the Bicentennial coin program authorized by section 4 of the Act of October 18, 1973, supra. Under the program, Bicentennial proof silver-clad coins are sold in sets of three coins, consisting of a dollar, a half-dollar, and a quarter dollar. The dollar bears former President Eisenhower's portrait on one side and a Bicentennial design on the reverse.

"As of September 30, 1975, the Bureau of the Mint had sold approximately 2.4 million three-coin Bicentennial silver-clad proof sets for \$12 dollars each. No payments have been made thus far to Eisenhower College and the Rayburn Library on the basis of the proceeds derived from the sale of these Bicentennial proof sets. Approximately \$1.66 million remains unexpended under the Supplemental Appropriation Act, 1975, and the Treasury, Postal Service,

and General Government Appropriation Act, 1976, of the appropriation made to the Bureau of Financial Operations for grants to Eisenhower College pursuant to Public Law 93-441.

"The issue presented is whether or not the proceeds from the sale of Bicentennial proof silver-clad coin sets may be used to determine the amount of grants to be made to Eisenhower College and the Rayburn Library from the balance of the unexpended appropriations. Tenable legal arguments can be made on both sides of the question."

The result, if we answer the question in the affirmative as the General Counsel urges, is that the Department would use proceeds from sales of silver-clad proof dollars, bearing the likeness of President Eisenhower and a Bicentennial design, which were manufactured using silver originally set aside for the purpose of making Eisenhower-Apollo 11 silver-clad proof dollars (31 U.S.C. § 324g (Supp. III, 1973)) as a measure of grants to be made to Eisenhower College and the Rayburn Library.

Before we address the substantive question raised, we note that although the General Counsel's letter assumes the availability of two distinct appropriations, it appears that the balance of one of them is no longer available for payment to the College and the Library. Nine million dollars was appropriated for payments to Eisenhower College in the Supplemental Appropriation Act, 1975, Pub. L. No. 93-554, of which \$8,333,052, has been expended by the Department, leaving a balance of \$666,948. In addition, \$1 million was appropriated for the same purpose in the Treasury, Postal Service, and General Government Appropriations Act, 1976, Pub. L. No. 94-91. Section 201 of the Supplemental Appropriation Act, 1975, 88 Stat. 1783, provides that no part of any appropriation contained therein shall remain available for obligation beyond the current fiscal year, i.e., fiscal year 1975, unless expressly so provided. Since there is no such express provision with respect to the appropriation for payments to Eisenhower College, only the \$1 million appropriated for fiscal year 1976 is now available for obligation.

By its terms, the fiscal year 1976 appropriation is available for "payments to Eisenhower College, as provided by Public Law 93-441." That law provides for such payments based on the sale of \$1 proof coins bearing the likeness of the late President Eisenhower, minted and issued under section 101(d) of the Coinage Act of 1965, as amended, 31 U.S.C. § 391(d) (1970), and section 203 of the Bank

Holding Company Act Amendments of 1970, 31 U.S.C. § 324b (1970). The latter section states that the coins initially minted are to bear the likeness of President Eisenhower on one side and the Apollo 11 eagle design on the other. Since the reverse side of \$1 proof coins now being sold carries the Bicentennial design, rather than the Apollo 11 design, it could well be argued that the requirements of section 203 are not fully met. The General Counsel of Treasury also refers to some indications in the legislative histories of several statutes that "Bicentennial dollar" proceeds would not qualify for payments to Eisenhower College:

"* * * the legislative history of Public Law 93-441 shows that the report of the House Committee on Banking and Currency on the proposed legislation (H. Rept. 93-1267) and several congressmen during debate on the measure (120 Cong. Rec. H 9540-50) referred to proceeds derived from proof silver dollars selling for \$10 each. The Eisenhower-Apollo 11 silver proof dollars were the only coins being sold at that price. Moreover, the legislative history of H.R. 16900, the Supplemental Appropriation Act, 1975, is pertinent. The appropriation for Eisenhower College contained in that Act was offered as an amendment on the floor of the Senate. The co-sponsor of the amendment stated that for the period of 1975-76 the coin [Eisenhower proof dollar] will be sold only as a part of the Bicentennial coin package, with no receipts from the sale of these coins to go to the College and that after 1976 the coin will again go on the market and the proceeds will then be available to be funneled into the College. The co-sponsor further stated that it should be remembered that even though Eisenhower College cannot receive the proceeds from the sale of the Bicentennial coin, the Treasury Department does still receive the profits (120 Cong. Rec. S 19716). Thus, it could be concluded that there is no legal authority for the transfer of the remainder of the grants until the Department resumes the minting and sale of the original Eisenhower-Apollo 11 silver-clad proof dollar."

Nevertheless, the fact remains that a fiscal year 1976 appropriation of \$1 million was made for grants to Eisenhower College. While the legislative history of this particular appropriation does not expressly address the instant question, it is a fundamental principle that statutory provisions must be construed, if at all possible, so as to give them meaningful effect. See, *e.g.*, 2A Sutherland, Statutes and Statutory Construction, § 45.12 (4th ed., 1973). For the reasons

stated hereafter, we believe that the only meaningful construction of the instant appropriation provision is to permit grants to the College thereunder from the proceeds of Bicentennial \$1 proof coin sales.

As noted previously, minting of the "Eisenhower-Apollo 11" dollar proof coin was discontinued prior to the end of 1974. Thus the General Counsel observes with respect to testimony on the 1976 appropriation request:

"* * * The Commissioner, Bureau of Government Financial Operations, stated that the Bureau of the Mint estimated that additional sales will exceed \$10 million through the end of fiscal year 1976 and that based on this estimate, an appropriation of \$1 million will be needed in fiscal year 1976 to fulfill the requirements of Public Law 93-441 (Hearings before House Subcommittee on Appropriations on Fiscal Year 1976 Treasury Appropriations, 94th Cong., Part I, p. 157; Hearings before Senate Subcommittee on Appropriations on H.R. 8597, 94th Cong., Part I, p. 10). At that time, no Eisenhower-Apollo 11 coins were being minted so that the additional sales referred to in the testimony could have referred only to Bicentennial coin sets. Consequently, the Treasury believes it is consistent with the most recent legislative history to hold that Congress had the understanding because of that testimony when it passed the fiscal year 1976 appropriation that the funds could be expended based on sales of the Bicentennial coin sets."

We also note that section 1 of Pub. L. No. 93-127, 31 U.S.C. § 324d (Supp. III, 1973), requires that the reverse side of all dollar, half-dollar, and quarter-dollar coins minted for issue after July 4, 1975, and until such time as the Secretary of the Treasury determines, shall bear the Bicentennial design. Thus it appears that for so long as Bicentennial coins are being minted, renewed minting of the Eisenhower-Apollo 11 dollar is flatly preempted.

Furthermore, pursuant to section 4 of Pub. L. No. 93-127, 31 U.S.C. § 324g, supra, much of the silver which had been set aside for production of the Eisenhower-Apollo 11 dollar proof coin was made available for production of at least 45 million, and possibly up to 60 million, Bicentennial coin sets. See 119 Cong. Rec. 33041 (1973) (statement of Representative Sullivan). There is some indication in connection with passage of the Supplemental Appropriations Act, 1975, that issuance

of the Eisenhower-Apollo 11 dollar would resume after issuance of the Bicentennial sets. However, the diversion of silver under section 4 of Pub. L. No. 93-127 creates the possibility that production of the Eisenhower-Apollo 11 coins could not in fact be resumed without an additional congressional allocation of silver.

In view of the foregoing, it appears virtually inconceivable that the 1976 appropriation for the College--which is available only until September 30, 1976*/--could be based on any source other than proceeds from sales of Bicentennial coin sets and still have meaningful effect. That is, the Bicentennial \$1 proof coin clearly appears to be the only \$1 proof coin bearing the likeness of the late President Eisenhower which will be sold--or which could be sold--during the availability period of the 1976 appropriation.

Finally, we might point out that, although the legislative histories of prior statutes suggest a distinction between Eisenhower-Apollo 11 dollar proofs and Bicentennial dollar proofs, the basic congressional intent and objective underlying the instant appropriation is, necessarily, to allow a \$1 million grant to the College (less the Rayburn Library's share) for 1976. In our view, this basic purpose must be considered to preempt expressions of intent concerning the narrower question of the particular sales proceeds to be used as a measure of the grant, to the extent that the latter would conflict with, and effectively defeat, the basic purpose.

Accordingly, we would not object, under these circumstances, if the Department, as proposed, were to allocate a portion of the proceeds from the sale of Bicentennial silver-clad proof coin sets according to a ratio based on the face value of the coins in the sets, and to use the amount so allocated to determine the amount of grants to Eisenhower College and the Rayburn Library to be made from the fiscal year 1976 appropriation, up to the \$1 million total.

As already stated, the unobligated balance of the amount appropriated in fiscal year 1975 is no longer available for such payments.

*/ As in the case of the prior year appropriation, the 1976 appropriation for Eisenhower College made by Pub. L. No. 94-91, 89 Stat. 442, does not expressly state a separate availability period. Therefore, under applicable general provisions, it is available only during fiscal year 1976 and the fiscal year transition period ending September 30, 1976. See Pub. L. No. 94-91, § 504, 89 Stat. 457; Pub. L. No. 93-554, § 204, 88 Stat. 1784.

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It is noted in this regard that the specified percentages from all sales of the original Eisenhower-Apollo 11 dollars which had been made prior to their discontinuance were paid over to the College (and the Rayburn Library) pursuant to the 1975 appropriation. No payments based on Bicentennial dollar sales could have been made under the 1975 appropriation since such sales apparently did not commence until after the close of fiscal year 1975.

(SIGNED) **ELMER B. STAATS**

Comptroller General
of the United States