



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON 25

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DIGEST - NO CIRCULATION

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Honorable Spessard L. Holland
United States Senate

Dear Senator Holland:

Your letter of August 4, 1955, acknowledged August 5 and 23, transmits a letter to you dated August 3, with enclosures, from Mr. Howard C. Adams, Vice President of the Pacific Far East Line, Inc. You request our views on a proposal set out in Mr. Adams' letter regarding the chartering of vessels in the reserve fleet and the use of the "Vessel Operations Revolving Fund, Maritime Activities" for payment of the expenses incident to putting such vessels in class for charter. Particularly, you request our views as to whether the receipts from the payments made by the shipping lines, including the charter fees, may be credited to such fund so as to cover the costs for these vessels which may be incurred within that fund in connection with both their withdrawal from and restoration to the reserve fleet.

Mr. Adams' proposal deals with obtaining for his company and other transpacific steamship operators approximately 10 to 12 Liberty vessels from the national defense reserve fleet in order to compete with foreign-flag vessels in the movement of more than 750,000 tons of iron ore, expected to be transported from the West Coast to Japan during the next two years.

He states that the cost to the Government for putting the vessels in seaworthy condition for bareboat charter hire for such cargo movement would average approximately \$150,000 per vessel; and that the cost of breakout and lay-up of each vessel, which cost would be borne by the operators, would approximate \$35,000. The approximate basis charter hire rate for a Liberty ship and the contingent charter hire to be paid by the charterer to the Government are set forth in his letter.

The Maritime Administration, it is said, expresses the view that the vessels are available for charter, subject to compliance with the provisions of section 5(e)(1) of the Merchant Ship Sales Act of 1946, as amended, as added by section 3 of the act of June 30, 1950, 64 Stat. 305, 50 U. S. C. App. 1738(e), but that the General Accounting Office has taken the position that the act establishing

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the Vessel Operations Revolving Fund limits expenditures therefrom to national emergency matters, as distinguished from normal peacetime commercial activities.

The primary question presented by Mr. Adams' proposal is whether the "Vessel Operations Revolving Fund" is legally available for expenditures involved in putting national defense reserve fleet vessels in class for bareboat charter to engage in the normal commercial transportation of transpacific cargo. The fund was established by the Third Supplemental Appropriation Act, 1951, 65 Stat. 52, 59, the pertinent provisions of which read as follows:

"For working capital for the 'Vessel Operations Revolving Fund', which is hereby created for the purpose of carrying out vessel operating functions of the Secretary of Commerce, including charter, operation, maintenance, repair, reconditioning, and betterment of merchant vessels under the jurisdiction of the Secretary of Commerce, \$20,000,000, to remain available until expended.

"Notwithstanding any other provision of law, rates for shipping services rendered under said Fund shall be prescribed by the Secretary of Commerce and the Fund shall be credited with all receipts from vessel operating activities conducted thereunder: * * * (Underlining supplied.)

By letters of October 22, 1951, B-105693, and October 20, 1952, B-112395, to the Secretary of Commerce, copies attached, this Office in effect considered the question involved in the present matter. In view of the provisions of the act establishing the fund and its legislative history, it was there held that receipts from charters properly may be credited to the fund only if the chartered vessel is being operated in an activity conducted under the program for the financing of which the fund was established. That is to say, a fund activity relating to the shipment of supplies, materials, and other items resulting from the national defense and other programs by established private operators acting as general agents of the Administration, as distinguished from a charter hire not connected with such activities, such as a charter for normal peacetime commercial purposes. As a corollary to that conclusion it necessarily follows that expenditures authorized by the fund for vessel charter, operation, etc., may not be regarded here in any different light and, therefore, are subject to the same limitation.

The effect of the contention in Mr. Adams' proposal, reported to be acquiesced in by the Maritime Administration, is that the

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Vessel Operations Revolving Fund was established also for the purposes of the cited section 5(e)(1) of the Merchant Ship Sales Act of 1946, as amended. With that view we cannot agree. That law is designed to authorize the Secretary of Commerce, subject to the specific conditions and procedures provided therein, to make Government-owned cargo vessels available for bareboat use in either foreign or domestic normal commercial trade. The scope and extent of such law is aptly summarized in the following statement appearing on page 5 of Senate Report No. 1783, 81st Congress on S. 3571 which became the cited act of June 30, 1950.

"It is therefore provided in the bill (sec. 3) that if after a public hearing the Federal Maritime Board finds that it is in the public interest to charter Government-owned vessels for use in a service not adequately served and privately owned vessels are not available on reasonable conditions and at reasonable rates, the Secretary of Commerce may bare-boat charter war-built cargo vessels for use in that service. The provisions of the Ship Sales Act of 1946 govern the terms and conditions under which such charter can be made." (Undersecoring supplied.)

Concerning the vessels which may be chartered under the provisions of the Merchant Ship Sales Act of 1946, as amended, it is observed that section 12(d) thereof (60 Stat. 50, 50 U. S. C. App. 1745(d)) provides that all moneys received by the Secretary under the act shall be deposited in the Treasury of the United States to the credit of miscellaneous receipts. In view thereof, it seems clear that, even if it were otherwise proper to make expenditures from the fund for putting vessels chartered under the provisions of section 5(e)(1) in class, the crediting of the charter fees and other receipts resulting therefrom to the fund would contravene the specific direction of the Congress as to the disposition of such receipts and, therefore, would be legally improper.

Thus, the action heretofore taken by this Office in regard to the availability of the Vessel Operations Revolving Fund has been on the basis that each of the two acts concerned contemplated the accomplishment of a different bareboat charter program, and that each should be given effect independently of the other. Since the Congress has seen fit to limit the use of the fund to vessels being operated in activities conducted under the program for the financing

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of which the fund was established, we believe that other uses should not be added thereto by construction. Accordingly, we do not feel that Mr. Adams' proposal is legally proper.

Mr. Adams' letter with enclosures is returned herewith as requested.

Sincerely yours,

Frank H. Weitzel

Acting Comptroller General
of the United States

Enclosures--5