



COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON

B-36541

SEP 9 1943

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The Honorable,

The Secretary of the Interior.

My dear Mr. Secretary:

I have your letter of August 20, 1943, requesting decision upon a matter set forth therein as follows:

"The Interior Department Appropriation Act, 1944 (Public Law 133, 78th Cong.), contains the following provision:

"The Bureau of Mines is hereby authorized, during the fiscal year 1944, to sell directly or through any Government agency, including corporations, any metal or mineral product that may be manufactured in pilot plants operated from funds appropriated to the Bureau of Mines, and the proceeds of such sales shall be covered into the Treasury as miscellaneous receipts."

"The Economy Act of 1932 (31 U. S. C. secs. 686, 686b, 686c) provides a procedure for the furnishing of materials and supplies by one department or agency of the Government to another, and for payment by the department or agency receiving the goods. Under this act the funds paid for the materials or supplies furnished are available to the department or agency furnishing them for the replacement thereof.

"Office Instructions No. 1587 of the Treasury Department, Bureau of Accounts, Division of Bookkeeping and Warrants, dated July 12, 1943, established a general fund receipt account for the deposit of funds received from the 'Sale of Metal and Mineral Products of Pilot Plants,' under the provision in the appropriation act above referred to.

"The Bureau of Mines, at the time of the enactment of the appropriation act, was furnishing some metals to various agencies of the Government, under the terms of the Economy Act of 1932. One such transaction is the supplying of electrolytic manganese to the Bureau of the Mint. The funds paid or transferred on such accounts have been credited to the Bureau's appropriation account which bore the cost.

"It is my belief that the provision in the appropriation act has no reference to transactions between departments and agencies of the Government, and was not intended to amend the Economy Act of 1932, or to place any restriction upon its application to the Interior Department and the Bureau of Mines. The phrase 'to sell directly or through any Government agency' apparently contemplates sales to private parties and not transfers between Government agencies.

"This Department would like to be certain that its construction of these provisions coincides with that of the General Accounting Office, and that funds derived from such interdepartmental transactions as those here referred to remain available to the Bureau of Mines under the provisions of the Economy Act of 1932. * * *

The legislative history of the provision of law quoted in your letter shows that it was inserted in the Interior Department Appropriation Act, 1944, approved July 12, 1943, ^{59 Stat. 451, 485} Public Law 133, by an amendment, substantially as it finally became law, introduced on June 18, 1943, on the floor of the Senate while the Interior Department Appropriation Bill for the fiscal year 1944 was under consideration. The comments with respect thereto appear in the Congressional Record (Cong. Rec., 78th Cong., 1st sess., p. 6167) and are as follows:

"Mr. Hayden. Mr. President, valuable quantities of magnesium and other minerals are being produced and it was thought that the Government might as well obtain money for them.

"Mr. McNary. May I ask the Senator, in a word, how does it modify the language of the bill?

"Mr. Hayden. At the present time if the pilot plant produces magnesium the Government can give it to some company to work with, but cannot sell it. This is to authorize sales and to have the money placed in the Treasury.

"Mr. McNary. That is an excellent idea."

It would seem apparent from these statements that the primary purpose of the provision of law in question was to cover, as you

state, "sales to private parties and not transfers between Government agencies," and that it apparently was not contemplated to disturb the procedure of furnishing services or supplies by one agency of the Government to another as authorized by section 601 of the Economy Act of June 30, 1932, 47 Stat. 417, as amended. On the other hand, the statement in your submission that under this law "the funds paid for the materials or supplies furnished are available to the department or agency furnishing them for the replacement thereof" is not strictly accurate. The law as it appears in section 686, Title 31, United States Code, provides as follows:

"(a) Any executive department or independent establishment of the Government, or any bureau or office thereof, if funds are available therefor and if it is determined by the head of such executive department, establishment, bureau, or office to be in the interest of the Government so to do, may place orders with any other such department, establishment, bureau, or office for materials, supplies, equipment, work, or services, of any kind that such requisitioned Federal agency may be in a position to supply or equipped to render, and shall pay promptly by check to such Federal agency as may be requisitioned, upon its written request, either in advance or upon the furnishing or performance thereof, all or part of the estimated or actual cost thereof as determined by such department, establishment, bureau or office as may be requisitioned; but proper adjustments on the basis of the actual cost of the materials, supplies, or equipment furnished, or work or services performed, paid for in advance, shall be made as may be agreed upon by the departments, establishments, bureaus, or offices concerned: Provided, That the War Department, Navy Department, Treasury Department, Civil Aeronautics Administration, and the Maritime Commission may place orders, as provided herein, for materials, supplies, equipment, work, or services, of any kind that any requisitioned Federal agency may be in a position to supply, or to render or to obtain by contract: Provided further, That if such work or services can be as conveniently or more cheaply performed by private agencies such work shall be let by competitive bids to such private agencies. Bills rendered, or requests for advance payments made, pursuant to any such order, shall not be subject to audit or certification in advance of payment.

"(b) Amounts paid as provided in subsection (a) shall be credited, (1) in the case of advance payments, to special working funds, or (2) in the case of payments other than advance payments, to the appropriations or funds against which charges have been made pursuant to any such order, except as hereinafter provided. The Secretary of the Treasury shall establish such special working funds as may be necessary to carry out the provisions of this subsection. Such amounts paid shall be available for expenditure in furnishing the materials, supplies, or equipment, or in performing the work or services, or for the objects specified in such appropriations or funds. Where materials, supplies, or equipment are furnished from stocks on hand, the amounts received in payment therefor shall be credited to appropriations or funds, as may be authorized by other law, or, if not so authorized, so as to be available to replace the materials, supplies, or equipment, except that where the head of any such department, establishment, bureau, or office determines that such replacement is not necessary the amounts paid shall be covered into the Treasury as miscellaneous receipts."

It will be noted that the last sentence under subsection (b) quoted above contemplates that the amounts received in payment for materials or supplies furnished should be available to the procuring agency for replacements only if replacement is required, but if replacement is not necessary the amounts paid should be covered into the Treasury as miscellaneous receipts. In a matter such as you present where the metals and minerals produced by the Bureau of Mines appear to be by-products of the pilot plants operated with funds appropriated primarily for investigation and research work, there would seem to be for determination in each instance by the administrative office, under that provision of law, whether replacement of the metals or minerals furnished another Government agency is or is not required. If such replacement is not necessary no reason is apparent why the funds received for the transfer of the supplies should

not be covered into the Treasury as miscellaneous receipts under the receipt title "Sale of Metal and Mineral Products of Pilot Plants" referred to in your letter.

Subject to the foregoing, the question you submit is answered in the affirmative.

Respectfully,

WILLIAM F. FLEMING
Acting Comptroller General
of the United States.