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B-48722 April 16, 1945

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The Honorable, The Secretary of the Navy.

My dear Mr. Secretary:

There has been considered your letter of March 24,1945, JAG:II::WGJ:L L10-5/NY10, as follows:

"The expense of operation of a transportation system, covering a home-to- work schedule between Civilian Housing Area 3 and the Navy Yard, Pear Harbor, T.H., for the period October 1942 to June 30, 1944, was defrayed from special deposit funds maintained for that purpose by the operating organization of Civilian Housing Area 3, which also collected all revenues from bus fares."

"It has been ascertained that the gross receipts for bus fares for the period involved amounted to $455,694.17 and that the actual expense of operation was $319,890.53, leaving a net profit of $135,803.64, which latter amount has been deposited with the Disbursing Officer, Navy Yard, Pearl Harbor, T.H. for deposit to the credit of Miscellaneous Receipts."

"In order to comply with the requirement of Section 3617, Revised Statutes (31 U.S.C. 484), with respect to the deposit of $319,890.53 into the Treasury as Miscellaneous Receipts, it appears that a charge must first be effected against a Naval appropriation or fund in said amount with a corresponding credit to the special deposit account under the Naval Working Fund. In view of the statutory requirement under which the gross revenues derived from the operation of the transportation system must by deposited to the credit of Miscellaneous Receipts, the Navy Department has under consideration a recommendation that funds available under the Navy Procurement Fund be allotted to the Navy Yard, Pearl Harbor, T.H. to cover the expense of operation of the transportation system which was incurred during the fiscal years 1943, and 1944, and that the activity be directed to effect the necessary adjustment."

"In your decisions to the Secretary of the Navy of March 15, 1944 (23 Comp. Gen. 668), construing the Act of July 23, 1942 (56 Stat. 645), which established the Naval Procurement Fund, it was held (quoting from the syllabi):"

"When provisions in the act of July 3, 1942, authorizing the establishment of the Naval Procurement Fund and the making of advance check payments thereto from naval appropriations, may not be considered as having the effect of removing the restriction of the limited period of availability of naval appropriations placed thereon by the Congress at the time of appropriation and making such

appropriations available until expended upon being advanced to the Naval Procurement Fund -- a revolving fund not subject to fiscal year limitations."

"In the Naval Appropriation Act, 1945, approved June 22, 1944 (Public Law 347-78th Congress), it is provided under the heading 'NAVAL PROCUREMENT FUND' as follows:"

"The Secretary of the Treasury is authorized and directed, prior to July 1, 1944, upon the request of the Secretary of the Navy, to transfer $1,000,000 from the Naval Emergency Fund (17X0300) to the Naval Procurement Fund (Public Law 653, approved July 3, 1942), and advances by check or warrant and reimbursements to the Naval Procurement Fund from naval appropriations may be made on the basis of the estimated cost of a project without further accounting distribution of expenditures to the individual appropriations involved: Provided, That the Naval Procurement Fund shall not be employed beyond the duration of the present wars except to liquidate obligation incurred prior to the termination of such wars."

"Your decision is requested as to the legal availability of the Naval Procurement Fund for the purpose of granting an allotment therefrom in the amount of $319,890.53 to cover the expense of operation of the transportation system, Civilian Housing Area 3, for the fiscal years 1943 and 1944, under the conditions herein stated."

"In the event your decision on this question is in the negative, your further decision is requested as to whether any other Naval appropriation may be considered legally available for this purpose."

Section 3617, Revised Statutes, as carried into the U.S. Code 31 U.S.C. 484, provides:

"The gross amount of all moneys received from whatever source for the use of the United States, except as otherwise provided in section 487 of this title, shall be paid by the officer or agent receiving the same into the Treasury, at as early a day as practicable, without any abatement or deduction on account of salary, fees, costs, charges, expenses, or claim of any description whatever. But nothing herein shall affect any provision relating to the revenues of the Post Office Department."

Under said statute moneys received for the use of the United States are for depositing in the general fund of the Treasury as miscellaneous receipts without deduction for costs or expenses; and, it is only when specifically authorized by law that funds received by any Federal agency may be credited to a working fund or otherwise made available for expenditure. 23 Comp. Gen. 986; 15 ed. 390; 14 id. 923. And, section 2 of the act of December 1, 1942, 56 Stat. 1024, 1025, authorizing the furnishing of transportation services in situations such as here involved requires that the proceeds of fares, etc., be deposited in the Treasury as miscellaneous receipts. Hence, the use of the receipts derived from the operation of the transportation system to cover the expenses incurred in such operation would appear to have been in contravention of said expenses in order to effect a compliance with the statute referred to is, of course, dependent upon the availability of an appropriation or fund for that purpose.

It is observed that section 114 of the Naval Appropriation Act, 1944, approved June 26, 1943, 57 Stat. 216, provides:

"The appropriations for the Naval Establishment for the fiscal year 1944 shall be available for providing transportation of naval and civilian personnel between their domiciles and places of employment as authorized by law * * *."

The authorization by law referred to in the foregoing statute would appear to be that contained in the act approved December 1, 1942, supra. For the furnishing by the Government of adequate transportation facilities to an from their place of employment for personnel attached to or employed by the Navy Department, the War Department, and the Maritime Commission.

Since under the specific authority contained in the act of June 26, 1943, supra, the appropriations for the Naval Establishment for the fiscal year 1944 could have been charged with the operating expenses here considered; and as the failure to do so tended to augment the appropriations made for that purpose (15 Comp. Gen. 390, 392; 16 id. 195), there would appear to be a reasonable basis for the view that such appropriations were properly obligated for the expenses incurred in operating the transportation system during said fiscal year. While nothing appears in the Naval Appropriation Act, 1943, 56 Stat. 53, expressly making available for a similar purpose the appropriations for the fiscal year 1943, yet, having regard for the specific authorization contained in the act of December 1, 1942, supra, for transporting personnel of the Navy Department to and from their places of employment, no objection is perceived, under the circumstances, to charging said appropriations with the operating expenses incurred during the fiscal year 1943. In this connection, it may be stated that such a conclusion does not involve a failure to observe the limited period of availability of the appropriations for the fiscal years 1944 and 1943, referred to, since it is a general rule that the availability of an appropriation relates to the authority to obligate ti and does not necessarily prohibit payment after the available date for obligations incurred during the period of available therefor. See 23 Comp. Gen. 862; id. 82; 20 id. 436; 19 id. 863.

With respect to the proposed use of the funds in the Naval Procurement Fund, the statute establishing said fund (act approved July 3, 1942, 56 Stat. 645, 646, expressly limits its availability in the following terms:

"* * * That no expenditure shall be incurred under the naval procurement fund, which is not properly chargeable to available funds under a naval appropriation and the naval procurement fund shall be promptly reimbursed from the appropriate naval appropriations for all expenditures properly chargeable thereto * * *."

Thus, it is evident -- as was pointed out in the decision in 23 Comp. Gen. 668, cited in your letter -- that the Naval Procurement Fund was established merely as a convenient fund from which expenditures, properly chargeable to available funds under naval appropriations, may be made from moneys appropriated to the fund, but conditioned upon subsequent reimbursement therefor from the applicable naval appropriations. Consequently, there would appear to be no basis for allotment of any moneys presently in the Naval Procurement Fund as a result of the appropriation made by the act of June 22, 1944, 58 Stat. 310, quoted in your letter, to cover the expenses here involved. While there may be room for the view that such allotment from the fund might be made for that purpose, reimbursement therefor to be effected subsequently from the 1944 and 1943 naval appropriations herein above referred to, such a procedure is believed to be of doubtful propriety since it would seem clear that said fund was designed for expenditures in connection with current and future needs and not, as in the instant case, for expenditures relating to transactions long since consummated.

Accordingly, and as hereinbefore indicated, this office will not be required to object to the transfer from the naval appropriations for the fiscal years 1944 and 1943 properly chargeable therewith, of such amounts as will cover the expenses of operation of the transportation system incurred during said fiscal years -- which were paid out of the receipts of operation -- for deposit into the Treasury as miscellaneous receipts.

Respectfully,

(Signed) Frank L. Yates Acting Comptroller General of the United States.