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B-69813 December 8, 1947

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The Honorable, The Secretary of Agriculture

My dear Mr. Secretary:

Reference is made to your letter of September 23, 1947, concerning a problem that has arisen in the administration by the Department of Agriculture of programs to encourage the domestic consumption of agricultural commodities or products, through diversion or increased consumption, pursuant to the provisions of section 32 of the act of August 24, 1935, as amended, 7 U.S.C. 612(c).

It appears that in some cases you have found it inadequate or impractical to arrange for diversions by the direct payment of benefits or indeminities and are considering the adoption of a purchase and sales technique for use in the future. That is to say, instead of paying indeminities to consumers who have consummated approved purchases from growers or producers, the Department will make purchases from growers or producers at price support levels and then sell to consumers at prices which take into consideration indeminty allowances commensurate with the reduced value of the articles for the particular purpose for which they would be used. Since the contemplated procedure would result in an initial charge against funds appropriated annually from customs revenues for program operations for the full cost of the articles, and thus deplete such funds by amounts in excess of indemnity payments, you request a decision as to whether the proceeds of such sales may be returned to the operating funds for reuse. Also, you inquire whether, if the answer to the above questin be in the affirmative, the proceeds of sales from commodities sold after the fiscal year in which they were purchased will be available fr obligation and expenditure during the fiscal year in which the articles are sold, and whether receipts from sales will affect the limitations upon amounts expendable for administrative expenses imposed by section 392 of the act of February 16, 1938, as amended, 7 U.S.C. 1392.

The pertinent language of the above-mentioned section 32, as amended, authorizes the use of funds to--

"* * * (2) encourage the domestic consumption of such commodities or products by diverting them, by the payment of benefits or indeminities or by other means, from the normal channels of trade and commerce or by increasing their utilization through benefits, indemnities, donations or by other means, among persons in low income groups * * *."

Ordinarily, a sale of articles by a Federal Agency would be regarded as an

individual transaction and the proceeds thereof would be for deposit and covering into the Treasury as miscellaneous receipts under the terms of section 3617, Revised Statutes,31 U.S.C. 484, which require "The gross amount of all moneys received from whatever source for the use of the United States" (with certain exceptions not here involved) to be so deposited. 23 Comp. Gen. 986; 16 id. 195; 15 id. 390. However, in the present matter, purchases and sales would be accomplished as intregal factors in carrying out indemnification agreements with consumers, for their convenience, and it appears reasonable to regard both operations together as a single transaction. Under the circumstances, where purchase and resale operations are resorted to solely to facilitate and consummate arrangements with consumers for the purpose of encouraging the domestic consumption of agricultural commodities and products "by the payment of benefits or indemnities," this Office will not object to treatment of the purchase cost as a tentative charge against the appropriation, subject to partial reimbursement from the proceeds of sales, so that the net charge against the appropriation will be tantamount to an indemnity payment.

In cases where the proposed procedure is adopted, use of the proceeds of sales would be governed by the availability of the appropriation obligated by the purchase of the commodities involved. That is to say, if the appropriation charged with the purchase were limited in availability to the fiscal year current at that time, the proceeds of sales of commodities purchased from such funds, when recredited to the appropriation, would be subject to the same fiscal year limitation.

With respect to your final question, the limitations upon administrative expenses imposed by the act referred to in your letter, though in terms applicable to the "total amount available" for the purposes named, must be regarded, insofar as the present statute is concerned, as having in comtemplation only amounts actually appropriated. Accordingly, the recrediting of the proceeds of sales to the original appropriation would not affect the limitation upon administrative expenses.

Respectfully,

Linday C. Warren Comptroller General of the United States