

June 10, 1944

TO The Executive Officer

FROM The General Counsel

SUBJECT Proceeds from sale of equipment

In response to your request of May 17, 1944, I submit herewith my opinion on the following:

QUESTION

Must the cash realized from the sale of equipment belonging to the Board, or the value of equipment exchanged in whole or in part payment for new equipment, be deposited and covered into the Treasury as miscellaneous receipts?

OPINION

The question is answered in the affirmative, in the absence of a statutory provision authorizing the crediting of the Board's appropriation with the cash, or the exchange of the old property for the new, respectively.

DISCUSSION

Section 3618 of the Revised Statutes (31 U.S.C. 487) provides in pertinent part as follows:

"All proceeds of sales of old material, condemned stores, supplies, or other public property of any kind . . . shall be deposited and covered into the Treasury as miscellaneous receipts, on account of 'proceeds of Government property', and shall not be withdrawn or applied, except in consequence of a subsequent appropriation made by law. . ."

In construing this statute, the Comptroller General has ruled that "The value of old equipment, whether disposed of by exchange or

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sale, is - in the absence of statutory authority to do otherwise - 1/ for deposit to the credit of miscellaneous receipts in accordance with section 3618, Revised Statutes, the gross price of the new equipment being charged to the appropriation." 18 Comp. Gen. 227, 231. However, the Comptroller General points out that statutory authority to exchange old equipment for new, 2/ whether in whole or in part payment, so changes this rule that when the old equipment is exchanged, only the net cash paid for the new equipment is charged to the appropriation, without any deposit to the credit of miscellaneous receipts being required.

Accordingly, the value of old property belonging to the Board which is sold or exchanged must be deposited into the Treasury to the credit of miscellaneous receipts, in the absence of a statutory provision authorizing the crediting of the cash to the Board's appropriation in the one case, or the exchange of old property for new in the other.

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General Counsel

1/ Under a proposed amendment to the Railroad Retirement Acts and the Railroad Unemployment Insurance Act (S. 1911, 78th Cong., 2nd Sess., Sec. 334(d); H.R. 4805, 78th Cong., 2nd Sess., Sec. 334(d)) credit for the value of Board property sold or exchanged is expressly granted to the Board.

2/ Thus, for example, 41 U.S.C. 26 provides:

"The executive departments and other Government establishments and all branches of the public service may exchange typewriters, adding machines, and other similar labor-saving devices in part payment for new machines used for the same purpose as those proposed to be exchanged."

And Section 203 of the Independent Offices Appropriation Act, 1944, states:

"In purchasing motor-propelled or animal-drawn vehicles or tractors, or road, agricultural, manufacturing, or laboratory equipment, or boats, or parts, accessories, tires, or equipment thereof, the head of any executive department or independent establishment or his duly authorized representative may exchange or sell similar items and apply the exchange allowances or proceeds of sales in such cases in whole or in part payment therefor."