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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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Dear Mr. Derwinski: (Representative)

Pursuant to your request of October 16, 1969, we have examined into the possibility that public funds may have been misused in the sale of park land by the Oak Lawn Park Board, Oak Lawn, Illinois. The park land had been acquired, in part, with funds provided by the Department of Housing and Urban Development (HUD) under the Open-Space Land Program.

In February 1965, the Oak Lawn Park District applied for a HUD grant, under title VII of the Housing Act of 1961, as amended (42 U.S.C. 1500), to assist in acquiring several proposed park sites. HUD approved a revised version of the Park District's application and allocated a grant of $724,082 to the Park District in November 1966. The grant covered 50 percent of the estimated park site costs of $1,442,564, plus a relocation grant of $2,800. The estimated costs comprised $1,048,288 for land acquisition, $374,712 for land development, and $19,564 for administrative expenses. The grant applied retroactively to land acquisitions made after February 12, 1965, the date of HUD's tentative approval of the original application submitted by the Park District.

One of the proposed park sites--Simmons Park--a rectangular tract of land consisting of about 57.5 acres, is located about 280 feet north of 95th Street and about 615 feet west of Ridgeland Avenue in Oak Lawn, Illinois. The sale of the land in question involved part of Simmons Park.

Prior to the establishment of Simmons Park, Mr. Christ Mitchell, a private landowner, owned a 7.5-acre tract of undeveloped land about 330 feet wide, extending about 943 feet north from 95th Street. The rectangular area planned for Simmons Park included the northern 663 feet of this land; however, Mr. Mitchell refused to sell the entire 663 feet and on March 25, 1966, sold only the northern 363 feet to the Park District.

[Possible Misuse of Public Funds in Sale of Park Land]

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After this sale Mr. Mitchell still had a parcel of land about 330 feet wide that jutted about 300 feet into the planned Simmons Park area.

The planned Simmons Park area included 52 separate parcels of land. The 52 parcels, except for the land retained by Mr. Mitchell, were acquired at a total cost of about $660,000. (HUD's share was about $330,000, or 50 percent.) Mr. Mitchell was permitted to retain about one half of that part of his land that was located within the perimeter of the planned park area even though condemnation actions were taken to acquire four of the 52 parcels acquired.

In March 1966, prior to Mr. Mitchell's sale of land to the Park District, the Park District's attorney took steps toward condemnation proceedings to acquire the northern 663 feet of land owned by Mr. Mitchell, but such action was not taken. The attorney and the Park Commissioners told us that they thought that the condemnation proceedings were not taken because Mr. Mitchell had invested a substantial sum of money in planning for the development of his land and that forced acquisition would have made the land too expensive to be purchased by the Park District. However, the Park District's revised application for the HUD grant, which was amended to delete the 300- by 330-foot parcel of land retained by Mr. Mitchell, contained a statement concerning the reason for the deletion as follows:

> "This portion of the parcel of land was deleted, for the simple reason that the owner and developer of the land had invested thousands of dollars in proposed plans for the improvement of this portion of the site for use as a small shopping center area and for multiple dwellings. The Park Board felt that the burden was too costly to the developer for which there was no recompensible cost to him, to take this site."

In October 1967, Mr. Mitchell began construction of three apartment buildings on the land he retained which abutted the land he had previously sold to the Park District. The building permits were issued by the Village of Oak Lawn on an expedited basis without rezoning authorization, prescribed engineering drawings, approved street plans, and other prerequisite documents. In placing the apartment building foundations, Mr. Mitchell encroached about 14 feet upon the park property.

On December 8, 1967, a revised Plat of Survey of Mr. Mitchell's retained parcel of land, prepared at his request, showed that the apartment buildings under construction did, in fact, encroach upon park property.

In June 1968, when the buildings were about 70 percent completed, Mr. Mitchell notified the Park District of the encroachment because the question of land title had become an obstacle to completing his mortgage arrangements. In order to resolve the land title problem, the Park District, without waiting for formal approval from the Secretary of HUD, sold a strip of park land about 23 feet by 330 feet, including the encroached land, to Mr. Mitchell for $10,000.

In July 1968, the Secretary of HUD tentatively approved the Park District's sale of the land subject to the condition that the statutory and administrative requirements pertaining to the conversion of open-space land be met.

The Park District purchased land to replace the land sold to Mr. Mitchell and took other remedial steps required by Federal statutes and HUD administrative regulations. Final approval for the conveyance of the encroached land was granted by the Secretary of HUD on March 5, 1970.

Mr. Mitchell had a sewer line installed across the park land to service his apartment buildings, without obtaining permission from the Park Board and without easement authority from the Village of Oak Lawn. Subsequently, the Park District

granted an easement to the Village of Oak Lawn, which in turn gave an easement to Mr. Mitchell, pursuant to his agreement that he would repair any damage caused by the installation of the sewer line.

Mr. Mitchell failed to repair the damages to the park land, and the Park District threatened suit. The president of the Park District Board informed us that the lawsuit was not filed because the collectible damages (estimated by the Park District to be about $300) would not be worth the legal fees involved.

From our examination of the Oak Lawn project, we have concluded that:

--The sale of park land by the Park District without the prior approval of the Secretary of HUD was a violation of Federal law.

--HUD, in requiring the Park District to replace the land sold, acted in accordance with Federal statutes.

--There was no identifiable misuse of Federal funds with regard to the sale of park land because the land was replaced by other land.

--The Park District appears to have been indulgent in not condemning Mr. Mitchell's parcel of land because it left him with a parcel of land jutting about 300 feet into the planned park area, which had the effect of partially isolating a park area of about 300 feet by 330 feet from the main area of the park.

--The Park District and the Village of Oak Lawn appear to have been lenient in dealing with problems caused by the actions of Mr. Mitchell which involved:

  --Allowing him to become over 8 months delinquent in paying his $5,000 promissory note for part of the $10,000 purchase price of the land.

--Expediting building permits without prerequisite documentation.

--Allowing the foundations to be poured for an apartment building before rezoning authorization had been obtained and before the street pattern had been approved.

--Not requiring him to honor his agreement to repair the damage to the park property caused by his installation of a sewer line.

These actions appear to be within the sphere of local authority.

Although Mr. Mitchell did not notify the Park District of the encroachment until June 1968, we believe that he should have been aware of the encroachment as early as December 8, 1967--the date of a revised Plat of Survey made at his request, which showed that the apartment buildings under construction had encroached upon park land.

Because of the lack of specific development plans for Simmons Park, we were unable to determine whether the usefulness of the replacement land was equivalent to that of the land sold to Mr. Mitchell.

In August 1969, HUD issued instructions requiring that a restriction be included in the deeds for all land acquired under the Open-Space program, indicating that the site or any interest therein may not be sold, leased, or otherwise transferred without the prior written approval of the Secretary of Housing and Urban Development or his designee. We believe that implementation of this instruction should preclude the sale of land acquired with funds provided under the Open-Space program without the prior written approval of the Secretary of HUD.

The details of our examination are discussed in the enclosure.

Our examination was made at the HUD Chicago regional office, at offices of the Oak Lawn Park District and the Village of Oak Lawn, and at the office of the Park District's attorney. We interviewed Mr. Christ Mitchell, Mr. Mitchell's attorney, the surveyor, and the building and sewer contractors who had done work for Mr. Mitchell. We also visited real estate appraisers, offices of the Cook County recorder and tax collector, the Chicago Title and Trust Company, and Oak Lawn newspaper offices. We interviewed officials and other representatives at the offices visited and examined records, documents, and other pertinent data.

We have not obtained written comments on the matters discussed in this report from any of the affected parties.

We have notified the Secretary of the subject and the release date of the report and, in accordance with an agreement reached during discussions with your staff, we shall provide copies of the report to the Secretary if he requests them.

We plan to make no further distribution of this report unless copies are specifically requested, and then we shall make distribution only after your agreement has been obtained or public announcement has been made by you concerning the contents of the report.

Sincerely yours,

Comptroller General
of the United States

Enclosure

The Honorable Edward J. Derwinski
House of Representatives

GENERAL ACCOUNTING OFFICE

EXAMINATION INTO SALE OF PARK LAND

IN OAK LAWN, ILLINOIS,

ACQUIRED, IN PART, WITH FEDERAL FUNDS

PROVIDED UNDER THE OPEN-SPACE LAND PROGRAM

The General Accounting Office has examined into the sale of park land by the Oak Lawn Park Board, Oak Lawn, Illinois, which was acquired, in part, with Federal funds provided by the Department of Housing and Urban Development (HUD), under the Open-Space Land Program. The review was made pursuant to a request of Congressman Edward J. Derwinski, dated October 16, 1969.

Our examination was made at the HUD Chicago regional office, at offices of the Oak Lawn Park District and the Village of Oak Lawn, and at the office of the Park District's attorney. We interviewed Mr. Christ Mitchell, Mr. Mitchell's attorney, the surveyor, and the building and sewer contractors who had done work for Mr. Mitchell. We also visited real estate appraisers, offices of the Cook County recorder and tax collector, the Chicago Title and Trust Company, and Oak Lawn newspaper offices. We interviewed officials and other representatives at the offices visited and examined records, documents, and other pertinent data. We did not, however, obtain written comments on the matters discussed in this report from any of the affected parties.

Under the Open-Space Land Program, HUD awards grants to qualified public bodies to assist in the acquisition and development of land in urban areas for permanent open-space land use. The objectives of the Open-Space Land Program are to help curb urban sprawl; prevent the spread of urban blight; encourage more economic and more desirable urban development; and help provide necessary recreational, conservation, and scenic areas. These objectives are accomplished by assisting State and local governments in taking prompt action to preserve open-space land, which is essential to the proper long-range development and welfare of the Nation's urban areas.

Pursuant to title VII of the Housing Act of 1961, as amended (42 U.S.C. 1500), HUD is authorized to award grants to qualified public bodies to encourage and assist in the timely acquisition of land to be used as permanent open-space land. Open-space land is defined in the act as any undeveloped or predominantly undeveloped land in an urban area which has value for park and recreational purposes, conservation of land and other natural resources, or historic or scenic purposes.

To be eligible for a HUD grant, an applicant must (1) be a State or local public body, (2) have authority to acquire title to open-space land, (3) be able to provide the non-Federal portion of the cost, and (4) have authority to contract with the Federal Government and to receive and expend Federal and other funds.

HUD grants are limited to 50 percent of the total costs of acquiring permanent interests in and the development of open-space land. Additional grant assistance may be provided to applicants to pay the relocation expenses of persons or organizations displaced from land acquired under the Open-Space program.

Assisted open-space activities must be part of an areawide open-space acquisition and development program which, in turn, is consistent with areawide comprehensive planning. Local governing bodies are required to preserve a maximum of open-space land, at a minimum cost, through the use of existing public lands and other means.

Prior to submission of an application for a HUD grant, a public body is required to have the open-space land proposals reviewed by the local governmental agencies responsible for the comprehensive plan, the program of comprehensive planning, and other related phases of the Open-Space Land Program.

The act prohibits the conversion to other uses of open-space land acquired with HUD assistance without the approval of the Secretary of HUD. Section 704 of title VII of the Housing Act of 1961, as amended, provides that:

> "No open-space land for the acquisition of which a grant has been made under this title shall, without

the approval of the Secretary, be converted to uses other than those originally approved by him. The Secretary shall approve no conversion of land from open-space use unless he finds that such conversion is essential to the orderly development and growth of the urban area involved and is in accord with the then applicable comprehensive plan, meeting criteria established by him. The Secretary shall approve any such conversion only upon such conditions as he deems necessary to assure the substitution of other open-space land of at least equal fair market value and of as nearly as feasible equivalent usefulness and location."

OAK LAWN PARK DISTRICT, OAK LAWN, ILLINOIS,
PROJECT OSC-35-I[illegible].

On February 10, 1965, the Oak Lawn District submitted an application to HUD for a grant to assist in acquiring eight sites of open-space land. On February 12, 1965, HUD granted tentative approval to the Park District for acquiring the land referred to in the application. Subsequently, three of the proposed sites were deleted from the original application and a revised application was submitted by the Oak Lawn Park District on October 6, 1965, which covered five sites totaling about 110 acres.

During a review of the grant application, HUD's Chicago regional office further revised the application. The project evaluation report prepared by the HUD regional office recommended approval for acquiring four noncontiguous sites, totaling about 93 acres, for park and recreational purposes--sports fields, playgrounds, picnic areas, tennis courts, and a swimming pool. The estimated cost of $1,442,564 consisted of $1,048,288 for land acquisition, $374,712 for land development, and $19,564 for administrative expenses. The regional office recommended that a Federal grant of 50 percent of the total cost, or $721,282, plus a relocation grant of $2,800 be awarded to the Park District. The recommendation was concurred in by the HUD Assistant Regional Director for Special Programs on July 28, 1966.

By letter to the Park District dated November 16, 1966, the Chicago regional office confirmed a HUD central office telegram announcing that $724,082 had been allocated as a grant for Project OSC-35-I11. The allocation of grant funds constituted approval of the Park District's application and concurrence in the acquisition and development of land as provided for in the approved application. The grant covered acquisitions made after February 12, 1965, the date of HUD's tentative approval of the original application submitted by the Park District.

One of the open-space land sites proposed for acquisition in the Park District's original application was a generally rectangular tract of about 57.5 acres, now called Simmons Park. The tract was to extend about 2,500 feet in an

east-west direction and about 1,000 feet in a north-south direction. The tract is located about 280 feet north of 95th Street, a heavily traveled east-west thoroughfare bordered by commercial businesses. (See overlay I.) All dedicated streets within the Simmons Park area were to have been vacated by the Village of Oak Lawn, and all parcels of land within the planned area of Simmons Park were to have been acquired piecemeal from various private owners.

The open-space land sites proposed for acquisition by the Oak Lawn Park District in its revised application submitted to HUD in October 1965 included the tract of land later designated as Simmons Park. However, two streets within the tract were not scheduled to be vacated. The streets were (1) Nashville Avenue, a 33-foot-wide strip, jutting about 120 feet into the park area from the south and (2) Oak Park Avenue, a 66-foot-wide strip running north-south through the park area about 540 feet east of the proposed western boundary. This street is presently impassable; however, the Village of Oak Lawn plans to use the street as an artery for through traffic.

In addition to these two streets, the revised application showed that the planned Simmons Park rectangular area was broken by a parcel of land about 330 feet wide, jutting about 300 feet into the park area from the south adjacent to Nashville Avenue. The private owner, Mr. Christ Mitchell, refused to sell this parcel of land to the Park District.

Mr. Mitchell owned a 7.5-acre tract of undeveloped land about 330 feet wide, extending about 943 feet north from 95th Street. The area planned for Simmons Park included the northern 663 feet of the 943 feet of land owned by Mr. Mitchell. However, he refused to sell the entire 663 feet of land and on March 25, 1966, sold only the northern 363 feet to the Park District and retained about 580 feet of land, of which 300 feet jutted into the Simmons Park area. He sold the parcel of land which contained 120,309 square feet for $28,220, which amounted to $0.2345 per square foot.

In December 1967, Mr. Mitchell sold the south 410 feet of the 580 feet of land he had retained to an auto dealer for $246,000. This parcel of land contained 135,886 square feet,

and the selling price amounted to about $1.81 per square foot.

After the two sales Mr. Mitchell still had a parcel of land that extended about 170 feet into the planned park area north of the land sold to the auto dealer. The land sold to the auto dealer together with the land retained by Mr. Mitchell jutted about 300 feet into the planned Simmons Park area. (See overlay IIA.)

The planned Simmons Park area included 52 separate parcels of land. The 52 parcels, except for the land retained by Mr. Mitchell, were acquired at a total cost of approximately $660,000. (HUD's share was approximately $330,000, or 50 percent.) Mr. Mitchell was permitted to retain about one half of that part of his land that was located within the perimeter of the planned park area even though condemnation actions were taken to acquire four of the 52 parcels.

In March 1966, prior to Mr. Mitchell's sale of land to the Park District, the Park District's attorney took steps toward condemnation proceedings to acquire the northern 663 feet of land owned by Mr. Mitchell; however, such action was later dropped. The attorney and the park commissioners told us that they thought that condemnation proceedings were not taken because Mr. Mitchell had invested a substantial sum of money in planning for the development of his land and that forced acquisition would have made the land too expensive to be purchased by the Park District.

However, the Park District's revised application for the HUD grant, which was amended to delete the 300- by 330-foot parcel of land retained by Mr. Mitchell, contained a statement concerning the reason for the deletion as follows:

> "This portion of the parcel of land was deleted, for the simple reason that the owner and developer of the land had invested thousands of dollars in proposed plans for the improvement of this portion of the site for use as a small shopping center area and for multiple dwellings. The Park Board felt that the burden was too costly to the developer for which there was no recompensible cost to him, to take this site."

Deletion from the park area of the parcel of land retained by Mr. Mitchell reduced the width of the park in this area from about 1,000 feet to about 700 feet. Also, retention of the parcel by Mr. Mitchell had the effect of partially isolating from the main area of the park an area of about 300 feet by 330 feet to the east of the retained parcel. Further, Nashville Avenue, which jutted into the park area on the west side of the parcel retained by Mr. Mitchell, was not vacated but was allowed to remain in service to provide access to Mr. Mitchell's property. This further reduced the planned area of the park 33 feet by 120 feet.

The length of the main area of the park, contemplated in the original application, was to have had an unbroken length of 2,500 feet. This was not accomplished because of Oak Park Avenue (a proposed through north-south street), Nashville Avenue, and the property retained by Mr. Mitchell.

Elements involved in the encroachment on the park land

Following Mr. Mitchell's sale of land to the Park District, he constructed three apartment buildings on the parcel he retained that jutted into Simmons Park. The foundations of the buildings, placed in October 1967, encroached about 14 feet upon park property. The encroached park land was part of the parcel that Mr. Mitchell had previously sold to the Park District. (See overlay IIB.)

Shortly after Mr. Mitchell sold a portion of his land to the Park District he had a survey made of the parcel he retained for an apartment building site. The Plat of Survey, dated April 25, 1966, shows the location of four iron pipes marking the boundary corners of the parcel of land retained by Mr. Mitchell on which his apartment buildings were to be constructed. The north boundary line of this tract, marked at the corners by iron pipes, agrees with the south boundary line of the parcel of land Mr. Mitchell sold to the Park District, as stated in the legal description in the deed.

Available memoranda from HUD's project files and our interviews with Mr. Mitchell and his contractor indicated that, in locating the site for the foundations of the apartment buildings, the contractor did not follow the iron pipe corner markers identified in the Plat of Survey. Instead, the contractor used some existing wooden stakes as the markers of the north boundary of Mr. Mitchell's land. The stakes, however, actually marked a line 33 feet north of Mr. Mitchell's boundary line.

Mr. Mitchell told us that prior to construction of the apartment buildings he had requested that the Park District mark its south boundary line. He also stated that the wooden stakes had been placed by the Park District engineer and that his encroachment had resulted from his reliance on the work of the engineer. However, the former Park District engineer who Mr. Mitchell stated had placed the wooden stakes informed us that he had not placed the stakes.

We interviewed Mr. William Schaaf, an Illinois land surveyor who had made the survey for Mr. Mitchell. He stated

that he had not placed the wooden stakes but that he had placed the iron pipes to mark the four corners of Mr. Mitchell's land as shown in the Plat of Survey.

The Plat of Survey was revised by Mr. Schaaf, for Mr. Mitchell, to superimpose the location of the apartment buildings. The date of the revision--December 8, 1967--is shown on the plat in addition to the original plat date of April 25, 1966. The location of the apartment buildings on the plat shows them encroaching beyond the north boundary line marked by the iron pipes.

Mr. Chris Lagen, the general contractor who built Mr. Mitchell's apartment buildings, informed us that Mr. Mitchell had not furnished surveys or maps to him for use in locating the building site but that Mr. Mitchell had told him that the land was staked out and all he had to do was to stay 20 feet from the wooden stakes. Mr. Lagen stated that he did not know who had placed the wooden stakes. He also said that in placing the foundations he followed Mr. Mitchell's instructions.

Building permits dated October 2, 1967, were issued by the Village of Oak Lawn, authorizing construction of the three apartment buildings. However, the legal description of the site in the building permits placed the land about 200 feet south of the site on which the buildings were actually constructed.

We interviewed the Oak Lawn building commissioner, who acknowledged that the land description in the building permits was erroneous. However, the building commissioner informed us that the Village considered the building permits to be valid, despite the error in the legal description of the building site, because the Village could not determine who made the error or how the error arose.

The Village building commissioner stated that the processing of the building permit applications and the issuance of the building permits were expedited because of Mr. Mitchell's insistence that he needed the permits to

process financing arrangements. The building commissioner stated that the error must have occurred in the "hurry up" atmosphere and that the normal more orderly procedures for processing an application for a building permit were not followed. He stated also that the permits were issued without the prescribed engineering drawings, approved street plans, and other prerequisite documentation.

The foundation for one of the three apartment buildings was poured in October 1967 before rezoning authorization was obtained by the Village Board of Trustees. Rezoning authorization had been deferred pending approval of the street pattern for the site.

After the first foundation had been poured, the Board acted to permit construction of the foundation for the three buildings subject to the granting by Mr. Mitchell of a 32-foot dedication for a street south of the building line and subject to the understanding that a 16-foot dedication for a street would be made on the east side of the property.

Such dedications of land for streets were not made, as Mr. Mitchell sold his land south of the building site to an auto agency. In August 1969, a strip of land running north from 95th Street for a distance of 440 feet, approximately 24 feet wide, was dedicated and became the eastern portion of Nashville Avenue.

Notification of encroachment and sale of park land

In June 1968, when the apartment buildings were about 70 percent completed, Mr. Mitchell notified the president of the Park Board of the encroachment. The encroachment was preventing Mr. Mitchell from obtaining a clear title to the land on which his apartment buildings were being constructed and was therefore delaying completion of his mortgage arrangements.

In regard to notifying the Park Board of the encroachment, we believe that Mr. Mitchell should have been aware of the encroachment as early as December 8, 1967--about 2 months after construction began and about 6 months before he notified the Park Board of the encroachment--because the revised Plat of

Survey, dated December 8, 1967, prepared at his request, showed that the apartment buildings under construction encroached about 14 feet upon park land.

According to a HUD memorandum dated June 12, 1968, the Park District attorney telephoned an official of HUD's Chicago regional office and informed him of the encroachment. The HUD official advised the attorney that the Park Board of Commissioners should arrive at an equitable solution to the problem and present it in a letter for HUD's approval.

By letter dated June 20, 1968, the President of the Park Board of Commissioners notified HUD of the encroachment and referred to the telephone authorization received from the HUD regional office official

> "*** authorizing the Park District to solve the problem in the best interest in conserving the open space aspects of the program, and also, without too much hardship on the person who committed the error."

The letter stated the following solution to the problem:

> "The Board of Commissioners has arrived at a solution to the problem by securing an appraisal of the present fair market value of the land, as vacant, encroached upon, with sufficient additional feet to provide a working space for the users of the buildings. This has been determined at 23 feet. The Park District, by resolution, has authorized the disposal of this 23 feet to the encroachers, who were the original sellers, by the payment of the sum of $10,000.00 to the Park District."

The letter requested HUD approval of the disposal of the land.

The Park District, without waiting for formal approval from HUD, conveyed the 23-foot strip of land (see overlay IIC) to Mr. Mitchell for $10,000 by deed dated June 20, 1968. In payment for the land, the Park District accepted Mr. Mitchell's

check for $5,000 and his 5-percent note for $5,000, payable on December 31, 1968. (Subsequently, the Park District allowed Mr. Mitchell to become over 8 months delinquent on the note which was not paid until September 1969.)

The Park Board contracted to have two appraisals made by local realty firms of the strip of encroached land. The first appraisal, dated June 14, 1968, valued the land at $9,622, made up of $7,622 for the land ($1 per square foot) on the basis of zoning for residential use, plus $2,000 for damages, costs of changing boundary lines, engineering necessary for relocating sewer and water lines, surveys, appraisal costs, and legal and title expenses. The second appraisal, dated November 2, 1968, valued the land as of June 1, 1968, at $9,500 ($1.22 per square foot rounded to the next highest $500) on the basis of zoning for apartment use.

Park Board Commissioner Henry told us that it was his personal opinion that the strip of converted land should have been sold for $40,000, comprised of $21,000 for the value of the land ($3 per square foot for 7,000 square feet) and $19,000 as damages.

The purchase by the Park District of this strip of land from Mr. Mitchell in March 1966 at a cost of about $1,800 (7,622 square feet at $0.2345) and the subsequent sale of the land back to Mr. Mitchell in June 1968 for $10,000 (7,622 square feet at $1.22) resulted in a gain to the Park District of about $8,200.

HUD requirements regarding conversion of open-space land to other uses

According to a HUD memorandum, on July 9, 1968, HUD officials met with the attorney and the superintendent of the Park District and discussed the circumstances of the encroachment and the conveyance of the encroached park land to Mr. Mitchell. HUD maintained that, after the initial call from the Park District's attorney to the HUD office, the Park District proceeded to make the conveyance to Mr. Mitchell without HUD's knowledge or permission. The memorandum stated that, during subsequent visits to the HUD regional office by Mr. Mitchell, HUD officials had advised him that the Park District did not have the right to convey the encroached park property to him and that he should discontinue construction of the buildings until the matter was settled. The memorandum suggested that a land exchange might be a satisfactory solution to the problem.

In a memorandum dated July 11, 1968, a HUD regional office official reported the matter of encroachment of park land to the HUD Regional Administrator and pointed out that the conversion of park land was clearly a violation of section 704 of the Housing Act of 1961, as amended. He concluded that:

> "*** the infringement is the result of negligence on the part of the builder and extreme carelessness on the part of the Oak Lawn Park District."

The memorandum stated that the problem could be corrected only by the substitution of other land for the land that had been sold.

In a memorandum dated July 23, 1968, to the Chicago Regional Administrator, the HUD Deputy Director of the Division of Land Development established the actions necessary to obtain the Secretary's approval as follows:

1. Describe the present open-space use of the land and the use to which the land is proposed to be converted.

2. Explain why the conversion is proposed.

3. Demonstrate that the proposed conversion is consistent with the applicable comprehensive plan.

4. Demonstrate that the proposed conversion has been reviewed and approved by State, regional, metropolitan, county, municipal or other governmental agencies responsible for the comprehensive plan, the program of comprehensive planning, and other related phases of the Open-Space Land Program

5. Demonstrate that the proposed conversion is essential to the orderly development and growth of the urban area involved.

6. Demonstrate that the open-space land will be replaced, without cost to the Federal Government, by other open-space land of at least equal fair market value at the time of conversion of as nearly as feasible equivalent usefulness and location.

7. Obtain three copies of a map of the urban area which shows the location of the open-space land proposed to be converted from open-space use and the open-space land proposed to replace it.

8. Obtain a resolution of the Park District authorizing the conversion and a certificate of the Park District's recording officer that the resolution has been approved.

9. Obtain a resolution of the public body responsible for comprehensive planning indicating that the conversion has been reviewed and found to be consistent with the comprehensive planning and related open-space program and a certificate of the Park District's recording officer that the resolution has been approved.

10. Obtain copies of acceptable appraisal reports from independent land appraisers certifying that the replacement land is at least equal to the fair market value of that land being replaced.

In a letter dated July 31, 1968, to the president of the Park District, the Secretary of HUD stated that he would execute the necessary approval documentation when the Park District satisfied the statutory and administrative requirements relating to the conversion of the land.

The Oak Lawn Park District complied with all the above requirements, and final approval for the conveyance of the encroached land was granted by the Secretary of HUD on March 5, 1970.

Acquisition of replacement land

The rectangular shape of Simmons Park (except for Mr. Mitchell's tract which jutted into the park area) limited the possibilities of obtaining replacement land equivalent in value, usefulness, and location to the strip of converted park land. A member of the Park Board informed us that the Park Board would have preferred to use the money obtained for the converted land for park development purposes but was required by HUD to buy replacement land.

In July 1968, the Superintendent of the Park District suggested during a meeting with HUD officials that land immediately west of the Simmons Park area was available for exchange for the land sold by the Park District. Also, attempts were made to buy some of the school land adjacent to the eastern border of Simmons Park, but negotiations could not be consummated.

Eventually, the Park District purchased a strip of land 25 feet by 331 feet adjoining the park on the southern boundary of the eastern end for $10,000. (See overlay IID.) The $10,000 paid for the replacement land was established as the fair market value of the land on the basis of two appraisals which were made by the same two firms that had appraised the land sold to Mr. Mitchell. The purchase was made from a bank (no longer in existence) acting as trustee for the owner. Mr. Mitchell told us that he had no interest in the replacement land, and as far as we could ascertain, this was true.

The HUD land appraiser, in January 1969, issued written concurrence in the appraised value of the two parcels of land.

Planned use of park area

The Park District application for the HUD grant indicated that immediate development was planned for only the eastern 330 feet of the park area which adjoined school land east of the park. The subsequent development of this area included playgrounds, basketball courts, tennis courts, lavatories, and a wooded area with nature trails. The development costs totaled about $66,000, of which HUD's share was about $33,000.

The proposed future plans for the rest of the park area contemplated development of a golf course and other recreational facilities, including sites for outdoor camping and the development of a creek which runs through the land. However, such plans were general and no areas had been mapped out for specific purposes.

Damage to park property caused by installation of a sewer line

Mr. Mitchell had a sewer line installed across the park land to service his apartment buildings, without obtaining permission from the Park Board and without easement authority from the Village of Oak Lawn. A representative of the company that installed the sewer line informed us that Mr. Mitchell told him he had a permit and easement for the sewer line and that everything was in order. He said that he did not ask to see the easement agreement but did ask for the permit number. He said that he verified that the permit number had been issued by the Sanitary District.

The engineer for the Village of Oak Lawn informed us that the Sanitary District permit was dated May 28, 1968. He stated also that the Sanitary District requirements for a sewer permit are only concerned with the line capacity and the seals which will be used on the drain pipes and do not concern any easement for the land over which the sewer line is to be installed.

By letter dated in August 1968, the Village president requested the Park Board to grant an easement for the sanitary sewer outlet. On August 21, 1968, the Park Board voted to grant the easement contingent upon Mr. Mitchell's payment of the $5,000 note he had given in partial payment for the encroached park land. However, on September 4, 1968, the Park Board rescinded its August 21 action and granted an unconditional easement to the Village of Oak Lawn for the sewer.

In consideration of Oak Lawn Park District's granting an easement to the Village of Oak Lawn for a sanitary sewer which was to service Mr. Mitchell's apartment development, Mr. Mitchell signed a written agreement dated August 23, 1968, to make the following repairs:

--Prepare and seed with grass a parcel of land about 30 feet in width, extending from Nashville Avenue on the west a distance of about 300 feet to the east. The parcel is located immediately north of the apartment development.

--Grade, remove fallen trees, fill with black dirt, and plant evergreens and grass seed on a parcel of land immediately east of the apartment development.

--Repair a cut made through a blacktop path.

--Plant grass seed and trees in an area east of the blacktop path.

The repairs were to be made immediately and seeding and planting were to take place at the proper planting time.

Mr. Mitchell failed to make the repairs and on September 29, 1969--more than a year later--the Park Board's attorney wrote a letter to Mr. Mitchell notifying him that unless the repairs were made within 30 days a law suit would be filed. However, in December 1969, the attorney informed us that although the repairs had not been made the suit was not filed.

The President of the Park Board told us that no action was planned against Mr. Mitchell for damage to Simmons Park. He said that the amount of collectible damages (estimated by the Park District to be about $300 for 16 trees, shrubs, and grass destroyed) would not be worth the legal fees involved in such a suit. However, he said that the Park District was continuing to press Mr. Mitchell for payment of the damages.

According to a HUD official, HUD has no special requirements or provisions pertaining to the granting of an underground easement other than that the land be restored to the same condition as existed prior to the granting of the easement. He informed us also that the damage to the park property caused by the installation of the sewer line was a local Park District affair.

CONCLUSIONS

On the basis of our examination of the Oak Lawn project, we have concluded that:

--The sale of park land by the Park District without the prior approval of the Secretary of HUD was a violation of Federal law.

--HUD, in requiring the Park District to replace the land sold, acted in accordance with Federal statutes.

--There was no identifiable misuse of Federal funds with regard to the sale of park land because the land was replaced by other land.

--The Park District appears to have been indulgent in not condemning Mr. Mitchell's parcel of land because it left him with a parcel of land jutting about 300 feet into the planned park area, which had the effect of partially isolating from the main area of the park an area of about 300 feet by 330 feet.

--The Park District and the Village of Oak Lawn appear to have been lenient in dealing with problems caused by the actions of Mr. Mitchell which involved:

  --Allowing him to become over 8 months delinquent in paying his $5,000 promissory note for part of the $10,000 purchase price of the land.

  --Expediting building permits without prerequisite documentation.

  --Allowing the foundations to be poured for an apartment building before rezoning authorization was completed and before the street pattern was approved.

  --Not requiring him to honor his agreement to repair the damage to the park property caused by his unauthorized installation of a sewer line.

These actions appear to be within the sphere of local authority.

Although Mr. Mitchell did not notify the Park District of the encroachment until June 1968, we believe that he

should have been aware of the encroachment as early as December 8, 1967, the date of a revised Plat of Survey made at his request, which showed that the apartment buildings under construction had encroached onto park land.

Because of the lack of specific development plans for Simmons Park, we were unable to determine whether the usefulness of the replacement land was equivalent to that of the land sold to Mr. Mitchell.

In August 1969, HUD issued instructions requiring that a restriction be included in deeds for all land acquired under the Open-Space program, indicating that the site or any interest therein may not be sold, leased, or otherwise transferred without the prior written approval of the Secretary of Housing and Urban Development or his designee. We believe that implementation of this instruction should preclude the sale of land acquired with funds provided under the Open-Space program without the prior written approval of the Secretary of HUD.

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PROCEDURES FOLLOWED BY THE POSTAL INSPECTION SERVICE IN CHARGING POSTAL EMPLOYEES WITH MAIL LOSSES POST OFFICE DEPARTMENT

B-168446
8/6/70

RESTRICTED

This examination was made pursuant to a request from Senator Gale W. McGee, Chairman, Committee on Post Office and Civil Service.

We reported that, in investigating mail losses, the Postal Inspection Service charged postal employees with mail losses in addition to the mail employees were caught stealing. We stated that the investigative procedures followed by the Inspection Service do not provide a reasonable basis for charging employees with mail losses that the employees were not caught stealing. Such losses were identified with employees usually on the basis of the inspector's investigative experience and judgment rather than on adequately documented data.

We stated that the Department should not charge employees with mail losses other than the mail they are caught stealing without clearly establishing that such losses are attributable to their acts.

We reported also that the practice of providing indemnification services to patrons for ordinary mail losses (all mail other than registered, insured, or collect-on-delivery mail losses) should be discontinued unless a fee is charged for the services. We stated that if the Department believes it should continue reimbursing postal patrons for ordinary mail losses, it should request the Congress to amend the United States Code (5 U.S.C. 5511 and 5512) to authorize offsets against employees' salary and retirement benefits. We stated also that

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if legal authority is needed to establish fees for providing indemnification services to these postal patrons, the Department should request appropriate legislation from the Congress.

An index was not prepared for this digest.

Revised

B-168446
8-6-70

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

POD

B-168446

AUG 6 1970

Dear Mr. Chairman:

Your letter of November 7, 1969, requested that we investigate the procedures followed by the Postal Inspection Service in resolving theft cases involving postal employees charged with stealing money or mail, and furnish your Committee with a report on our findings and that, if appropriate, we submit recommendations for legislation. You expressed concern as to whether the rights of employees were being safeguarded and whether procedural due process was being observed.

We examined into the policies and procedures followed by the Inspection Service in charging mail losses to postal employees and made a detailed review of the case files for 17 employees whom we randomly selected from 204 employees caught and arrested for stealing mail in six States and the District of Columbia during the period July 1, 1968, to December 31, 1969.

In each of the cases, the Inspection Service charged the apprehended employee with mail losses in addition to the mail the employee was caught stealing and requested payment from the surety for losses not collected from the employee. For the 17 cases, the losses charged to the employees totaled $24,300. Of this amount, only $3,700 could be recovered from the employees. Another $19,600 was requested from the surety, but only $3,900 had been received as of the date of our review. The remaining $1,000 was uncollectible. The Department did not have readily available data which showed the extent of such losses and the recoveries nationwide. Arrests of postal employees caught stealing mail during the period covered by our review totaled 1,848. Our review was made at Post Office Department Headquarters and at the Inspection Service field unit in Washington, D.C.

We believe that the investigative procedures of the Inspection Service do not provide a reasonable basis for charging apprehended postal employees with mail losses that the employees were not caught

stealing. Such losses are identified with apprehended employees usually on the basis of the inspector's investigative experience and judgment rather than on adequately documented data.

The data supporting the total charges against the postal employees included in our detailed case review and our discussions with Inspection Service officials showed that the postal inspectors did not clearly establish that the employees stole money or mail other than that which they were caught stealing. The data accumulated in accordance with existing procedures did not establish that:

--the mail which contained valuables was not being held as "undeliverable as addressed" in the dead letter or dead parcel branch of some post office or had not been sold at auction as unclaimed mail;

--the loss occurred within the postal system;

--the mail actually reached the employee's duty station and he had access to it;

--another postal employee did not steal the mail;

--employees of other Government agencies, business firms, or other organizations did not steal the mail.

We believe that the Department should not charge employees with mail losses other than the mail they are caught stealing without clearly establishing that such losses are attributable to their acts.

The Department makes recoveries from a surety for Government and ordinary mail losses and reimburses postal patrons for their losses. Government losses consist of registered, insured, or collect-on-delivery mail losses for which the Department must reimburse the patrons irrespective of whether the losses are recovered.

Other mail losses are referred to by the Department as ordinary losses because the Government is not liable to reimburse postal patrons for such losses. The Department's practice of reimbursing postal patrons for ordinary losses, if recovery is made from employees or the surety, results in these patrons receiving indemnification services for which they have not paid. (Other patrons must pay for such service.)

The Department incurs investigation costs in determining ordinary mail losses to be charged to an employee caught stealing similar mail and is not reimbursed for such costs. In addition, the practice of reimbursing patrons for such losses may increase the Department's insurance premiums to the surety because losses claimed by the Department are a factor having a bearing on the amount of the premiums.

Officials of the Inspection Service recently informed us that steps were being taken to reduce the number of mail thefts by improvements in the recruitment and training of inspectors, in plant security, and in the screening of new applicants for postal employment to identify potential thieves. We believe that such measures, if effectively carried out, should help to deter potential thefts and to identify employees who should be removed from the postal service.

We believe also that the Inspection Service should develop specific procedures to be uniformly followed by inspectors in accumulating data to establish the amount of losses that should be charged to employees caught stealing. Such procedures should require the Inspection Service to obtain adequate support and verification of the reported losses.

The practice of providing indemnification services to patrons for ordinary losses should be discontinued unless a fee is charged for the services. Because the Government is not liable for ordinary losses, the Department does not have legal authority to offset the amount of such losses against the employees' salary and retirement benefits as it does for Government losses. If the Department believes that it should continue reimbursing postal patrons for ordinary mail losses,

it should request the Congress to amend the United States Code (5 U.S.C. 5511 and 5512) to authorize offsets against employees' salary and retirement benefits for losses where data is developed to clearly show that the losses were attributable to the acts of the employees. If legal authority is needed to establish fees for providing indemnification services to these postal patrons, the Department should request appropriate legislation from the Congress.

Our findings are discussed in more detail in the enclosure with this letter.

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The Department was not asked to formally comment on the report. However, in accordance with arrangements with your office, the Department is being notified of the release date and the Chief Postal Inspector has been informed of the subject matter of this report.

We trust that this information will be helpful.

Sincerely yours,

Assistant Comptroller General
of the United States

Enclosure

The Honorable Gale W. McGee
Chairman, Committee on
Post Office and Civil Service
United States Senate

GENERAL ACCOUNTING OFFICE

EXAMINATION INTO PROCEDURES FOLLOWED BY THE POSTAL INSPECTION SERVICE IN CHARGING POSTAL EMPLOYEES WITH MAIL LOSSES

SCOPE

Our examination of the procedures followed by the Postal Inspection Service in investigating theft cases in which postal employees have been charged with stealing money or mail included a review of the Post Office Department's prescribed procedures, a detailed review of the case files for 17 employees whom we randomly selected from 204 employees caught and arrested for stealing mail in six States and the District of Columbia during the period July 1, 1968, to December 31, 1969. We also held discussions with Inspection Service and post office officials. For the cases we reviewed, the losses charged to employees totaled $24,300. Of this amount only $3,700 could be recovered from the employees. Another $19,600 was requested from the surety, but only $3,900 had been received as of the date of our review. The remaining $1,000 was uncollectible. The Department did not have readily available data to show the extent of such losses and recoveries nationwide. During the above period, 1,848 postal employees caught stealing mail were arrested.

IDENTIFICATION OF MAIL LOSSES

The Post Office Department classifies its mail losses either as Government losses or as ordinary losses. Government losses consist of insured, registered, and collect-on-delivery mail losses for which the Department must reimburse the patrons irrespective of whether the losses are recovered. Ordinary losses consist of all other mail losses for which the Department does not have any liability to reimburse the patrons.

Mail that is undeliverable as addressed and does not contain a return address is sent to the dead letter or dead parcel branch where

attempts are made to identify the sender or addressee so that the mail can be delivered.

Department procedures require that losses of mail matter be reported by patrons on form 1510 (Inquiry for the Loss of Rifling of Mail Matter). Information for the form is provided by the patrons and postal employees. For an effective search to be made for lost mail at the mailing and addressee post offices and at their respective dead letter and dead parcel branches, and for the inspectors to chart the flow of the mail through the postal system, the following information must be included on the forms.

1. Date, time, and place of mailing. Place of mailing must include city, State, and main post office, station, branch, or location of collection box where mailed.

2. Whether the mail was a letter or a parcel and whether it was either insured, registered, collect-on-delivery, or other mail.

3. Complete description and value of the lost mail.

4. Name of employees who would have collected the mail and the date, time, and place it would have been collected and deposited.

5. Date and time the mail should have been dispatched from the mailing post office and the mode of transportation that would have been used to get the mail to the addressee post office. This information is not needed if the mailing and addressee post offices are the same.

6. Name and title of person who would have receipted for the mail at the addressee post office.

7. Name of employee who should have delivered the mail to the addressee.

Searches for lost mail are made at the mailing and addressee post offices. If the loss concerns a letter which contained more than one dollar in cash or other enclosures having an estimated value of more than one dollar, or if it concerns a first-class parcel, the form 1510 is sent to the dead letter or dead parcel branch for the mailing office to determine whether the mail is being held. If the search

proves negative, the form is sent to the dead letter or dead parcel branch of the addressee post office for a further search and return to the post office of mailing. The outcome of each search is required to be stamped on form 1510 and, if the mail was not found, the form is then forwarded to the Inspection Service.

The Inspection Service uses form 1510's to launch investigations. If a number of forms are accumulated which show that losses have occurred at a particular location, an investigation is made to determine the cause and to identify, if possible, those who may be responsible for the losses.

We noted that many of the form 1510's reporting mail losses charged to the 17 employees included in our review did not contain adequate descriptive data to identify the lost mail, the time and place the item was mailed, or collection and delivery data needed to search for the lost mail and to determine whether the mail reached the employee's duty station and whether he had access to it. For example, one form 1510 contained the following description of items lost in the mail: "3 prs. children shoes, 1 child tee shirt, pants, dress." Also, the form did not contain collection and delivery data needed to establish that the mail had reached the duty station of the employee suspected of being responsible for its disappearance. An official at the Washington, D.C., Post Office told us that postal personnel would not be able to identify and recover any of the articles listed on the form 1510 unless they knew the manufacturer's name or the brand name, size, color, style, and type of material for each article, because many such articles are usually in the dead parcel branch or "loose-in-the-mail section" at any point in time.

Department records showed that, during the 18-month period ended December 31, 1969, its 16 dead letter branches destroyed about 52 million of the 56 million dead letters processed because information was not adequate to permit delivery or return to patrons. The records showed that, of $498,000 removed from letters, $159,000 was returned to the senders and the balance was deposited with the Treasurer of the United States. Department records showed also that about 1.8 million parcels were not returned to the senders during the period.

The Postal Manual requires that auction sales of parcels which cannot be returned to the sender be held at least twice a year. However, the records showed that, during the 18-month period covered by our review, auction sales were held at the 16 dead parcel branches

about every 3 months because of the large number of unclaimed parcels and that $1.3 million had been realized from such sales. Obviously, if a form 1510 is sent to the post office after auctions have been held, the search for the lost parcel will prove fruitless. Under Department procedures if the mail is not found, it is assumed lost and so reported to the Inspection Service.

We believe that under the circumstances it is not reasonable to conclude that lost mail described on form 1510's was stolen if it was not located at the mailing or addressee post office or at their respective dead letter or dead parcel branches. Also, an official at the Washington, D.C., Post Office told us that lost mail matter may not be located in the mailing or addressee post office or the respective dead letter or dead parcel branches because (1) the description included on the form 1510 was incomplete or not sufficient for positive identification, (2) an incorrect or illegible address or zip code may have caused the mail to be delivered to a post office other than the addresee's post office, which would result in the mail being sent to a dead letter or parcel branch other than the branch for the addressee's post office or, (3) the mail was damaged to the extent that it was impossible to determine the sender or addressee.

As an example of a deficient address, the official showed us an envelope that had contained a birthday card and $10 in cash, which was stamped "no such street." The letter did not have a return address and the handwritten address of the intended recipient appeared to be "Washington, D.C." However, the address could have been one of several Washingtons in the country. The official told us that, if the postal patron who mailed the above card filed a form 1510, a search would be made for the card only at the post office where mailed, at the addressee's post office as shown on the form 1510, and at the dead letter branches of these post offices. He stated that the search would be fruitless because the mail could have been sent to any one of the Washingtons in the country.

PROCEDURES FOR CHARGING MAIL LOSSES TO POSTAL EMPLOYEES

Lost mail which cannot be located in a post office is reported to the Postal Inspection Service field units. A separate copy of each form 1510 reporting a loss is filed for the mailing and addressee post offices. The Inspection Service assumes that the post offices have made a thorough search for the lost mail reported and that a valid loss

exists. Once a sufficient number of losses have been accumulated for a particular post office to establish that a pattern of losses exists, a postal inspector makes an investigation at the post office. A pattern would be indicated if the losses for a post office exceeded the normal losses expected for the office or if there was a sudden increase in reported losses for the office. The application of these criteria is based on judgments of the inspectors assigned to the Postal Inspection Service field units.

Investigation at the post office

The postal inspector attempts to determine from information on the form 1510's at what point within the post office system losses may be occurring and then employs the use of test mail and observations to identify employees who may be stealing mail. For example, if most of the reported mail losses associated with a post office involved complaints from patrons on a particular delivery route, the inspector would plant test mail in the carrier's mail to determine whether the carrier was stealing. However, if losses appeared to be widespread and involved several or all routes, the losses might be occurring during the mail-processing functions within the post office. Accordingly, the inspector would plant test mail and observe the employees at work within the post office to determine which employees were stealing.

If an employee is observed stealing the test mail or other mail matter, the inspector immediately arrests the employee. The inspector advises the employee of his constitutional rights and may have him jailed. The inspector furnishes the U.S. Attorney with the details of the arrest. The U.S. Attorney advises the inspector whether the employee should be charged with a violation of Postal Statutes. If the employee is charged, he may be taken before a U.S. Commissioner to have bond set.

In all cases, when prosecution is authorized by the U.S. Attorney, the employee is brought to court to face criminal charges for theft and/or rifling of mail. At the time the employee is apprehended, he is immediately suspended from his job. The employee's unpaid salary and other benefits are held pending determination as to the total amount of Government losses to be charged to the employee.

Approximately 60 days following the employee's arrest, the inspectors are required to determine the total amount of mail losses to be charged to him. These losses are in addition to the total amount

involved in the test letter, package, etc., which the employee was caught stealing.

Review at field unit headquarters

After the inspector determines the total losses to be charged to the employee, he forwards this information to his respective field unit headquarters for review and processing. Other field units are contacted to determine whether the losses have been charged to other employees. If the replies received from the other field units are negative, confirmation forms are prepared and mailed to the sender and addressee to confirm that the loss still exists and to indicate the value of the loss.

Actions taken by the Bureau of the Chief Postal Inspector

The field unit headquarters forwards the confirmation and a report of each loss to the Bureau of the Chief Postal Inspector where the final decision is made on the losses to be charged to the employee. Using the form 1510's, confirmations, and other data pertaining to the losses, the Bureau determines whether the losses are similar to the mail the employee was caught stealing and prepares a letter of demand, stating the total amount due the Government, and forwards it to the employee. The employee is given 15 days in which to reply or make payment. He is also advised that, if a reply or payment is not received, demand will be made on his surety.

If the full amount of a Government loss (insured, registered, test, and collect-on-delivery mail) is not recovered from the employee voluntarily, the Inspection Service requests the Postal Data Center to offset such loss against any monies due the employee (salary, terminal leave pay, bond deductions, retirement deductions, etc.). If such monies are insufficient to offset the Government loss, the Department makes demand on the surety for the remaining balance due.

Similar procedures are used for ordinary losses, except that funds belonging to an employee are not withheld. The Department does not withhold funds due the employee for ordinary losses because 5 U.S.C. 5511 and 5512, concerning the withholding of pay, refer only to debts due the United States, and the Department considers these losses to be debts due the patron.

Questionable mail losses
charged to postal employees

We reviewed in detail case files for 17 postal employees caught and arrested for stealing mail in six States and the District of Columbia during the period July 1, 1968, to December 31, 1969. In each case the employee stole test mail or was observed stealing other mail matter and was charged with a violation of Postal Statutes. Either the employees were prosecuted on criminal charges for the mail they were caught stealing or they were still awaiting trial. We did not find any indication that the Inspection Service had improperly charged the employees with violation of Postal Statutes.

In addition to charging the apprehended employees for mail matter they were caught stealing, the Inspection Service charged them with losses of $24,300 for other mail which they were not caught stealing. The Department recovered only $3,700 from the employees and requested the surety to make payment for $19,600 of the losses which could not be recovered from the employees. The remaining $1,000 was uncollectible. These losses consisted of mail reported to the Inspection Service by post offices as lost. Inspection Service officials informed us that it was assumed that the various post offices had made a thorough search and that the lost mail was not in the post offices.

An official at the Washington, D.C., Post Office stated that it was virtually impossible to establish whether mail was stolen, destroyed, auctioned off, or was in the dead letter or dead parcel section of some post office, or, in the case of cash, was deposited in the Treasury. On the basis of our observations of search operations for lost mail at the Washington, D.C., Post Office and our review of documents supporting the charges against the 17 employees, we agree with this official. Also, we question the Inspection Service's assumption that valid losses, chargeable to the postal employees, exist because the search performed by post offices for reported mail losses does not establish that the mail was stolen.

Each year the Department receives millions of pieces of mail which cannot be delivered as addressed nor identified with a postal patron's claim. As explained on page 4, there are many reasons why mail cannot be found in the postal system and this situation casts considerable doubt on the propriety of charging losses of such mail to postal employees.

We noted that many of the form 1510's did not include adequate descriptive data to identify the lost mail. Also, these forms did not show the time and place the item was mailed or collection and delivery data needed to search for lost mail and to determine whether the mail reached the employee's duty station and whether he had access to it. Without such data the lost mail cannot be effectively traced through the mail-processing system to establish that the mail actually arrived at the duty station of the employee charged with its disappearance. The inspectors stated that they could only estimate the day the accused employee may have had access to the lost mail on the basis of their experience and judgment.

Inspectors told us that, once an employee had been caught stealing, the employee might be charged with additional similar mail losses which could be attributed to him. If the mail losses were similar to the mail the employee was caught stealing and the employee's timecards showed that he was working on the day that the similar mail losses occurred, and if another employee was not caught stealing, the inspector, in his best judgment, estimated the similar mail losses and charged such losses to the employee. The inspectors stated also that they relied on their experience, judgment, and knowledge of the situation to make such determinations. The inspectors said that they could not determine the specific mail an employee who was caught stealing actually took and that they could not, in a court of law, prove that the employee took such lost mail.

We noted that some of the confirmations of mail losses reported on form 1510's were not returned by the sender or addressee; many confirmations included additional items and/or larger amounts than those shown on the form 1510's initially reporting the loss; and some confirmations included statements by the sender or addressee which raised questions as to whether a loss actually existed. Although some of the questionable mail losses were not charged to the employees, many such losses were charged.

For example, in one case the Inspection Service charged an employee with nine losses totaling $204 even though the record indicated that confirmations had not been received from three of the addressees. The total losses not confirmed by the addressees amounted to $35. The confirmation for another lost item, which was mailed on January 12, 1968, and included $90 in cash, contained statements that raised serious questions as to whether an actual loss existed.

The sender filed his claim on January 24, 1968. The sender's confirmation, which was filed on January 7, 1969--1 year later--indicated that the cash was for payment of rent. He stated that he had not received credit from the addressee and that he had made a duplicate payment in February or March 1968. The addressee's confirmation dated January 21, 1969, included the following statement:

> "Payment of $90 was credited to account on 1/25/68. We assume this is article referred to, however, we cannot be absolutely positive it was specific article." (Underscoring supplied.)

The case file indicated that a follow-up was not made on the confirmation to show that a loss had actually occurred. The inspectors agreed that the loss was questionable and that a follow-up should have been made before the loss was charged to the employee.

Unverified listings of mail losses charged to postal employees

The Inspection Service follows a policy of accepting as mail losses chargeable to postal employees arrested for stealing mail, blanket statements of mail losses reported by other Government agencies, by business firms whose records show that credit was given to customers, and by charitable institutions for remittances not received. The Inspection Service requires that each statement show only the date of mailing, the sender, and the amount remitted. The Inspection Service policy states that such statements may be accepted without verification.

In four of the 17 cases we reviewed, inspectors charged employees with losses reported on blanket statements. In one case, the Government Printing Office (GPO) submitted a blanket statement showing over 1,500 individual cash losses totaling about $1,100 for which credit was given to customers who reportedly mailed cash to the Superintendent of Documents during the period September 1, 1967, to January 7, 1969. The inspectors charged most of these losses to four postal employees arrested at the Washington, D.C., Post Office for mail theft, without determining whether GPO employees could have been responsible for the losses. The inspectors stated that it was a policy of the Inspection Service to accept blanket statements from Government agencies without verification.

On April 21, 1970, the inspector who charged the GPO mail losses to the four postal employees told us that one of the employees was a narcotic addict and that it was obvious to him that the employee stole to obtain money to buy narcotics. He stated that he charged most of the losses to this employee and the balance of the losses to the other three employees on the basis of his knowledge of the activities of the four employees, his experience, and his best judgment.

The case file for one of the four postal employees charged with the GPO mail losses was included in the cases we reviewed. In this case, the inspector charged the employee with 323 of the GPO cash losses totaling about $200. In addition, the inspector charged the employee with 346 of the cash losses included in a blanket statement submitted by a photo lab showing losses it sustained as a result of credit given to its customers for remittances not received. The total amount of these losses charged to the employee was about $1,000.

Even though the employee had been caught stealing mail, we believe that it was unreasonable to charge him with theft of mail addressed to GPO and the photo lab. We do not believe that the amount of losses shown on blanket statements submitted by Government agencies, business firms, and charitable institutions should be charged to postal employees, because the inspectors cannot determine conclusively whether a postal employee or an employee of the reporting Government agency, business firm, or charitable institution was responsible for the loss.

Concerning GPO losses, an article published in the Wednesday, May 13, 1970, edition of the Washington Daily News, disclosed that the Federal Bureau of Investigation (FBI) had charged four GPO employees with stealing money sent in by mail for Government publications. FBI and GPO officials said that there was no way to determine how much money had been stolen by the GPO employees.

Three of the GPO employees were employed during the period covered by the GPO blanket statement of losses charged to the four postal employees. It is possible that the GPO employees were responsible for the GPO mail losses charged to the postal employees.

INEQUITIES TO POSTAL PATRONS

The Department makes a demand on the responsible employee for payment of mail losses and then submits a claim to the surety for the

losses not recovered from the employee. The Department is authorized by 5 U.S.C. 5511 and 5512 to offset Government losses against any salary, retirement, or other funds due the employee before submitting the claim to the surety. The law does not authorize such offset for ordinary mail losses.

Losses of insured, registered, and collect-on-delivery mail (Government losses) are paid to the patron from postal funds upon the submission of a satisfactory claim and approval by the Department.

The amounts collected from the employee and the surety for ordinary mail losses are held in trust by the Department. Ordinary losses are subsequently paid to patrons out of the trust fund for those losses for which recovery was made.

Patrons who lose cash or valuables sent through the mails as ordinary mail have a determination not to pay the fees required for indemnification for loss or theft. We believe that the Department should not incur costs associated with indemnifying patrons for ordinary mail losses as is done for patrons who pay a fee for this service. Also, the collection from the surety for ordinary mail losses probably results in the Department's incurring increased surety bond premiums, because losses paid by a surety are a factor having a bearing on the surety's premium charges. Department records showed that demands had been made on the surety for $19,600 or 81 percent of the losses charged to the 17 employees included in our review.

If the Department believes that it should continue reimbursing postal patrons for ordinary mail losses, the Department should request the Congress to amend 5 U.S.C. 5511 and 5512 to authorize the Department to make offsets against employees' salary and retirement benefits for losses where data is developed to clearly show that the losses were attributable to the acts of the employees. Also, if legal authority is needed to establish fees for providing indemnification service to these postal patrons, the Department should request appropriate legislation from the Congress.