

COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548



B-195492

D
March 18, 1980Releasable after
4/18/80 per note
in file and OCRB-142538, Feb. 8, 1961,
clarifiedThe Honorable William Proxmire
United States Senate

Dear Senator Proxmire:

This is in response to your request concerning the Cooperating Association Fund (Fund) of the National Park Service. The Secretary of the Interior maintains the Fund, also known as the Director's Discretionary Fund, under authority of 16 U.S.C. § 6 (1976) which permits him to accept lands, rights-of-way, buildings or other property and money which may be donated "for the purposes of the national park and monument system."

You suggest that monies in the Fund are not donations but are assessments collected from the cooperating associations and used for improper purposes. The cooperating associations are non-profit organizations which assist the Park Service by selling various interpretive publications and souvenirs. You state that the Fund is:

" * * * merely a way around the Appropriation and Budget process. The funds are not gifts but an assessment of one-half of one percent from the non-profit vendors of the Park Service. The monies are then used for travel, entertainment, Congressional lobbying, etc., beyond the amounts provided by Congress."

Your first point is important because if the monies are assessments, they would be treated differently from donations. Donations, under 16 U.S.C. § 6, are to be placed in trust and used for several purposes of the national park and monument system. Assessments, on the other hand would be considered to be revenues of the national parks which would have to be covered into the Treasury as miscellaneous receipts. 16 U.S.C. § 452 (1976); see also 31 U.S.C. § 484.

We considered a similar issue in 25 Comp. Gen. 637 (1946). In that case, a sum of money collected by the Park Service for the privilege of filming motion pictures in a national park was determined to be a fee or charge instead of a donation. We said:

"Essentially, 'donations', 'gifts', or 'bequests' are gratuitous conveyances or transfers of ownership in property without any consideration. In contrast, the funds here involved represent a payment in consideration

766693/087641

B-195492

of the granting of a privilege to film motion pictures and it does not appear how their intrinsic character may be changed by an administrative order characterizing them as a 'donation.'"

With respect to the Fund, a determination must be made as to whether the contributions are voluntary and therefore donations, or whether they are payments in consideration for the privilege granted to the cooperating associations to conduct business in the national parks.

To determine this, we solicited the views of the Department of the Interior. In reply, the Under Secretary of the Interior explained:

" * * * They [the cooperating associations] are non-profit organizations that exist solely for the national parks for which they were established. Their primary function is to assist the various interpretive programs of the parks through their publications and sales programs. Each of the 59 Cooperating Associations has an agreement with the Park Service. There is no mention in the agreements of contributing any amount or percentage of their gross sales to the Cooperating Association Fund. At the Conference of the Associations in Albuquerque, to which the Senator refers, the Associations did agree to give one-half percent of their gross sales to this fund. This was a reduction of their previous commitment of 1-1/4 percent. However, in no way are the Associations coerced to give or penalized if they do not give. In fact, during the 1977 fiscal year, only 37 of the 59 Cooperating Associations contributed to this fund, and in FY 1978 only 35 contributed."

Although the cooperating associations have collectively determined how much a contribution should be, an individual association does have the option of not contributing anything to the Fund. According to the Under Secretary, this option has apparently been exercised by a number of associations, without any adverse consequences to the association, over the last few years. It therefore appears that any contributions made to the Fund have been made on a voluntary basis and were properly credited to the Fund, to be used in accordance with 16 U.S.C. § 6j

Your question also concerns, however, the types of expenditures made from the Fund. The Fund has been used to pay for travel and entertainment expenses for various people, including top administration officials, Members of Congress, and some persons who were not Government employees. The Fund financed the purchase of gifts, refreshments, lunches and receptions, floral

B-195492

arrangements and centerpieces, seminars, photographs, entry fees for contests and transportation and per diem expenses for people who are not employed by the Government.

For example, the Fund paid \$120 for 3 entries in the American Institute of Architects Honor Awards Program. It sponsored a reception "for VIP guests" following an Interior Department awards ceremony, including a payment of \$107.10 for champagne and wine. The Fund paid \$256.50 for two Navajo belt buckles which were apparently given to an Interior Department official, and \$78.05 for a "Token of gratitude" to another Department official. Many of the other expenditures appear to have been for what are called "representation" matters -- receptions, meals, refreshments. You think that many of these expenditures are improper.

According to 16 U.S.C. § 6, the Fund is to be used "for the purposes of the national park and monument system." The fundamental purpose of the national parks, monuments, and reservations, as described in 16 U.S.C. § 1 is to:

"* * * conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations."

In 47 Comp. Gen. 314 (1967) we ruled with respect to this Fund that since monies can only be accepted for purposes of the national park and monument system, there is no legal basis for expenditures for personal rather than official purposes.

We have long classified certain uses of funds appropriated by the Congress from the general fund of the Treasury as being for personal rather than official purposes. For example, in B-164467, June 14, 1968, we held that entry fees for contests were not official expenses; in B-149493, December 28, 1977, we held that photographs of both Government employees and non-Government employees were not necessary to the accomplishment of agency purposes and in 54 Comp. Gen. 976 (1975), we classified gifts as personal in nature.

We have held that in the absence of specific authority in a statute or regulation, appropriated funds are not available for the costs of luncheons, dinners, receptions, refreshments, or similar activities. 47 Comp. Gen. 657 (1968); 43 Comp. Gen. 305 (1963); and 26 Comp. Gen. 281 (1946).

Clearly, many of the expenditures made by the Department of the Interior from the Discretionary Fund would be improper if made from funds appropriated by the Congress from general funds of the Treasury. The question is whether funds donated by private persons to further the purposes of the national park and monument system are subject to the same strictures applicable to appropriated funds generally. We think not.

The rules applicable to appropriated Treasury funds derive in large measure not so much from the proposition that "entertainment," "gifts," and other so called "personal" items may never be construed as being for official purposes in furtherance of an agency mission. Rather, the rules are based largely upon the concept that such purposes are so subject to abuse as to require specific Congressional authorization before general agency appropriations may be so used.

In the case of authority to use private donations, however, we have been willing to rely on the discretion of agency officials to determine when expenditures are in furtherance of official purposes. The Department of the Interior relies upon our decision of February 8, 1961, B-142538, involving the use of donated funds by the National Science Foundation. The Foundation had statutory authority to accept donations "in furtherance of one or more of [its] general purposes." We said that:

"where Federal officers are authorized to accept such funds for a particular purpose, authority must of necessity be reposed in the custodians of the trust fund to make expenditures necessary to carry out the purpose of trust without reference to general regulatory and prohibitory statutes applicable to public funds."

This, of course, does not mean that agencies have blanket authority to use trust funds for personal purposes; each agency must justify its use of trust funds as being incident to the terms of the trust. The burden is on the Park Service to show that its Fund expenditures were to carry out trust purposes.

The availability of donated funds for travel and subsistence expenses is subject to general travel reimbursement laws and pay laws. B-166850, June 13, 1969. Section 5511 of title 31, U.S.C. (1976) prohibits the use of funds "appropriated for any purpose," for expenses of anyone other than a Federal employee, to attend conventions, seminars, or other assemblages without specific statutory authority to do so. See also, 55 Comp. Gen. 750 (1976) and B-166506, July 15, 1975. Therefore, expenditures from the Fund to pay for the expenses of non-Federal Government employees to attend seminars, conventions or other meetings would be improper.

Furthermore, specific statutory or regulatory authority must exist in order for travel and subsistence expenses to be paid or reimbursed to non-Federal Government employees. The statutory provision which permits reimbursement of individuals

serving the government without pay, 5 U.S.C. § 5703V(1976), has been determined to apply only to individuals who are performing a direct service to the Government. Mine Safety and Health Administration-Payment of Travel Expenses at Seminars, B-193644, July 2, 1979.

In the list of expenditures of the Fund, we note that a portion were made for the transportation of non-Federal employees. In addition to being expenses prohibited by 31 U.S.C. § 551, any transportation expenditures made from the Fund would be improper if the individuals incurring these expenses were not performing a direct service for the Government.

Upon detailed examination it may be that certain expenditures made from the Fund would be found to have been improper. We note, however, that the Park Service had, because of an overbroad interpretation of the National Science Foundation case, discussed above, at least a plausible basis for its interpretation of its authority. Moreover, the Senate and House Committees on Appropriations are aware of your criticism of the Fund. The Senate Committee has attempted to remedy the situation by proposing that the Park Service submit detailed quarterly reports on Fund expenditures to the Office of the Secretary of the Interior and to the Appropriations Committees. S. Rep. No. 363, 96th Cong., 1st Sess. (1979). In light of this we do not plan to take any further action at this time.

We trust that this has been responsive to your request.

Sincerely yours,

SIGNED ELMER B. STAATS
Comptroller General
of the United States