



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D C 20548

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2-20-70

FEB 20 1970

B-168722

Dear Senator Griffin.

This is in further response to your request of December 19, 1969, that we review and comment on a letter to you, dated December 17, 1969, from Miss Mildred Lepler regarding a grant for \$182,000 to be spent for a road to the shrine of Gerald L. K. Smith.

Our inquiry showed that the funds in question had been programmed for the improvement of a 2.5-mile Federal-aid secondary road which connects Arkansas Highway 23, a Federal-aid secondary route, with U.S. Highway 62, a Federal-aid primary route in Carroll County, Arkansas, near the Community of Eureka Springs. Located near Eureka Springs is a tourism complex operated by the Elna M. Smith Foundation, a nonprofit corporation. Presumably, this complex is the shrine referred to in Miss Lepler's letter. Although this road serves as a connection between two other highways, it also provides tourists with general access to the tourism complex.

The total estimated cost of the proposed improvement of the road is \$227,500. The primary Federal grantor is the Federal Highway Administration, Department of Transportation--through the Arkansas State Highway Department--under its Federal-aid secondary road program. The Administration has programmed \$113,750 for this project from funds apportioned to the State for its secondary road program. This amount represents the normal share (50 percent) of the total project cost. Under the Administration's procedures, funds are normally paid to the State in reimbursement of its costs as construction work progresses.

In addition to the \$113,750 Federal-aid highway funds approved by the Administration, the Ozarks Regional Commission has approved a supplementary grant of \$68,250, or 30 percent of the estimated construction cost, under authority of section 509 of the Public Works and Economic Development Act of 1965, as amended. Supplementary grants are approved by the Commission to enable applicants to take advantage of Federal grant-in-aid programs for which they are eligible but for which, because of their economic situation, they cannot supply the

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required matching share. Funds made available by the Commission have been transferred to the Administration and will be paid to the State as construction progresses. The remaining \$45,500 will be made available by Carroll County.

The Federal-aid secondary program is administered in a manner that will extend to the State highway departments as much freedom in standards, procedures, and operations as is consistent with the Administration's responsibility to protect the Federal investment and to ensure economy and efficiency in the expenditure of Federal funds. The Administration approves secondary road projects on the basis of an approved "secondary road plan" which sets forth standards and procedures that the State proposes to follow, or requires to be followed, in the construction of projects under the plan. Although the Federal-aid secondary road program is, for the most part, administered by the Administration's division offices located in each State, this particular project was also reviewed by its Headquarters because of the numerous public and congressional inquiries.

The Commission's involvement in this project was to assist Carroll County by providing supplementary funds to be used for a share of the cost of improving this secondary road which is located in a financially depressed area. Information furnished to us by the Administration and the Commission during our inquiry indicates that the road will be used primarily by tourists, a major source of income in the area. Although both Federal agencies approved the project, we were advised by an Administration official that, as of January 19, 1970, no Federal funds had been expended to reimburse the State for construction costs.

As you probably know, there has been a substantial amount of public and congressional interest in this project which, at least to some extent, was occasioned by the activities of one Gerald L. K. Smith and his relationship to the Elna M. Smith Foundation. Because of this interest, both Federal agencies involved in this project have reexamined their initial approvals of the project and have reaffirmed their prior approvals. Copies of data prepared by both agencies subsequent to their reexaminations are enclosed for your information.

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On the basis of our inquiry into this matter, we have no legal basis for objecting to the use of the Federal funds which have been programmed to improve the road in question.

We trust that this information will serve your purposes.

Sincerely yours,

R.F.KELLER

Assistant Comptroller General  
of the United States

Enclosures - 2

The Honorable Robert P Griffin  
United States Senate

## FACT SHEET

Eureka Springs, Carroll County, Arkansas  
Federal-Aid Secondary Route 2226

The State of Arkansas, Carroll County in Arkansas, and Eureka Springs business interests -- working together proposed the improvement of a 2.5-mile section of Federal-aid Secondary Route 2226 between State Highway 23 and U. S. Highway 62 in Arkansas. State Highway 23 in Arkansas is a part of the Federal-aid Secondary System. U. S. Highway 62 in this area is on the Federal-aid Primary System in Arkansas. The proposed improvement, therefore, is not a disconnected highway segment, but rather provides for service between two other Federal-aid routes.

In preparing their project the State and County officials interested the Ozarks Regional Commission in the development aspects of this undertaking and obtained financial assistance to the extent of 30 percent of the project costs. Federal-aid secondary highway funds apportioned to Arkansas under the provisions of Section 104b(2), Title 23, USC, were programmed by the State, with approval of the Bureau of Public Roads Division Engineer in Arkansas, for 50 percent of the project costs. The remaining 20 percent of the financing required is to be provided by the County. So far as Highway Trust Fund financing is concerned this is a normal 50-50 secondary project.

The State's program submission was approved by the Division Office of the Bureau of Public Roads in Arkansas November 13. The Bureau approval indicated concurrence in the validity of the decision by the State and County to improve a road that was inadequate to meet the needs imposed by a significant generator of highway traffic - a major tourist attraction in a tourist-oriented mountain area.

Under Federal-aid secondary project procedures it was not required that the project be reviewed or approved in the Washington office. From later review, since the matter received such interest, the Bureau finds no irregularity in the project criteria or in the procedures followed for its development up to this point.

GAO note: According to an Administration official, this fact sheet was prepared on December 15, 1969, because of numerous congressional and public inquiries regarding the improvement of the road.

*U.S. Department of Commerce*  
**ECONOMIC DEVELOPMENT ADMINISTRATION**

**OZARKS  
REGIONAL  
COMMISSION**

ORC 70-1

FOR IMMEDIATE RELEASE TUESDAY, JANUARY 6, 1970

COMMISSION RELEASES FUNDS FOR  
EUREKA SPRINGS, ARK., PROJECT

Phone (202) 967-2572

Citing "the pressing public need for the improvements contemplated by the project," the Ozarks Regional Commission today released Federal funds for the completion of a county road project near Eureka Springs, Arkansas.

The Federal funds had been temporarily frozen pending an investigation of the project. Earlier news accounts had alleged that the funds had been authorized to promote a project of the religious and racial extremist Gerald L. K. Smith.

The road in question, County Route 1226, is a 2.5 mile connecting roadway linking U. S. Highway 62 with Arkansas State Highway 23 (North) and is a heavily traveled tourist route for visitors desiring to view the statue, "Christ of the Ozarks," and to attend the Passion Play operated by the Elna M. Smith Foundation. The road project was certified by Arkansas State officials as contributing to the development of the Region.

The road is to be financed by the U. S. Bureau of Public Roads, \$113,750; by the Ozarks Regional Commission, \$68,250, and by Carroll County, Arkansas, \$45,000.

Eureka Springs, the Commission report noted, is located in a depressed area, with tourism its only industry. Two million visitors are expected in 1970 and five million by 1975, with the vast majority traveling on Route 1226. In its present condition the road is unsafe and dangerous to public traffic.

The Commission stressed that none of the Federal funds for the project will go to the Elna M. Smith Foundation nor used to improve Foundation property. It found that there appears to be no factual basis for the charge that proceeds from the tourist attractions are in any way diverted to the personal activities of Gerald L. K. Smith. The Commission concluded that withdrawal of the funds sought because of the controversial nature of Mr. Smith's views, would be contrary to the principles of the First Amendment and would penalize a public project designed to improve the economic status of Eureka Springs.

Copies of the Commission report are available on request from the Department of Commerce News Room.

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**THE OZARKS REGIONAL COMMISSION**  
Room 2099-B, Department of Commerce Building  
Washington, D C 20230

202 967-2572

January 6, 1970

**FACTS AND CONCLUSIONS**  
Carroll County, Arkansas Public Road Project

The joint federal-state-local road project at Eureka Springs, Arkansas, has been the subject of several newspaper articles questioning the propriety of the federal expenditures involved. The controversy first arose in an article published by the Washington Post on November 25. According to the allegations of the columnist who wrote the article, "a \$182,000 federal grant has been quietly authorized for a project promoted by Gerald L. K. Smith, " in order to provide "sleek new roads to improve the access" to the Christ of the Ozarks statue and the Passion Play operated by the Elna M. Smith Foundation near Eureka Springs, Arkansas. Pending a complete review of these charges, the Ozarks Regional Commission froze all funds allocated to this project. Our investigation has revealed the following

- (1) The project in question involves the repaving and regrading of an existing county road, Route 1226 which already serves as a schoolbus and mail route.
- (2) The roadway is part of the federal aid secondary system and links U.S Highway 62 with Arkansas Highway 23 (North)
- (3) Funding for the project is being supplied by the U.S. Bureau of Public Roads (50%), the Ozarks Regional Commission (30%), and Carroll County, Arkansas (20%)
- (4) The need for repaving is occasioned by the fact that the road is heavily traveled by visitors desiring to see the statue and play operated by the Elna M Smith Foundation.

(5) The road is an entirely public thoroughfare and does not enter private property at any point along the right of way

(6) None of the federal money in question will go to the Foundation, nor will it be used to improve property owned by the Foundation

(7) The Foundation expends all of its revenues for maintenance and operation of the projects. No monies are diverted to any outside activities

(8) The road repaving is a response to an already high volume of traffic on a presently unsafe and dangerous public road

#### BACKGROUND

Eureka Springs is in a depressed area and desperately needs a sustaining industry. As of 1967, per capita income for Carroll County was \$1,548 and unemployment exceeded six percent. The entire Beaver Lakes area relies on tourism and the Elna M. Smith Foundation projects form one of the central tourist attractions for the area. The project employs 20 full-time and 200 part-time employees in addition to stimulating a good deal of local commerce in the tourist trade.

The only other industry in Eureka Springs was a hardwood flooring factory employing 40 workers. The plant was partially destroyed by fire recently, and the company has decided to relocate out of the region. This only served to heighten the need to promote tourism in the area.

The thoroughfare in question, designated county Route 1226, is an entirely public, 2.5 mile connecting roadway linking U. S. Highway 62 with Arkansas State Highway 23 (North).

In November of 1968, County Judge Arthur Carter, Administrator of Carroll County, filed an application with the Ozarks Regional Commission for assistance in repaving and upgrading 2.5 miles of Route 1226. The project had been approved by the Bureau of Public Roads for 50% federal assistance and the County sought Commission aid in helping to meet the balance of the costs.

The justification offered for this project was that the road is a heavily traveled tourist route for visitors desiring to see the statue "Christ of the Ozarks" and to attend the Passion Play. Tourism is the major, indeed the only, industry of Eureka Springs, one million persons visited the project area in 1968 alone, two million visitors are expected in 1970 with the number swelling to five million by 1975. The vast majority of these visitors will travel on Route 122<sup>6</sup>. At present, the road is only partly paved and very poorly constructed. Nighttime travel on the road is extremely dangerous.

The repaving project was proposed by the County Judge and was endorsed by the Governor of the State. Carroll County, despite its poor financial condition, considered the road project of such importance that it contributed \$45,000. The project was certified by the Governor of the State as contributing to the development of the region.

#### RELIGIOUS ACTIVITIES OF GERALD L. K. SMITH

The application from the County and the certification and recommendation from the State of Arkansas in no way revealed that Mr. Gerald L. K. Smith was connected with the project nor that he was, in fact, the husband of Elna M. Smith. No mention of this fact was made during the meetings with the Federal Cochairman for the Ozarks Regional Commission and the federal staff had no reason to inquire into the background of the Foundation since the public road to be improved did not enter the property of that Foundation. Furthermore, any investigation of the Foundation or its members would only have been in connection with construction details of the road project since we are advised that the First Amendment to the Constitution prohibits a federal agency from weighing the religious affiliation of any person in deciding whether to grant federal funds.

The Commission has received numerous requests to withdraw the funds for this project in view of the now known relationship of Mr. Gerald L. K. Smith to the Foundation. Concern has been expressed that proceeds from the Foundation will be used to promote other activities of Mr. Smith. Our investigation indicates that the Foundation in question uses all of its income for the maintenance and operation of the projects and makes no contributions to the publications or activities of Mr. Smith. Donations solicited by the Foundation are used only for maintenance or improvement of the Eureka Springs projects and to help reduce outstanding deficits. There appears to be no factual basis, therefore, to a contention that proceeds from the statue or play are in any way diverted to the personal activities of Gerald L. K. Smith.



In addition, Carroll County has executed a written assurance of compliance with Title VI of the Civil Rights Act which guarantees that "no person in the United States shall on the ground of race, color or national origin be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination under any program or activity for which the Recipient receives Federal financial assistance."

The overriding consideration, however, in declining to withdraw funds from this project on the grounds that Mr. Smith will enjoy some collateral benefit is the Commission's belief that such a withdrawal is contrary to the principles of the First Amendment. It was made clear that there was a pressing public need for the public improvements contemplated by this project. It is now equally clear that the only basis for revoking approval of this project would be the well-known beliefs of Mr. Gerald L. K. Smith. Thus, the Commission is being asked to halt the distribution of federal funds because of the religious intolerance of a citizen who could indirectly benefit from a public improvement project. Although the Commission strongly condemns the intolerant views publicly espoused by Mr. Smith, it does not feel that the objectionable nature of these beliefs can serve as a basis for rejecting a needed public project.

In view of the above considerations, the Commission has directed the release of funds for the completion of this project. The Commission would be happy to provide additional background information on this project should anyone so desire it.

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FEDERAL GRANTS FOR IMPROVEMENT OF A ROAD TO A  
TOURIST COMPLEX IN ARKANSAS--FEDERAL HIGHWAY  
ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

B-168722  
2-20-70

RESTRICTED

Report to Senator Robert P. Griffin pursuant to his request.

The report contained information about the \$182,000 approved by the Federal Highway Administration, Department of Transportation and the Ozarks Regional Commission for the improvement of a 2.5-mile Federal-aid secondary road which connected Arkansas Highway 23 with U.S. Highway 62 in Carroll County Arkansas, near the community of Eureka Springs. This road also provided tourists with general access to the tourism complex operated by the Elna M. Smith Foundation, a nonprofit corporation. There has been a substantial amount of public and congressional interest in this project which, at least to some extent, was occasioned by the activities of Gerald L. K. Smith and his relationship to the Elna M. Smith Foundation. (2)

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Also we reported that we had no legal basis for objecting to the use of the Federal funds which had been programmed to improve the road.

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ID:  
Eureka Springs, AR

Construction  
Grants  
Public Works  
Highway  
Road construction  
Federal aid for  
the improvement of  
public works  
Financial management  
915126

B-168722  
2-20-70

FEDERAL GRANTS FOR IMPROVEMENT  
OF A ROAD TO A TOURIST COMPLEX  
IN ARKANSAS

RELEASED

RESTRICTED

This inquiry was made pursuant to a request by Senator Robert P. Griffin which was motivated by a complaint from a constituent. The road in question is a 2.5-mile Federal-aid secondary road which connects with two other Federal-aid roads in the vicinity of Eureka, Arkansas. The road also provides general access to a tourist complex operated by the Elna M. Smith Foundation. Federal funds amounting to \$182,000 have been programmed by two Federal agencies--the Federal Highway Administration and the Ozarks Regional Commission--to assist in the improvement of the road. This project has been the subject of a substantial amount of public and congressional criticism which was occasioned, at least to some extent, by the activities of Gerald L. K. Smith and his relationship to the Elna M. Smith Foundation.

We examined records of the Federal Highway Administration and the Ozarks Regional Commission and held discussions with representatives of both agencies. We reported to Senator Griffin that we had no legal basis for objecting to the use of Federal funds which have been programmed to improve the road (B-168722, February 20, 1970.)

Revised

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*Revised*

*Cards J*