

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

B184705

SEP 4 1975

The Honorable Howard W. Cannon  
Chairman, Committee on Rules and  
Administration  
United States Senate

Dear Mr. Chairman:

By letter dated August 11, 1975, you requested our views concerning a legal issue which has arisen in the Committee's consideration of the nomination of Dr. Daniel J. Boorstin to be Librarian of Congress.

You state that several employees of the National Museum of History and Technology of the Smithsonian Institution, who were paid as Federal employees with appropriated funds, spent a substantial amount of their regular work days over a period of several years doing research and manuscript typing for Dr. Boorstin, the Museum Director, who was paid by privately endowed funds and not as a Federal employee. The purpose of such work was to help complete a book manuscript which had been contracted for by a private publishing company for which the author, Dr. Boorstin, would be compensated monetarily by royalties.

You request our views on the "legality of using employees paid by Federal funds for a private purpose, namely, assisting in the research and preparation of a manuscript for an individual who was not within the Federal service insofar as his compensation coming from privately endowed funds, with the results of this work by federally paid employees benefitting this individual financially and with honors." (Dr. Boorstin's work earned him the Pulitzer Prize for History in 1974.)

It is fundamental that appropriations provided by the Congress may be used only for the objects for which the appropriations are made and for no others. Section 3678, Revised Statutes, 31 U.S.C. § 628 (1970). No provision appears in the appropriations to the Smithsonian Institution which either expressly or by reasonable and direct implication authorizes the use of those funds to assist an employee thereof in a private revenue earning venture. Moreover, the work product of Federal employees becomes the property of the United States. See, for example, 17 U.S.C. § 8 (1970). These principles, however, would not appear to be applicable to the instant situation.

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There (is for consideration the unique nature of the Smithsonian Institution (Institution). It was created by the Act of August 10, 1846 (9 Stat. 102) to administer the trust of John Smithson, who bequeathed the bulk of his estate "to the United States of America, to found at Washington, under the name of the Smithsonian Institution, an Establishment for the increase and diffusion of knowledge among men." The principal of the bequest was required to be lent to the United States Treasury at 6 percent interest which was appropriated to the perpetual maintenance and support of the Institution. A tract of publicly owned land was appropriated to the Institution and the construction of a suitable building thereon for a museum, laboratory, library, art gallery, and lecture rooms was authorized. From time to time the functions of the Smithsonian have been increased by laws placing under its control additional establishments or authorizing it to extend its activities into additional fields, but its organization and powers with respect to the subject matter of its operation have remained substantially unchanged. See 20 U.S.C. §§ 41 et seq. (1970).

The nature of the Smithsonian was described at length by James Bradley, Under Secretary of the Institution, in the course of testimony before the Subcommittee on Library and Memorials, Committee on House Administration, July 21, 1970, p. 262:

"\* \* \* The Smithsonian was established as a charitable, nonprofit corporation to carry out the trust responsibilities of the United States, but independent of the Government itself.

"It receives the support and assistance of each branch of the Government without becoming a part thereof."

Mr. Bradley also quoted former Chief Justice Taft who said, at a Conference on the Future of the Smithsonian Institution in 1927:

"I must make it clear, gentlemen, that the Smithsonian is not and has never been considered a government bureau. It is a private institution under the guardianship of the government."

The administrative expenses of the Institution are generally paid from appropriated funds, the expenditure of which may be audited by this Office. However, in addition to the original Smithsonian endowment, the Institution holds and administers a number of other funds for purposes stipulated by their donors. All trust funds may be expended by the Institution in accordance with the Smithson bequest, or

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other bequests, and are not subject to the usual rules applicable to Federal funds. Our Office does not currently have the authority necessary to audit the expenditure of the trust funds.

Within that framework the Smithsonian has established two separate systems for its employees. Some (approximately 3,284 as of June 30, 1975) are hired as Federal employees and paid from appropriated funds. Others (1,346 as of June 30, 1975) are paid from other monies of the Institution. As a general rule the pay and fringe benefits of these latter employees are comparable to those of the Federal employees.

The offer of employment to Dr. Boorstin, made in two letters from Dr. S. Dillon Ripley, Secretary of the Institution, set forth some of the conditions of his employment. In his letter of December 18, 1968, Dr. Ripley stated:

"\* \* \* If you are able to accept our invitation, it will be with the understanding that you will continue your research and writing and that you will also do as much teaching, either within the Smithsonian or outside, as you might wish. You would have complete freedom to apportion your time between these activities and the administrative responsibilities of the Museum of History and Technology in any way that might seem best to you."

In a subsequent letter Dr. Boorstin was advised:

"\* \* \* as a private employee of the Smithsonian Institution, you will be free to retain royalties earned through the publication of materials written by you at the Smithsonian."

In his testimony before your Committee concerning the instant nomination, Dr. Ripley stated that it is in keeping with longstanding tradition and policy that Dr. Boorstin was encouraged to continue his research and writing in the field of history.

It was clearly within the authority of the Institution to hire Dr. Boorstin as a Museum Director to be paid from other than appropriated funds, with the understanding that his time and effort might be split between administrative duties at the Museum and pursuit of his career as a historian from which he could retain any royalties or other income earned.

Dr. Ripley further testified that, concomitant to the Institution's encouragement of Dr. Boorstin's research and writing, it agreed

to attempt to provide him the kind of research assistance afforded scholars of his eminence in other institutions such as universities, research libraries and other centers for advance study. Pursuant to this agreement Dr. Boorstin was provided with office space, a research assistant (actually three individuals who served in succession) and a secretary. In addition to assisting Dr. Boorstin in his personal scholarly activities, these individuals participated in a variety of programs in the Museum including work on exhibitions and exhibition catalogues.

Again, there would seem to be no question that it was within the authority of the Smithsonian as a part, in effect, of its employment contract with Dr. Boorstin, to agree to provide him with research assistance. Further, there would clearly be no question raised if the individuals assisting Dr. Boorstin had been paid from the private funds of the Smithsonian. However, in the instant situation all three research assistants and the secretary were Federal employees paid from funds appropriated to the Smithsonian.

We might note that in addition to maintaining public exhibits representative of the arts, American history, aeronautics and astronautics, technology, anthropology, geology and biology; and acquiring and preserving for reference and study millions of items of scientific, cultural and historic purposes; presenting performances of American arts and crafts; conducting educational programs at all levels and participating in the exchange of scientific information, the Smithsonian Institution conducts research in the natural and physical sciences and in the history of cultures, technology and the arts. It has consistently requested from Congress additional funds to improve its facilities to allow members of its professional staff to perform productive research in art, history and science. Clearly, within its broad charter of diffusing knowledge among men, the Smithsonian is authorized to hire researchers to study American history including, we presume, the kind of work Dr. Boorstin's assistants performed.

Considering the unique status of the Institution it is clear that its employees (at least those paid from trust funds) may be authorized and/or directed to undertake activities from which one or more of them may benefit directly or indirectly--provided the terms of the Institution's charter and of the parties contributing the funds are complied with--when the desirability, advisability and propriety of Government employees in Government agencies undertaking similar tasks could be called into question. Thus, the Institution has the authority to hire from its trust funds a Museum Director such as Dr. Boorstin with the understanding that he is free--and, in fact,

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encouraged--to utilize the Institution's resources and divert time from his museum duties in the course of his historical research and writing from which he will earn income in addition to his salary from the Institution. It may also provide office space and research and secretarial assistance specifically for the purpose of assisting the Museum Director in his private writings. A Federal agency, of course, has no such hiring authority.

Had Dr. Boorstin been assigned employees paid solely out of the Institution's trust funds rather than appropriated funds, there would be no valid question of impropriety raised outside the Smithsonian itself. While the Institution erred in assigning four employees to Dr. Boorstin who were paid from Government funds instead, in the light of all the facts and circumstances in the instant case, we feel that Dr. Boorstin's acceptance of these services was made in good faith and was, at worst, a technical error which should be corrected to compensate the employees in question for the portion of time spent on Dr. Boorstin's work from nonappropriated funds instead of appropriated funds.

We trust that the above is responsive to your request.

Sincerely yours,

SIGNED WALTER B. STANTS

Comptroller General  
of the United States  
Employees  
for private purposes  
activity

Enclosure

SMITHSONIAN INSTITUTION  
WASHINGTON, D.C.

SMITHSONIAN INSTITUTION  
WASHINGTON, D.C.

SMITHSONIAN INSTITUTION  
WASHINGTON, D.C.

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**SMITHSONIAN INSTITUTION**  
**Employees**  
**Use for private purposes**  
**Legality**

**DEPARTMENTS AND ESTABLISHMENTS**  
**Status**  
**Smithsonian Institution**

**FUNDS**  
**Nonappropriated**  
**Smithsonian Institution**

**OFFICERS AND EMPLOYEES**  
**Status**  
**Nonappropriated fund activities**