

DOCUMENT RESUME

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Self-Insurance Status of Payments Received under Probation Orders. B-18793^u. July 15, 1977. 5 pp.

Decision by Paul G. Dembling (for Elmer B. Staats, Comptroller General).

Issue Area: Personnel Management and Compensation (300).

Contact: Office of the General Counsel: General Government Matters.

Budget Function: General Government: Central Personnel Management (805).

Organization Concerned: Administrative Office of the United States Courts.

Authority: (P.L. 91-492; 84 Stat. 1090; 18 U.S.C. 3651, as amended). (P.L. 92-310, sec. 101; 86 Stat. 201; 31 U.S.C. 1201 (Supp. V)). 28 U.S.C. 2041, 2042. 31 U.S.C. 725v. 52 Comp. Gen. 549. B-185909 (1976). B-177655 (1973). S. Rept. 92-790, 92-791. Howard v. United States, Use of Stewart, 184 U.S. 754, 762 (1901).

The General Counsel of the Administrative Office of the United States Courts requested a decision with regard to whether the United States is a self-insurer of restitution, reparation, and support moneys collected pursuant to court orders issued in accordance with 18 U.S.C. 3651. The United States is the self-insurer of these payments. Such payments are received by probation officers in connection with their official duties, and are subject to fiduciary responsibility while held in the custody of the courts. (Author/SC)

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DECISION



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

FILE: B-187934

DATE: July 15, 1977

**MATTER OF: Self-insurance status of payments received
under probation orders**

**DIGEST: Under Pub. L. No. 92-310, which prohibits bonding
of Federal employees in favor of self-insurance
by Government, United States is self-insurer of
restitution, reparation and support payments
received by probation officers as required by
probation orders issued pursuant to 18 U.S.C.
§ 3651. Such payments are received by probation
officers in connection with their official duties
and are subject to fiduciary responsibility while
held in custody of courts.**

The General Counsel of the Administrative Office of the United States Courts has requested our decision as to whether, under Pub. L. No. 92-310, infra, the United States is a self-insurer of restitution, reparation and support moneys collected pursuant to court orders issued in accordance with 18 U.S.C. § 3651 (1970 & Supp. V, 1975).

Under 18 U.S.C. § 3651, any court having jurisdiction to try offenses against the United States may, upon a judgment of conviction, suspend imposition or execution of the sentence and place the defendant on probation for such period and upon such terms and conditions as the court deems best. Among the conditions which may be imposed, the defendant:

"* * * May be required to pay a fine in one or several sums; and

"May be required to make restitution or reparation to aggrieved parties for actual damages or loss caused by the offenses for which conviction was had; and

"May be required to provide for the support of any persons, for whose support he is legally responsible. * * *"

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Section 3651 was amended in 1970 by Pub. L. No. 91-492 (October 22, 1970), 84 Stat. 1090, to permit the court to require residential community center treatment as a condition of probation and to require the payment, as deemed appropriate by the Attorney General, of the costs incident to residence in the center. Section 3 of Pub. L. No. 91-492, 18 U.S.C. § 3651 note (1970), provides that:

"Funds collected pursuant to section 3651 * * * of title 18, as amended, shall be deposited in the Treasury of the United States as miscellaneous receipts."

Clearly this requirement for deposit as miscellaneous receipts was intended to apply only to collections received under 18 U.S.C. § 3651 for the United States. We do not construe it to cover restitution, reparation and support payments received for the benefit of aggrieved parties other than the United States.

The General Counsel of the Administrative Office advises that the clerks of court have commonly been making collections and disbursements pursuant to 18 U.S.C. § 3651. However, it is proposed to reassign these collection and disbursement functions to probation officers, who are in direct and constant contact with probationers and are therefore better able to monitor compliance. The reassignment would be effected under the fourth paragraph of 18 U.S.C. § 3655 (1970), which provides that a probation officer:

"* * * shall keep records of his work; shall keep accurate and complete accounts of all moneys collected from persons under his supervision; shall give receipts therefor, and shall make at least monthly returns thereof; shall make such reports to the Director of the Administrative Office of the United States Courts as he may at any time require; and shall perform such other duties as the court may direct."

Section 101 of Pub. L. No. 92-310 (June 6, 1972), 86 Stat. 201, 31 U.S.C. § 1201 (Supp. V, 1975), provides in part:

"(a) No agency of the Federal Government may require or obtain surety bonds for its civilian employees or military personnel in connection with the performance of their official duties."

Subsection 101(c) defines "agency of the Federal Government" to include judicial branch entities.

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As recognized in prior decisions of our Office, the basic objective of Pub. L. No. 92-310 was to substitute the principle of self-insurance on the part of the Federal Government for the practice of obtaining surety bonds for Federal employees "in which the risk insured against was a loss of Government funds or property and in which the United States was the insured." B-185909, June 16, 1976, at page 3; see also, 52 Comp. Gen. 549 (1973); B-177655, February 22, 1973. The Senate report on the legislation enacted as Pub. L. No. 92-310 stated in this regard, S. Rep. No. 92-790, 1 (1972):

"The purpose of H.R. 13150 is to provide that the Federal Government shall assume the risks of fidelity loss. It thus establishes the policy that no agency of any branch of the Federal Government shall obtain surety bonds for its civilian or military personnel who have the responsibility for substantial sums of money in connection with their official duties. The bill repeals or amends existing law requiring Federal agencies to obtain surety bonds for these civilian and military personnel. It provides that the amount of any loss due to the fault or negligence of a Federal employee shall be charged to the agency's appropriation or other available appropriate fund."

The General Counsel of Administrative Office believes that the self-insurance principle of Pub. L. No. 92-310 would apply to restitution, reparation and support payments received by probation officers under 18 U.S.C. § 3651 so long as they are held in the custody of the court. He analogizes these payments to "litigation funds" paid into the registry of a court pending distribution by the court to the successful party. See 28 U.S.C. §§ 2041-42 (1970); 31 U.S.C. § 725v (1970); and Rule 67, Fed. R. Civ. P.

While the precise status of litigation moneys paid into the court registry is not certain for all purposes, the General Counsel points out that they had been considered subject to the clerk's fidelity bond when such bonds were required before enactment of Pub. L. No. 92-310:

"Some cases discussing the nature of the role of the court as to funds held for distribution, refer to the court as stakeholder (U.S. Overseas Airlines, Inc. et al. v. Compania Aerea Viajes Expressos de Venezuela, S.A.,

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161 F. Supp. 513, 516 (S.D.N.Y. 1958)); or trustee (Thomas Branch and Thomas Branch, et al., v. U.S., 100 U. S. 759, 10 Otto 673 (1879); In re Casco Chemical Co., 335 F.2d 645, 649 (5th Cir. 1964)). In any event, prior to the elimination of the blanket position bond it was held that the clerk of court was accountable on his bond in a suit brought by a party in the name of the United States for moneys which the clerk failed to deposit into the court's registry. Howard v. United States, Usa of Stewart, 184 U.S. 754, 762 (1901). In that case the Court observed:

'By the terms of the statute a clerk's bond remained in the custody or subject to the order of the court. In our opinion, Congress intended that the required bond should protect private suitors as well as the United States, and therefore, no statute forbidding it, a private suitor may bring an action thereon for his benefit in the name of the obligee, the United States. Such must be held to be the legal intentment of existing statutory provisions. The United States, or rather the court which had custody of the bond, is to be regarded as a trustee for any party injured by a breach of its conditions.

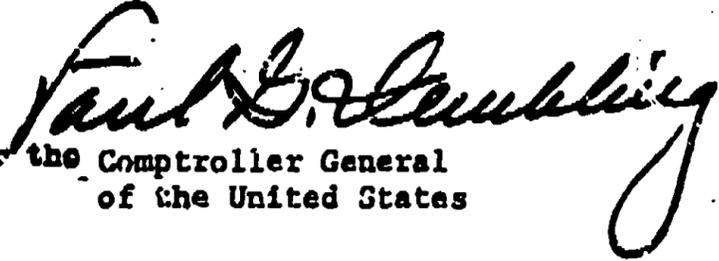
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'As the clerk had the right to receive the money in question; as he failed, to the injury of the suitor from whom he received it, with the sanction of the court in a pending cause, to deposit it as required by law, and appropriated it to his own use; and as his bond was for the protection of private suitors as well as for the government, there is no sound reason why the plaintiff could not enforce his rights by a suit in the name of the United States for his benefit.' (Emphasis added.)"

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We agree with the General Counsel that the Government is now a self-insurer of litigation funds paid into the court registry by virtue of Pub. L. No. 92-310. We also agree that the same conclusion applies by analogy to the payments under 18 U.S.C. § 3651 to be collected by probation officers. Probation officers are employees of the Federal Government, and they would receive such payments in the performance of their official duties. Compare B-177655, B-185909, supra. Finally, under the reasoning of the court cases cited by the General Counsel with respect to litigation funds, it seems reasonable to conclude that the United States has a fiduciary responsibility for the payments received by its probation officers.

For the foregoing reasons, it is our opinion that the United States is a self-insurer of restitution, reparation and support payments received by probation officers pursuant to 18 U.S.C. § 3651.


For the Comptroller General
of the United States