

DOCUMENT RESUME

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Architect of the Capitol Contributions to Employee Benefit Trust Funds on Behalf of Temporary Employees. B-189553. October 13, 1977. 3 pp.

Decision by Paul G. Dembling, Acting Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation (305).

Contact: Office of the General Counsel: Civilian Personnel.

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

Organization Concerned: Architect of the Capitol; McChesney & Pyne.

Authority: Legislative Pay Act of 1923, as amended (46 Stat. 38; 55 Stat. 615). 31 U.S.C. 492. 5 U.S.C. 5525. 5 U.S.C. 5521(1). 40 U.S.C. 166b-5 (Supp. V). 2 U.S.C. 60a-2a. Internal Revenue Code, sec. 401(a).

William B. Duff, member of a law firm which represents the Boards of Trustees of several employee benefit trust funds, requested a ruling whether the Architect of the Capitol was empowered to make contributions directly into the trust funds rather than paying an equivalent amount to the temporary employees themselves. The Architect has been authorized to make payments on behalf of employees to nonemployee third parties only in certain specified instances and has not been authorized to make contributions to employee benefit trust funds.

(Author/SC)

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T. Armstrong
Air Person

DECISION



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

FILE: B-189153

DATE: October 13, 1977

MATTER OF: Architect of the Capitol contributions to employee benefit trust funds on behalf of temporary employees

DIGEST: The Architect of the Capitol is not authorized to make fringe benefit contributions directly into employee benefit trust funds on behalf of temporary employees. 5 U.S.C. 5525 is not applicable to the Architect's Office. The Architect has been authorized to make payments on behalf of employees to nonemployee third parties only in certain specified instances. Not having been authorized to make contributions to employee benefit trust funds, the Architect is precluded from doing so. See 31 U.S.C. 492(a).

Local labor unions and interested employers have entered into collective bargaining agreements establishing several employee benefit trust funds. The funds provide pension, health and welfare benefits to those employees covered by the funds. Certain employers of union members have agreed to make contributions on behalf of their employees directly into the trust funds. The contributions are made in amounts based on rates specified in the agreements.

The Office of the Architect of the Capitol has followed the practice of hiring, on a temporary basis, employees who are members of the unions. Unlike the private employers who are parties to the collective bargaining agreements, the architect, not a party to the agreements, refuses to make fringe benefit contributions directly into the employee benefit trust funds. The Architect does, however, pay to the temporary employees, in addition to normal wages, an amount for fringe benefits equivalent to that contributed by private employers to the trust funds.

The law firm of McChesney & Pyne, represents the Boards of Trustees of several of the employee benefit trust funds. By letter of July 5, 1977, Mr. William B. Duff of the firm points out that a union member must be performing services for an employer who has agreed to contribute to the trust fund in order for him to maintain his eligibility for benefits from the trust fund. Under the terms of the agreement establishing these funds, the union members have no legal right to receive the contributions as part of their wages because the money is to be paid directly to the trust fund by the employer. By paying the money for fringe benefits directly to the employee rather than to the trust fund, the Architect, Mr. Duff claims, is jeopardizing the employee's eligibility.

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Such an arrangement, Mr. Duff claims, has several unfavorable tax consequences. The money representing the fringe benefits contribution becomes taxable income of the employee when it is paid to him. Furthermore, he states that employee contributions to the trust funds threaten the special tax status of the trust funds under Internal Revenue Code, section 401(a).

Because of these problems, Mr. Duff urges us to hold that the Architect of the Capitol is empowered to make contributions directly into the trust funds, as do other employers of union members, rather than paying an equivalent amount to the employees themselves.

Disbursing officers are required by 31 U.S.C. 492(a) (1970) to draw public money entrusted to them only as required for payments to be made pursuant to law and only in favor of the persons to whom payment is made. Congress has enacted several exceptions to this rule. Heads of agencies have been authorized to make allotments and assignments out of an employee's pay under certain circumstances. 5 U.S.C. 5525 (1970). However, "agency", as it is used in section 5525, is not defined to include the Office of the Architect of the Capitol. 5 U.S.C. 5521(1) (1970).

Although the broad authority of section 5525 has not been given to the Architect, Congress has created exceptions to the general rule which are applicable to the Architect. Congress has authorized the disbursing officers of agencies (including the Architect's Office) to draw checks in favor of financial organizations, at the request of an employee, in order to make payments to such organizations for credit to the account of the employee. 31 U.S.C. 492(b) (1970). The Architect is also specifically authorized, by reason of 40 U.S.C. 166b-5 (Supp. V, 1975), to withhold State income taxes and to remit such sums to the appropriate state.

In light of these specific authorizations from Congress, it seems the Architect must be granted express authority to make payments to non-employee third parties. Having no authorization from Congress to make contributions to employee benefit trust funds, the Architect is precluded from doing so.

The Legislative Pay Act of 1923, as amended (46 Stat. 38; 55 Stat. 615), allows the Architect to fix the compensation of his temporary employees. (See also 2 U.S.C. 60e-2a (1970).) He can, therefore, in addition to the normal union wage, pay to the temporary employee an amount representing the employer's contribution to the trust funds. However, the authority to determine the amount of compensation does not

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allow the Architect to pay portions of this compensation to parties other than the employee.

Accordingly, we are unable to advise the Architect to make fringe benefit contributions directly to the trust funds.

Paul G. Lumbly
Acting Comptroller General
of the United States