

COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON D.C. 20548



B-133332

August 17, 1984

The Honorable Cardiss Collins
Chairwoman, Subcommittee on
Government Activities and Transportation
Committee on Government Operations
House of Representatives

RELEASED

Dear Madam Chairwoman:

On April 30, 1984, members of my staff met with members of your Subcommittee's staff to brief them on our answers to your March 26th request for information concerning the General Accounting Office's audit authority over the Smithsonian Institution. As agreed, this letter summarizes the information presented at the meeting.

You requested a listing of GAO's work relating to the Smithsonian for fiscal years 1983 and 1984, including any pending matters. A listing of our reports dating back to the 1970's was provided to your staff on April 30. We will be pleased to provide copies of any of these reports.

As requested by your staff, enclosed are copies of (1) the December 1977 report of the House Appropriations Committee's Surveys and Investigations Staff on the Smithsonian's accountability and management policies and practices, and (2) GAO's July 20, 1982 approval of the Smithsonian's statement of accounting principles and standards. The Smithsonian's statement applies to its accounting operations involving Federal appropriations. The 1982 approval does not constitute approval of the accounting system itself. Examination of the accounting system was not completed at that time because the Smithsonian was in the process of installing a new payroll system. We have not performed any subsequent reviews of the Smithsonian's accounting system.

The second portion of your request asks generally about the statutory relationship between GAO's functions and responsibilities and the Smithsonian Institution. The two chapters of Title 31 of the United States Code to which you refer in your letter deal with the General Accounting Office (Chapter 7) and Accounting and Collection (Chapter 35). The majority of the sections within these chapters, which set forth GAO's

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role, cover "agencies". For purposes of Title 31 generally, "agency" is defined as "a department, agency, or instrumental-ity of the United States Government." 31 U.S.C. § 101 (1982). (Chapter 7 of Title 31 refines this definition for purposes of that chapter by including the District of Columbia government but excluding the legislative branch and the Supreme Court. 31 U.S.C. § 701. Parts of chapter 35 apply only to executive agencies but not to Government corporations. 31 U.S.C. § 3501.) Application of chapters 7 and 35 of Title 31 therefore depends in the first instance on whether the Smithsonian falls within the general definition.

The definitional problem stems from the Smithsonian Institution's dual nature. In his will, James Smithson left his property to the United States, "to found at Washington, under the name of the Smithsonian Institution, an establishment for the increase and diffusion of knowledge among men." Initially established to carry out the Federal Government's trust responsibilities under this bequest, the Institution traditionally has been regarded as private. Former Chief Justice Taft, speaking as Chancellor of the Board of Regents of the Smithsonian, was quoted as stating at a 1927 Conference on the Future of the Smithsonian Institution,

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

In its statutory charter, the Smithsonian has been given broad discretion in the conduct of its affairs which is unlike that of Federal agencies. For example, the Smithsonian has authority to accept and expend funds from private sources. 20 U.S.C. § 55 (1976). The Board of Regents has the authority to dispose of unappropriated moneys as they shall deem best suited for the promotion of the purpose of the testator. 20 U.S.C. § 56 (1976). The Board of Regents also is empowered to acquire, display, restore, loan, sell, or otherwise dispose of items of historical or artistic interest. 20 U.S.C. § 75 (1974).

However, the fact that the overwhelming majority of the Smithsonian's funds come from the Federal Government has led many to conclude that the Smithsonian is more like a Federal agency than an independent trust. In December of 1977, the

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House Appropriations Committee's Surveys and Investigations Staff submitted a report on the accountability and management policies of the Smithsonian Institution (copy enclosed). In this report, at page 60 the investigative staff expressed the view that

"[w]ith an average of more than 90 percent of its net operating expenses financed by Federal appropriations, grants, and contracts over the past quarter century, it [Smithsonian] has become, in fact, a Federal entity. The Investigative Staff believes it follows that the Institution should be accountable to the Congress with respect to all funds available to it, both private and Federal, on the same basis as other Federal agencies and all its operations should be subject to the same oversight."

In a September 1977 study prepared for the Audit Review Committee of the Smithsonian's Board of Regents, (copy enclosed) Phillip S. Hughes, then a consultant and now Undersecretary of the Smithsonian, similarly expressed the view that the Institution's activities reflect a pronounced Federal character. The preponderance of Federal funds, the extent of Congress' involvement and the coverage of Smithsonian employees under several Federal statutes of general application (he cites as examples statutes such as the Federal Tort Claims Act, the Federal Employees Compensation Act, the Occupational Safety and Health Act, and the Unemployment Compensation Act for Federal Employees) led Mr. Hughes to conclude (at page 36) that the Smithsonian Institution "is practically and operationally a Federal instrumentality, agency, or 'establishment' * * * which was created by Congress to carry out the trust objectives of the Smithson will."

The debate continues on the issue of the nature of the Smithsonian without a definitive resolution. As suggested above, the Smithsonian is subject to some of the same statutes as Federal agencies while excluded from the coverage of others.

For purposes of GAO's authority under Title 31^N, our decisions have tended to focus on the nature of the funds being

used rather than the nature of the Institution itself. A major statutory basis of GAO's authority over the Smithsonian's finances is found in 31 U.S.C. § 712 (1982). Section 712 is not limited to "agencies"; it states that the Comptroller General shall "investigate all matters related to the receipt, disbursement, and use of public money." This section thus conveys broad authority for us to audit the use of Federal funds (i.e., appropriations) by the Smithsonian but does not extend to trust funds. B-197565, May 13, 1980; B-184705, September 4, 1975.^{1/} Similarly, we have held that our audit authority does not extend to other private funds administered by Smithsonian Associates, a body of private citizens with no responsibility for or access to appropriated funds whatsoever. B-169011, April 2, 1970.

Prior to the recent revision and codification of Title 31, 31 U.S.C. § 72 authorized the General Accounting Office to receive and examine all accounts related to the Smithsonian Institution. In practice, this Office has construed this authority as extending only to accounts relating to the use of appropriated funds. This specific language was omitted from the superseding provisions (sections 3523 and 3526 of the revised title).

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Section 1321(a) of Title 31 of the United States Code (1982) (formerly 31 U.S.C. § 725s) classifies the principal of the Smithsonian trust as a "trust fund." It further provides that amounts accruing to the fund are "appropriated" to be disbursed in compliance with the terms of the trust. The principal that was received in money and paid into the Treasury is lent to the Treasury at six percent interest. A more specific provision, 20 U.S.C. § 54 (1976) states that the interest accruing to the trust fund is "appropriated" for the perpetual maintenance and support of the Smithsonian Institution. These classifications of amounts in the trust fund, as "appropriated" funds are not very significant as a practical matter since they would not be applicable to private donations to the Institution not deposited by the Regents into the Treasury and since the amount in the trust fund is limited to \$1,000,000 (20 U.S.C. § 55).

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Although this Office has not taken the position that our audit authority should be extended to the Smithsonian Institution's use of private funds, we did recommend in our 1977 Report entitled "Need to Strengthen Financial Accountability to the Congress" (GGD-77-43) that the Smithsonian provide the Appropriations Committees with information on the planned use of private funds when appropriation requests are submitted. In response to this recommendation, the Secretary of the Smithsonian Institution, in a letter dated March 21, 1977 (see appendix V of the report), stated:

"Currently it is recognized that in some areas, notably non-federal funds expended under the immediate direction of the individual bureaus, the amount of such funds has increased in the past year or two to the point where reporting of additional details concerning them may now be desired. If so, such information, will be provided in the future."

The Smithsonian Board of Regents prepared and submitted to the Appropriations Committee a statement on policies and procedures governing the use of all funds. (Copy enclosed.) The statement provides that any proposed expenditure of trust funds, which may result in a significant requirement for future Federal dollars, is to be brought to the attention of the Office of Management and Budget (OMB) and the Congress before any commitment is made. Additionally, the statement provides that trust fund plans and budgets for the current and budget years are to be communicated in a timely and comprehensive way to OMB and Congress for their review as part of the Federal appropriations process.

While the Smithsonian Institution may not be covered expressly by certain provisions in Title 31, in some cases it has chosen to follow these provisions voluntarily. For example, 31 U.S.C § 3513 (1982) provides for approval by this Office of an executive agency's accounting system when the system is considered to be adequate and in conformity with principles, standards and requirements prescribed by the Comptroller General. On more than one occasion, the Smithsonian has submitted its system to the General Accounting Office for approval. Consequently, although the statute on its face appears to cover "executive agencies," both the Smithsonian and this Office have treated the Smithsonian's accounting

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system as subject to the approval requirements in 31 U.S.C. § 3513, B-115390-O.M. March 27, 1979.

Similarly, the Smithsonian has complied with 31 U.S.C. § 720 which requires "agencies" (defined in part as departments, agencies, or instrumentalities of the United States) to submit to certain congressional committees a statement on action taken on GAO recommendations. Following our March 31, 1977, report entitled "Need to Strengthen Financial Accountability to Congress--Smithsonian Institution" (GGD-77-43), the Secretary of the Smithsonian submitted a statement to Congress reporting its progress in implementing recommendations contained in the report. (Copy enclosed) Additionally, where we issued a decision recommending that the Smithsonian reevaluate the necessity for a sole source procurement and reprocur competitively if appropriate, we furnished these recommendations to the committees specified in 31 U.S.C. § 720. We stated that this section requires the Smithsonian to submit a statement concerning action taken on these recommendations. 56 Comp. Gen. 434 (1977). It is important to note, however, that the procurement in that case was to be carried out solely using Federally-appropriated funds.

Regarding the remaining provisions of Chapters 7 and 35 of Title 31, their applicability to the Smithsonian Institution has not yet been tested. Whether the Smithsonian's compliance with each of these sections should be considered mandatory is an issue which must be determined on a case-by-case basis. Such a determination would be made in accordance with the general principles stated above.

In light of the above, one could say that while the Smithsonian's status as an "agency" or an "independent trust" with respect to Title 31, Chapters 7 and 35, is by no means clear, this Office has authority over the Smithsonian's affairs to the extent that it uses Federal funds. In addition, to the extent that the Smithsonian voluntarily subjects itself to other provisions purporting to cover only "agencies," we may have an impact on its operations. We hope

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that this information is helpful to you. Should you have further questions regarding this discussion, Mark Gebicke, Barry Bedrick, and Joy Gaines of my staff would be able to assist you.

Sincerely yours,



Acting Comptroller General
of the United States

Enclosures