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

B-133332

JAN 13 1972

Dear Mr. Ripley:

By letter dated November 18, 1971, you wrote to our Office concerning a unique problem that the Institution has which pertains to its employees assigned to the Smithsonian Tropical Research Institute (STRI). Specifically, you advised that employees of STRI are the only United States employees on the Isthmus of Panama whose organization provides no assistance in coping with the high cost of establishing and maintaining households in the Republic of Panama. You state that all other agencies provide either subsidized Canal Zone housing, subsidized housing in Panama, or Foreign Quarters Allowances.

According to your letter, no permanent housing is available in the Canal Zone for Smithsonian employees as housing in the Zone is in short supply and is completely consumed by activities more exclusively oriented toward canal operations and military requirements. Despite being assigned to duty stations in the Canal Zone, all Smithsonian employees therefore have no option but to establish residences for their families in the Republic of Panama where housing costs are considerably higher than they are in the Canal Zone itself and in the District of Columbia which is the geographic base upon which Foreign Quarters Allowances are determined.

Subchapter III of title 5 of the United States Code is the general statutory basis for the payment of overseas differentials and allowances to Federal employees. Under subchapter III, allowances and differentials are authorized for payment to employees officially stationed in foreign areas, see 5 U.S.C. 5922, and foreign area is defined in 5 U.S.C. 5921(6)(B) as "any area outside the United States, the Commonwealth of Puerto Rico, the Canal Zone, and territories and possessions of the United States." Accordingly, inasmuch as the employees in question are officially stationed in the Canal Zone, notwithstanding the fact that they are forced to obtain housing in the Republic of Panama, the provisions of subchapter III of title 5 of the United States Code authorizing overseas differentials and allowance are not applicable to these employees.

You advised that the Smithsonian has proposed to partially offset the inequities that are set out herein by providing housing cost support equivalent to the direct dollar differences between the tropical differential and foreign quarters allowances for those families having no choice but to

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B-133332

establish households in Panama. You state that the Congress has appropriated to the Smithsonian Institution \$21,000 in order to accomplish this objective in fiscal year 1972.

You requested a decision regarding the best interpretation of existing law which would permit the most effective expenditure of these already appropriated funds, and whether the budget justification and actual appropriation of funds by the Congress is sufficient authority for the Smithsonian Institution to disburse these funds.

The Smithsonian Institution budget justification for 1972 included the following:

"The Smithsonian Tropical Research Institute is the only U.S. federal activity in the Canal Zone or in Panama whose employees are not offered low-cost Canal Zone housing, Government-leased quarters in Panama, or quarters allowances. All STRI families must reside in Panama where high costs in comparison with District of Columbia costs provide the basis for State Department surveyed Foreign Quarters Allowances; STRI's U.S. staff members, however, now receive only a 15 percent pay differential as do all other U.S. employees working in the Canal Zone. This differential is approximately three-fifths the value of the Foreign Quarters Allowances received by all U.S. employees working in Panama. The requested funding of \$21,000 would make up the difference by enabling the agency to lease quarters in Panama and sub-lease these to staff members on a partially subsidized basis. This will rectify a hardship on the STRI's employees. Authorization for a longer-term solution will be sought whereby full Foreign Quarters Allowances may replace the differential."

See Hearings before a Subcommittee of the Committee on Appropriations, House of Representatives, 92d Congress, on the Department of the Interior and Related Agencies Appropriations for 1972, part 4, 568-569 and Hearings before the Senate Committee on Appropriations on the Department of the Interior and Related Agencies Appropriations, H.R. 9417, 92d Congress, fiscal year 1972, part 2, 1983-1985.

We were unable to find any discussions relating to this \$21,000 funding in either the House or Senate Hearings on the fiscal year 1972 Appropriation nor could we find any such discussion in the committee reports. However, in view of the fact that the budget justification states that the funding of

B-13332

this \$21,000 will rectify a hardship on the STRI's employees and that authorization for a longer-term solution will be sought whereby full foreign quarters allowances may replace the differential, we feel that there has been sufficient disclosure and justification to the Congress to preclude our Office from objecting to the expenditure in fiscal year 1972 of the \$21,000 appropriated for the purpose of subsidizing the housing requirements of the employees involved. It is of course expected that the Smithsonian Institution will take appropriate steps in the next session of Congress to obtain the authorization referred to in the last sentence of the above-quoted portion of the 1972 Smithsonian Institution budget justification.

With regard to the best interpretation of existing law which would permit the most effective expenditure of the \$21,000, we feel that you would be well advised to discuss the procedures that should be followed with the Department of State. While as pointed out herein the provisions of law governing the granting of overseas differential and allowances do not apply to these particular employees, the Secretary of State was delegated the regulatory authority over the payment of differentials and allowances to Federal employees by Executive Order No. 10903, January 11, 1961, 26 Fed. Reg. 217, as amended. Accordingly, it is felt that the Department of State would be best able to advise you of procedures to be followed which would most closely parallel those governing the payment of overseas differentials and allowances under existing law.

Sincerely yours,

R. F. KELLER

Deputy Comptroller General
of the United States

The Honorable S. Dillon Ripley
Secretary, Smithsonian Institution