



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

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JUL 11 1978

The Honorable Paul Findley
House of Representatives

Dear Mr. Findley:

This is in response to your request for information regarding matters raised by Mr. Charles Cooney, Managing Editor, Civil War Times. The questions raised by Mr. Cooney concern the propriety of the Smithsonian Institution and the White House Historical Association charging a fee above and beyond the actual cost of reproduction for photographs of art work owned by the United States, and of the Smithsonian exercising editorial control over the use of the reproductions. As we advised you earlier, we have been waiting for reports from the organizations whose practices were questioned by Mr. Cooney, and we have recently received such reports from the Secretary of the Smithsonian Institution and from the Executive Director of the White House Historical Association.

First, it should be made clear that the Smithsonian is not a Federal agency. Although financed in large part by appropriated funds, it was established as a charitable, non-profit corporation to carry out specified trust responsibilities of the United States but remaining independent of the Government itself. According to Secretary Ripley, the Smithsonian reproduction fee to which Mr. Cooney refers was a fee charged for the commercial--i.e., revenue-producing--use of photographs and was similar to those charged by other American museums. However, the Smithsonian advises that it has now discontinued the imposition of this fee and its only charge for photographs is one to cover the cost of printing.

The Smithsonian, according to Secretary Ripley, does not exercise editorial control over the use of photographs. It does, however, require commercial users of its photographs to obtain Smithsonian permission for that use and to furnish it with two copies of the publications in which the photographs are printed for use in its library and divisional files. There are two reasons for the permission requirement. First, the Smithsonian wishes to insure that the photographs it supplies are not used to imply that the Smithsonian endorses any commercial product or enterprise, concurs with the opinions expressed in, or confirms the accuracy of, any text used with the photographs. Second, some of the photographs in the

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Smithsonian collection were donated to the Smithsonian primarily for research and educational purposes and their use may require approval from the original copyright owners. We find nothing improper in the imposition of such restrictions.

The White House itself does not have photographs to supply. However, arrangements can be made through the First Lady's Press Office for journalists to take their own photographs of paintings or other items in the public areas of the White House. In addition, photographs may be obtained through the White House Historical Association.

The White House Historical Association is also not a Federal agency, but a private non-profit corporation organized to provide historical and educational information about the White House. As a private corporation, the White House Historical Association is authorized to copyright its works and to charge what it considers to be appropriate fees for the use of copyrighted materials. In fact, according to its Executive Director, the White House Historical Association does not itself carry photographs in stock but orders them through the National Geographic Society which, apparently pursuant to an agreement with the Association, takes the photographs and produces copies when ordered through the Association. The prices charged by the White House Historical Association are based on the prices charged to the Association by the National Geographic Society.

While the portraits and other items in the White House are public property, the Association's photographs of them are not. The photographs are copyrighted property of the Association and a copyright owner may exact a price from those who seek to use the copyrighted property. An arrangement whereby the White House Historical Association was given the exclusive right to photograph public property and to sell the photographs might indeed be of questionable propriety, but we find no reason to object to the existing arrangement whereby a journalist who does not wish to buy photographs from the Association is free to take (and copyright) his own photographs.

We trust that our reply has been responsive to your concerns.

Sincerely yours,

R. F. KELLER

Deputy, Comptroller General
 of the United States

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