

DECISION

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

OCM
Zelkowitz
119120

FILE: B-206173

DATE: August 3, 1982

MATTER OF: Department of the Interior--Funding of
Receptions at Arlington House--Reconsideration

DIGEST:

Affirms decision of February 23, 1982, B-206173, 61 Comp. Gen. ____, that two receptions held at Custis Lee Mansion, also known as Arlington House, during the 1981 Christmas season, hosted by the Secretary of the Interior and his wife, were social, rather than official, in nature. Therefore, neither funds appropriated to the Department of Interior for salaries and expenses nor funds donated to the Cooperating Association Fund of the National Park Service for the purpose of furthering the mission of the Park Service may be used to pay for these events. The Secretary's official reception and representation fund may be used to the extent sufficient funds are available for the expenses of one event hosted jointly by the Secretary and his wife and attended by Government officials, among others, but not for a breakfast hosted by the Secretary's wife exclusively for other wives. Park Service officials who certified improper payments are personally liable to restore the funds concerned, but the agency should proceed to seek reimbursement from the Secretary and his wife, pursuant to the Claims Collection Act, 31 U.S.C. § 951 et seq.

In a letter dated April 26, 1982, the Deputy Solicitor of the Department of Interior took issue with our decision of February 23, 1982 (B-206173, 61 Comp. Gen. ____), which held that Government funds had been improperly expended for non-official purposes. We decided to reconsider our decision, in the light of the Department's statement of points.

Our February decision concluded that two receptions held at the Custis-Lee Mansion, also known as Arlington House, during the 1981 Christmas season, were social, rather than official, in nature. We concluded, therefore, that neither funds appropriated to the Department of the Interior for salaries and expenses nor funds donated to the Cooperating Association Fund of the National Park Service could be used to pay for these events.

We stated, however, that to the extent available, funds appropriated to the Office of the Secretary for official reception and representation expenses could be used to defray the costs of one event, hosted by the Secretary and his wife, and attended by Government officials and others. The other event was a breakfast held by the Secretary's wife and attended

exclusively by wives of high-level Government officials (one of whom also is employed in the Executive Office of the President). Because of the apparently private nature of the breakfast, we held that using the Secretary's official reception and representation account to help defray its costs would be "inappropriate."

We have reviewed the particular facts surrounding these two events and have considered the arguments presented in the Department's request for reconsideration. However, we find no basis for changing our earlier conclusion that the Interior officials who authorized expenditures of Government funds for these events should reimburse the relevant accounts for any amounts not properly payable from the Secretary's official reception and representation account.

Interior does not contest our conclusion that use of funds appropriated by the Congress for other purposes, as opposed to the donated Cooperating Association Fund and the Secretary's appropriation for official reception and representation purposes, are unavailable under any circumstances for entertainment. We assume that appropriate reimbursements of these accounts have been made, as Interior stated would be done at the time of our earlier decision, and accordingly consider here only the propriety of Interior's use of Cooperating Association funds.

Interior's various arguments and our response to them are discussed below.

"PROMOTION" OF PARK SERVICE OBJECTIVES

Interior first points out that in addition to a conservation mandate, the 1916 legislation establishing the Park Service authorizes the Park Service Director (and by implication, the Secretary of the Interior) to "promote and regulate the use of * * * national parks, monuments and reservations." Interior states that "Receptions, which introduce the guests to historical buildings, are a most effective and appropriate method for the Secretary to promote the national park system."

It is true that Interior has statutory authority to "promote" the Park Service. This includes the authority to pay for receptions with donated funds in appropriate circumstances. The key question, however, is whether the receptions at issue here furthered the Park Service mission, even in a "promotional" sense. Interior's letter does not provide any information additional to that provided Congressman Markey in the February 16 letter concerning this matter from the Department's Deputy Assistant Secretary for Administration, which was discussed in our decision. That letter stated only that guests were free to tour the house and thus become acquainted with its historic significance and the Secretary's objective concerning historic preservation; and that "The Arlington House provided a setting more conducive to social gatherings than

would have the Interior building." It remains our opinion that the facts surrounding the two receptions indicate that they were essentially private social events and that the justification offered in the February 16 letter provided too tenuous a link to justify the use of donated funds to pay for them. A broad reading of the National Park Service Director's authority to "promote" the park system, raised long after the events, should not, in our view, be used to justify the unfettered use of donated funds for essentially social purposes.

GAO PRECEDENT

Interior points out that GAO has not disallowed expenditures for receptions from the Cooperating Association Fund in the past, even though receptions similar to those at issue here have traditionally been paid for with funds donated by Cooperating Associations. Interior also argues that its decision that funding of the December 1981 receptions with donated funds was permissible was based on "an analysis of past GAO instructions on the subject." Interior, therefore, concludes that "disallowance of payments [from the Cooperating Association Fund] should never be undertaken in the absence of clear, pre-existing and proper directions against such payments."

The past GAO opinions discussed in Interior's letter were relied on in our February decision--B-142538, February 8, 1961, to the National Science Foundation and B-195492, March 18, 1980, to Senator Proxmire concerning expenditures from the Cooperating Association Fund. Interior argues that these precedents stress the discretionary nature of expenditures from donated funds, pointing out that guidance in the National Science Foundation decision concerning donated fund expenditures which GAO would consider questionable was stated to be advisory only. Interior's letter contains the following quote from the National Science Foundation case.

"Manifestly, the question as to whether entertainment is necessary to accomplish statutory activities is often difficult of determination. Therefore, we may not undertake to draw a line or set forth a general statement which would encompass all situations where the donated funds properly may be so used to further the general purposes of the Foundation. However, it seems reasonable to conclude that, in general, whether entertainment is necessary or essential to the furtherance of one or more of the Foundation's general purposes for which the donated funds are authorized to be received and used, is a conclusion of fact to be determined on the basis of the particular facts and circumstances involved and in light of the general objectives of the Foundation to be served * * *. In such cases, an administrative determination as to the necessity of expenditures for entertainment to carry out effectively the authorized functions of the Foundation is accorded great weight in considering the donated funds available to the Foundation for such purposes."

Concerning the opinion to Senator Proxmire, Interior again mentions GAO's past reliance on agency discretion in the use of donated funds and states as the "only qualification" on such discretion that "each agency must justify its use of trust [donated] funds as being incident to the terms of the trust." Interior's letter maintains that the only control over donated fund expenditures established by the 1980 opinion to Senator Proxmire was an after-the-fact report to the Secretary of the Interior and to the House and Senate Appropriations Committees, on a quarterly basis, of all expenditures from the Cooperating Association Fund.

Our reading of these and similar past Comptroller General decisions is that they establish a greater limit on agency discretion than suggested by Interior, while recognizing that each case must be resolved on the basis of the particular facts and circumstances involved. For example, the National Science Foundation presented four separate factual situations in 1961, when it sought GAO approval of donated fund use for entertainment purposes. The first example involved an International Conference of Scientific Information, partially sponsored by the Foundation, during which necessary discussions with official representatives of foreign countries were conducted at luncheon and dinner meetings paid for by the Foundation with donated funds. With respect to this event, our decision stated:

" * * * it appears that the Foundation determined the luncheon and dinner periods of the conference necessary and a proper means, because of the circumstances then existing, of promoting an authorized activity. Under such circumstances, the use of donated funds to pay the cost of food and entertainment incident thereto would appear proper. * * *"

Among the other three events described in the Foundation request was a reception for Members of Congress, other high Government officials, and members of the scientific community. The purpose was "to give members of the Board an opportunity to become acquainted with individuals * * * who play a major role in matters affecting the Foundation and to make information available to them concerning accomplishments in several of the Foundation's programs." With respect to this and the other described events, our decision stated that they were discussed too generally to allow a categorical answer on the donated fund use question. The decision then provided the advice mentioned in Interior's letter—that use of donated funds for entertainment to cultivate cordial relations, manifest good will, or to reciprocate in kind hospitality extended by others would be questionable because it would not have a direct connection with or be reasonably necessary to the accomplishment of the Foundation's activities. Finally, the decision stated the following rule, omitted from the body of the passage as quoted in Interior's letter and repeated above:

"* * * in other words, the facts, in each case, must reasonably justify the conclusion not only that the entertainment

will further a purpose of the Foundation but that the Foundation's functions could not be accomplished as satisfactorily or as effectively from the Government's standpoint without such expenditures. * * * (Emphasis supplied.)

Our opinion to Senator Proxmire listed a number of Cooperating Association Fund expenditures which were either clearly unauthorized or questionable, including the payment of travel expenses for non-Government personnel and various entertainment expenses. No formal exception was taken to these expenditures because we concluded that the Park Service had "at least a plausible basis for its interpretation of its authority" as a result of its reliance on an "overbroad interpretation" of the earlier National Science Foundation decision. The opinion also mentioned the newly established quarterly reporting requirement. However, the opinion neither stated nor implied that an after-the-fact reporting requirement was to take the place of periodic GAO audit and account settlement. The opinion stated that the discretion reposed in agency officials concerning the use of donated funds:

" * * * does not mean that agencies have blanket authority to use trust funds for personal purposes; each agency must justify its use of trust funds as being incident to the terms of the trust. The burden is on the Park Service to show that its Fund expenditures were to carry out trust purposes."

It is our view that these two decisions establish workable rules for determining the propriety of using donated funds for entertainment purposes and establish clear limits on the exercise of administrative discretion in connection with such use. More importantly, as discussed below, the Park Service has adopted these rules in written guidance concerning use of donated funds.

On January 23, 1980, during the period we were auditing Cooperating Association Fund use prior to issuance of our March 18, 1980 opinion to Senator Proxmire, the Park Service issued a revised "Donations Policy of the National Park Service." With specific reference to the Cooperating Association Fund, the Policy states as follows on pages 5 and 6:

"Disbursements from this Fund must be for projects directly related to National Park Service administration; support will not be provided for projects that are initiated outside of the Service and unrelated to the mission of the National Park Service. * * *"

* * * * *

"In accordance with the Comptroller General's decision of February 8, 1961, entertainment expenditures

for the above cases are restricted to those occasions when the entertainment will further the purposes of NPS and that such purposes could not be served as satisfactorily or as effectively without such expenditures."

The revised policy was brought to the attention of Interior officials in connection with the events in question in a memorandum from the Park Service's Associate Director for Administration, dated November 25, 1981, as follows:

"FYI these are the guidelines we use in approving use of Cooperating Association funds. Since we will be providing about \$3,000 for the Secretary's use for Christmas activities, you might find them useful. Note in particular page 5."

Neither the revised policy nor the above-quoted memorandum are mentioned in Interior's letter. In our view, the rules enunciated in our prior decisions and adopted by the Park Service provide the "clear, preexisting and proper direction" against funding essentially personal, non-Park Service related entertainment which Interior suggests must be present to support a disallowance by our Office.

IMPLICIT CONGRESSIONAL APPROVAL

Interior next asserts that the quarterly reports which the Park Service has submitted to congressional committees since 1980 provide implicit congressional approval of all expenditures for reception purposes since no objection has been made to any of the reported expenditures. In this connection, Interior presented us with a list of most Cooperating Association Fund expenditures from fiscal year 1976 to the present. Although there are many entries for catering and other contractual services which appear to be related to receptions or other entertainment, not enough information is provided to enable us to determine whether the expenditures were for personal rather than official purposes. The congressional reports also lack the detailed factual descriptions which would be necessary to make a determination as to the propriety of the listed expenditures.

An example from the list provided us is an \$800 payment to an Arlington, Virginia caterer which bears the notation "Catering Services, Secretary Watt reception, November 19, 1981." This reception came to our attention during our audit work earlier this year. It was held at Interior headquarters and was attended by the Secretary's personal staff. Except for spouses and escorts, no non-Interior employees attended. Although the Secretary's personal staff apparently includes Park Service policemen for security purposes, no other Park Service employees were listed as guests. It is difficult to ascribe a "promotional" or any other arguably permissible purpose to this use of

Cooperating Association funds, and yet the description on the Cooperating Association Fund expenditures list for this event does not, on its face, appear inappropriate and would not be likely to provoke congressional objections.

In any event, we would not agree that a congressional reporting arrangement of this sort would override our audit and account settlement authority.

SECRETARIAL PRESENCE

Interior's final point, in reference to the breakfast for Cabinet wives hosted by Mrs. Watt, is that so long as a reception or other similar event promotes Park Service objectives, the presence of the Secretary, or of any other Government officials, is not necessary. Although we would not necessarily agree that the Secretary's presence—or the presence of a member of his staff—at a Park Service event is not necessary, or that a proper event could be hosted and attended entirely by non-Park Service or Interior individuals and still be appropriate for funding with Cooperating Association funds, the issue is whether the breakfast (apparently one of a series of events hosted by Cabinet wives) was related to the Park Service mission or whether, instead, it was essentially a personal, social event. Because neither the facts of record nor Interior's written explanations demonstrate otherwise, we adhere to the latter position. Further, since no Interior or Park Service personnel were present, we concluded that the breakfast was not an "official" event, within the context of the Secretary's fund for "official reception and representation" expenses.

SUMMARY AND CONCLUSION

The facts in this case, as developed by our investigation, by materials and statements provided to us by Interior staff, and by testimony at a hearing of the Subcommittee on Oversight and Investigations of the House Committee on Interior and Insular Affairs in February 1982, are of critical importance. They indicate that the two events in question were essentially personal and social in nature. The justification provided the Subcommittee by Interior's Deputy Assistant Secretary for Administration in the February 16 letter referred to above so characterized them. Visits to Arlington House by attendees at the evening reception were at the election of the guests as the reception itself was in a tent on the grounds. There was no agenda in which Park Service objectives were presented at either of the events. Any promotion of Park Service objectives would appear to have been by random chance. There certainly was no determination, nor any evidence, that Park Service objectives could not have been served as satisfactorily or as effectively without expenditures of donated funds for the two events, as required by the revised Park Service Donation Policy.

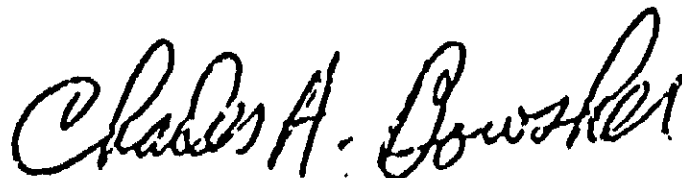
The facts present in prior situations in which our Office has approved use of donated funds for entertainment have in each instance indicated that

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the permissible entertainment was clearly incidental to an authorized agency activity, as in the case of luncheon and dinner meetings with scientists at an international conference. In the instant case, the authorized agency activity, if any, was clearly incidental to the entertainment provided. As such, it may not be approved.

This case, in our view, is similar to 47 Comp. Gen. 314 (1967), in which we held that expenditures of Cooperating Association funds for greeting cards were unauthorized personal expenses and disallowed them. Here, the facts demonstrate that the events in question were social and personal in nature and expenditures from the Cooperating Association Fund likewise must be disallowed.

Accordingly, we affirm our February decision that the use of the Cooperating Association Fund for the December 14 breakfast and the December 17 reception was unauthorized and we therefore take exception to payments from the Fund for the two events. The Secretary's official reception and representation fund is available for the evening reception as indicated, and may be used to reimburse the Cooperating Association Fund for those expenses, if sufficient. The Park Service certifying officer or officers who certified payments for the two events is personally responsible for reimbursing the Fund for any remaining deficiency. However, the agency should collect these amounts from the individuals on whose behalf the events were held, i.e., the Secretary and his wife, pursuant to the Claims Collection Act, 31 U.S.C. § 951, et seq.



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