



United States  
General Accounting Office  
Washington, D.C. 20548

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Office of the General Counsel

B-252447

August 11, 1993

John J. Kominski  
General Counsel  
Library of Congress

Dear Mr. Kominski:

This is in response to your letter in which you asked our opinion regarding the authority of the Library of Congress (Library) to make a second payment on an obligation. As explained in further detail below, we agree with your position that the Library has no authority to certify a second payment.

According to your letter, on August 28, 1989, the Library issued a check in the amount of \$40,950 to the Parpax Corporation for materials received by the Library. The check was sent to Parpax's corporate address in Orlando, Florida. On September 12, 1989, Parpax informed the Library that it had not received payment. It requested that the Library submit a check in payment. The company also stated that in order to increase the security associated with the payment, the check should be sent to a new address in Lake Buena Vista, Florida. Parpax also informed the Library that it should cease any and all interaction with a person known as [redacted] as he was no longer affiliated with the corporation.

The Library contacted the Department of the Treasury to stop payment on the check, but discovered that it had already been presented and paid. A photocopy of the check showed it had been indorsed and deposited into the account of [redacted].

The Library sent to Parpax the forms needed to file a claim for payment. However, within a month, the Library was informed by an officer of Parpax that the corporation had received the original check and that a second payment should not be made. Nonetheless, a few months later, Parpax renewed its claim and the Library sent the corporation another set of claim forms. Treasury processed Parpax's claim but it informed Parpax that the 1 year time limit for reclamation actions established by 31 U.S.C. § 3712 (a) (1) had passed and the government could not reclaim the funds from any indorser.

It is your position that you have no authority to pay this obligation a second time since a properly executed check was delivered to Parpax at its business address. We agree.

Your submission demonstrates that a check was issued to Parpax, b t Mr.                      negotiated the check and deposited the payment into his own business account. Whether the employee had implied or actual corporate authority to indorse the check and deposit the funds into his account is unclear since, according to your office, Parpax has not divulged any details of its relationship with Mr.                      . Nevertheless, his bank credited his account even though he was not the payee of the check.

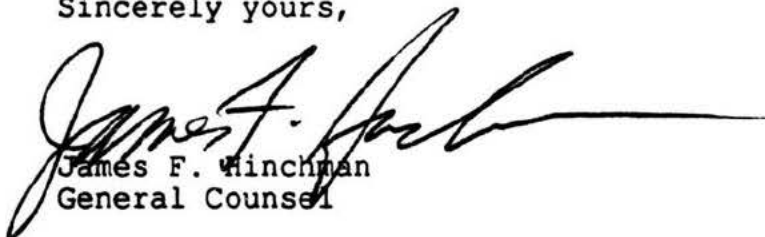
From these facts, it appears that the real dispute here is between Parpax and                      . Thus, Parpax may obtain payment by seeking civil relief against Mr.                      , or its bank. It cannot receive additional payment from the Federal Government.

The Library may not use its appropriation to make a second payment. It fulfilled its obligation by properly executing a check for payment and delivering it to the Parpax Corporation at the appropriate address. Since it has no further legal obligation to Parpax, the Library has no legal authority to certify a second payment.

Under 31 U.S.C. § 3331, the Secretary of the Treasury may issue a substitute check when he is satisfied that the original Treasury check was stolen, wholly or partially destroyed, or so mutilated or defaced so as to impair its value to the owner or holder thereof. A substitute check, however, may not be issued under this authority if the original check has been paid as is the case here. If an original check is paid under a forged indorsement, the Secretary of the Treasury is authorized to issue a settlement check drawn on the Check Forgery Insurance Fund. 31 U.S.C. § 3343. However, since it appears that the indorsement was not forged, there only being an uncertainty as to                      authority to negotiate the check, the claim may not be paid from this fund.

I hope the above answers your questions and is helpful to you.

Sincerely yours,

  
James F. Hinchman  
General Counsel

August 11, 1993

**DIGEST**

The Library of Congress has no authority to certify a second payment to a corporation since the Library fulfilled its legal obligation by properly executing a check for payment and delivering it to the appropriate corporate address where it was subsequently intercepted by someone affiliated with the corporation and deposited into his account.