

DECISION

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

FILE: B-184936

DATE: MAY 3 1976

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MATTER OF: Forest Products Laboratory agreement with
University of Wisconsin

- DIGEST:
1. Forest Products Laboratory, Department of Agriculture, has authority to accept bequest from private citizen only for purpose of establishing and operating forestry research facilities. It may not enter into cooperative agreement with University of Wisconsin Foundation to invest proceeds of bequest and to use income for fellowships, scholarships, special seminars and symposia since agency may not do indirectly what it cannot do directly.
 2. Proposed cooperative agreement provision which would permit recipient of funds to use funds for unspecified purposes in future at its own option is not proper, since proposed provision does not limit future use of funds to authorized purposes only.

A certifying officer of the Forest Products Laboratory (FPL), Forest Service, United States Department of Agriculture (USDA), requested an advance decision as to whether a voucher in the amount of \$357,646.58 may be certified for payment to the University of Wisconsin Foundation.

In June 1972, the FPL was advised that it had been designated as a beneficiary of the estate of the late Clark C. Heritage of Tacoma, Washington. After consultations between the Office of the General Counsel, USDA, and the Treasury Department, it was determined that the FPL could accept and use the proceeds of the bequest under section 581a-1 of 16 U.S.C. (1970) which states:

"On and after August 31, 1951, funds may be received from any State, other political sub-division, organization, or individual for the purpose of establishing or operating any forest research facility located within the United States, its Territories, or possessions. (Emphasis added.)

We agree with this determination, but note that the purposes for which the bequest could be accepted and used are those set forth in the underscored portion of the section only.

When the proceeds of the estate were distributed, the Forest Products Laboratory's share of \$357,646.58 was deposited in the Treasury as an available trust fund receipt in appropriation 128028, pursuant to 31 U.S.C. § 725S(a)(13)(1970). Such funds are not permitted to draw interest.

In his will, Mr. Heritage left no instructions or information as to the use he intended for his bequest. However, after consulting with his friends and business associates, the FPL determined that the wishes of Mr. Heritage could best be carried out by entering into a cooperative arrangement with the University of Wisconsin Foundation "to strengthen the synergistic relationships between the Forest Products Laboratory, the University of Wisconsin, and the wood industry." (Second "whereas" clause of proposed cooperative agreement.) The primary function of the FPL is the conduct of experiments, investigations, and tests with respect to the utilization and preservation of wood and other forest products. See 32 Comp. Gen. 339, 341 (1953). The FPL (of which Mr. Heritage was a former employee) was established to work in cooperation with the University of Wisconsin.

The proposed cooperative agreement provides for the FPL to turn over the bequest to the Foundation, which would be authorized to invest and administer the funds. Income from the investments would then be used to finance a number of programs specified in the agreement, only one of which appears to be directly related to the only permissible purpose for which the FPL could accept the bequest - "establishing or operating a uv forest research facility* * *" 16 U.S.C. 581a-1, supra. Specifically paragraph 2 of the proposed agreement provides as follows:

"Said activities, projects, or programs may include scholarships, fellowships, stipends for visiting lecturers, assistance with research projects, travel grants, etc. However, such support shall not be limited to these enumerated purposes but shall include any other activities which promote improved utilization of wood and wood fiber products. Particular importance is attached to exchanges of specialists and to periodic special seminars and symposia."

The overall goal of the above enumerated activities is stated to be the promotion of improved utilization of wood and wood fiber products.

If these purposes no longer exist, paragraph 10 permits the Foundation to use the funds "for other uses as close to the original purpose as expressed herein as it can at such time devise."

As stated above, under 16 U.S.C. § 581a-1, supra, it is clear that the FPL can accept and use the proceeds of the Heritage bequest to establish and operate a forest research facility. It could do so directly, or, in view of its additional authority under 16 U.S.C. § 582a-1, it could enter into cooperative agreements with the University of Wisconsin to establish and operate a forestry research facility for the FPL. However, there is no legal authority for the FPL to accept the bequest and use it directly or indirectly for any other purpose.

In this connection, it should be noted that the purposes for which the FPL can enter into cooperative agreements under 16 U.S.C. 582a-1 with State institutions, using appropriated funds, are broader in scope than the purposes for which it may accept and use a bequest or any other donation under 16 U.S.C. 581a-1. Conceivably, the seminars, scholarships, etc. enumerated in the agreement could be viewed as "encouraging and assisting" States to carry out programs of research, and would be quite proper under 16 U.S.C. 582a-1 if supported with appropriated funds. However, there appears to be no authority to use donated funds for anything other than "establishing or operating" a forest research facility, under 16 U.S.C. 581a-1, and the relationship of seminars and scholarships to establishment or operation of such facilities appears to be rather remote. It is axiomatic that an agency cannot do indirectly what it is not permitted to do directly. The FPL cannot broaden the purposes for which it could itself use the bequeathed funds by simply passing them on to another body through contract or other arrangements.

For the same reasons, the FPL cannot turn over to the Foundation the bequeathed funds for the purpose of investing them, since clearly the FPL would not be authorized to use the funds for that purpose directly. It is true that under some circumstances, we have held that custodians of a trust fund may make expenditures necessary to carry out the purposes of the trust without regard to general regulatory and prohibitory statutes applicable to public funds. Cf. 16 Comp. Gen. 650 (1937); 36 id., 772 (1957). In each of those cases, however, the trustee was faced with a conflict between specific terms and conditions laid down by the creator of the trust and the above mentioned statutes. In the instant case, notwithstanding the firm conviction of the testator's past associates that the testator would not have wanted his money held in a non-interest bearing account

(See, e.g., letter of May 14, 1975 from the Director, Central Research and Development Weyerhaeuser Company), the testator laid down no terms and conditions whatsoever. Thus there are no conflicts between trust terms and statutory provisions to be resolved and the agency remains bound by the limits of its own statutory authority.

The certifying officer also asks whether it is:

"permissible for the Forest Products Laboratory to enter into a cooperative agreement providing for the advancement of funds but not containing provisions for the recovery of the unused balance of the advance should the Laboratory become dissatisfied with the arrangement and wish to terminate this agreement."

Paragraph 10 of the agreement provides:

"It is expected that this agreement will continue in its present form as long as the Forest Products Laboratory pursues its primary assignment of advancing the efficient use of timber as an engineering and industrial raw material. Should the purposes for which the Fund is instituted cease to exist, then the Foundation may devote the Fund for other uses as close to the original purposes as expressed herein as it can at such a time devise."

As previously stated, this particular agreement is invalid because it contemplates the grant of donated funds for unauthorized purposes. We assume, however, that the question was meant to apply to all such provisions in cooperative agreements, regardless of the source of the funds. Even if the funds were appropriated for the purposes specified elsewhere in the agreement, a provision which allows the grantee to expend funds for other than these purposes at some future time--that is, for unspecified purposes of its own devising--would be improper. cf. 31 U.S.C. 628 (1970).

B-184936

For the above reasons, the voucher may not be certified for payment to the University of Wisconsin Foundation under the terms of the proposed cooperative agreement.

R. F. Keller

Deputy Comptroller General
of the United States