

DECISION

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

FILE: B-204078

DATE: July 13, 1982

MATTER OF: Administrator of Panama Canal Commission—
Maintenance of Residence

- DIGEST:**
1. Expenditures for operation and maintenance of residence of Administrator of Panama Canal Commission are subject to regulations issued under 5 U.S.C. § 5913, applicable to official residences in foreign areas. Under Panama Canal Act, Pub. L. No. 96-70, areas and installations in Republic of Panama made available to United States pursuant to Panama Canal Treaty and related agreements, formerly in Canal Zone, are foreign. Report ID-81-57, August 5, 1981, is modified to the extent that it is inconsistent with this decision.
 2. Public Law 96-400, October 9, 1980, limited Panama Canal Commission appropriations for operating expenses to not more than \$60,000 for the maintenance of the Administrator's residence. This limit did not apply to additional \$41,000 for residence employees' salaries which in past were charged to Administrator's Office, absent indication of intention to cut total cost estimate of \$108,000 (including an additional amount of \$7,000, for repairs) to \$60,000. Finding in report, ID-81-57, August 4, 1981 affirmed.

The Chairman, House Committee on Merchant Marine and Fisheries, by letter of September 8, 1981, requests that this Office reconsider certain conclusions appearing in a report to him entitled, "Panama Canal Commission Expenditures for Entertainment, Official Residence, and Supervisory Board" (ID-81-57), August 5, 1981, B-204078.

The Chairman first refers to expenditures of the Administrator of the Panama Canal Commission for maintenance of his official residence which, the report stated, do not fall under regulations issued pursuant to 5 U.S.C. § 5913, because this section deals with foreign areas, which does not include the former Canal Zone area. The Chairman suggests that the case relied on in the report (B-199251, November 18, 1980, 60 Comp. Gen. 71), is inapposite because it involved a claim for temporary quarters subsistence expenses, governed by a definition of "foreign areas" which is not applicable to official residence expenses. The Chairman believes that the former Canal Zone area is a foreign country for the purposes of section 5913.

Upon review, for the reasons stated below, it is our opinion that official residence expenses of the Administrator are within the scope of section 5913 and regulations issued pursuant thereto.

The Chairman also refers to a statement in our report that staffing costs are not considered in determining compliance with the \$60,000 limitation of Pub. L. No. 96-400 for maintenance of the Administrator's residence. He believes that the legislative history of this limitation shows that it was to apply to staffing as well as other expenditures for the residence.

Our review leads us to confirm the view expressed in the report that the \$60,000 limitation for maintenance of the residence of the Administrator does not include residence staffing expenses.

First Question Legislative Background

We first consider the question relating to the applicability of section 5913 to official residence expenses of the Administrator of the Panama Canal Commission.

The Overseas Differentials and Allowances Act (Act), Pub. L. No. 86-707, September 6, 1960, 74 Stat. 792, in part codified as 5 U.S.C. § 5913, had the purpose of "establishing a uniform system for compensating all Government employees in overseas posts irrespective of the agency by which they are employed." (S. Rep. No. 1647, 86th Cong., 2nd Sess. 1 (1960).) The Act extended to "non-foreign affairs agencies authority to pay the costs of unusual housekeeping expenses for principal representatives at a post." (S. Rep., page 25.)

Section 5913, Title 5, United States Code (1976) (Subchapter II—Quarters) provides that:

"(a) For the purpose of this section, 'agency' has the meaning given it by section 5721 of this title.

"(b) Under such regulations as the President may prescribe, funds available to any agency for administrative expenses may be allotted to posts in foreign countries to defray the unusual expenses incident to the operation and maintenance of official residences suitable for—

"(1) the chief representatives of the United States at the posts; and

"(2) such other senior officials of the Government of the United States as the President may designate." (Emphasis added.)

We first need to determine if the Administrator of the Panama Canal Commission is subject to section 5913. Section 5721 defines "agency" to mean: "(A) an Executive agency," and under section 1101 of the Panama Canal Act of 1979, Pub. L. No. 96-70, September 27, 1979, 93 Stat. 456 (22 U.S.C. § 3611 (Supp. III, 1979)), the Panama Canal Commission is established as an agency in the executive branch of the United States Government. Thus, if the former Canal Zone is a "foreign country", expenses of maintaining the Administrator's official residence are subject to the statute and its implementing regulations. The Act itself contains no definition of "foreign country" and there is no regulatory impediment to application of the provisions of section 5913 to the former Canal Zone area.

Section 3(b) of the Panama Canal Act, supra, provides that:

"Subject to the provisions of subsection (c) of this section, for purposes of applying the Canal Zone Code or other laws of the United States and regulations issued pursuant to such Code or other laws with respect to transactions, occurrences, or status on or after the effective date of this Act—

"(1) 'Canal Zone' shall be deemed to refer to the areas and installations in the Republic of Panama made available to the United States pursuant to the Panama Canal Treaty of 1977 and related agreements;"

Subsection (c) states that:

"Any reference set forth in subsection (b) of this section shall apply except as otherwise provided in this Act or unless (1) such reference is inconsistent with the provisions of this Act, (2) in the context in which a term is used such reference is clearly not intended, or (3) a term refers to a time before the effective date of this Act."

Discussion

Recent appropriation Acts have allocated specific amounts for official residence purposes. The residence of the Administrator is located in the former Canal Zone area of the Republic of Panama. The issue raised by your inquiry is whether the status of this area was changed as a result of the Panama Canal Treaty of 1977 and related agreements.

In forwarding proposed implementing legislation to the Congress, the President, in his letter of January 23, 1979, stated that:

"* * * the treaties will enter into effect on October 1, 1979. Under their terms, on that date the Canal Zone will

cease to exist, * * * and general jurisdiction over the area as well as the performance of a number of important support functions will pass to Panama. * * *"

This change of status was described in H.R. Rep. No. 96-98, 96th Cong., 1st Sess., Part I, on H.R. 111 which was enacted as the Panama Canal Act of 1979, as follows:

"Under the Panama Canal Treaty the United States will continue to operate the Panama Canal until December 31, 1999, subject to the provisions of the treaty and applicable laws of the United States. However, the conditions and circumstances under which such operation will continue are substantially modified by the treaty in comparison with those prevailing up to this time. These changes result from termination of territorial jurisdiction in the Canal Zone; the elimination of the Canal Zone Government and transfer of all governmental functions to Panama except the protection of the canal, to be shared by the two countries * * *." (Page 35.)

With the dissolution of the Canal Zone Government, the former Canal Zone is now under general Panamanian jurisdiction. Thus, it is clear that residences in that area which would otherwise qualify should now be considered to be located in a "foreign country" and be governed by the same rules and regulations as apply to residences of senior officials in other foreign countries.

This holding is consistent with our decision in 59 Comp. Gen. 671 (1980) that travel by a foreign service employee serving overseas to the Canal Zone for home leave could not be authorized, since home leave may only be granted in the continental United States or its territories and possessions and the Panama Canal Treaty provides the Republic of Panama with full sovereignty over this area.

We agree with the Chairman that our 1980 decision, 60 Comp. Gen. 71, is not applicable to official residence expenses under section 5913. That decision dealt with the authority for a new employee to receive temporary quarters allowances for himself and his family upon reporting to a post in the former Canal Zone. The primary holding of the decision was that:

"New appointees to positions outside the conterminous United States are entitled only to the travel and transportation expenses listed at paragraph 2-1.5g(2)(b) of the FTR [Federal Travel Regulations]. As specifically noted at FTR para. 2-1.5g(2)(c), new appointees to positions overseas are not entitled to certain allowances payable to transferred employees under 5 U.S.C. §§ 5724 and 5724a, including temporary quarters subsistence expenses * * *."

The decision also noted, as an additional ground for disallowance, that the former Canal Zone area "continues to be outside the definition of 'foreign area' for purposes of overseas differentials and allowances." We note that the temporary lodging allowance covered by 5 U.S.C. § 5923, is the overseas corollary to the stateside allowance payable under 5 U.S.C. § 5724a(a)(3). Section 1231(d) of the Panama Canal Act expressly amended 5 U.S.C. § 5724a(a)(3) to retain that stateside allowance for employees in the former Canal Zone. We cannot believe that the Congress intended this particular group of employees to receive duplicate benefits under both 5724a(a)(3) and under section 5923.

Conclusion

As the former Canal Zone is now under general Panamanian jurisdiction, we hold that it is a "foreign country" for purposes of 5 U.S.C. § 5913. To the extent that our report (ID-81-57) is inconsistent with this holding, it is hereby modified.

Second Question Legislative Background

We next consider the question of whether the monetary limitation on the maintenance expenses of the Administrator's residence includes the cost of the staff. For the reasons that follow, we do not think they do.

Public Law 96-400, October 9, 1980, 94 Stat. 1681, 1693, included appropriations for the Panama Canal Commission for the fiscal year ending September 30, 1981. The appropriation for operating expenses stated that, " * * * not to exceed \$60,000 shall be available for maintenance of a residence for the Administrator * * *."

The limitation was added to the appropriation bill as an amendment made on the House floor by Chairman Hubbard of the Subcommittee on the Panama Canal of the Committee on Merchant Marine and Fisheries. He explained that the amendment—

" * * * simply place[s] the same restrictions on the expenditure of these funds which are contained in the Panama Canal Treaties bill for 1981. The authorization bill, H.R. 6515, has been reported favorably by the Committee on Merchant Marine and Fisheries and favorably by the Panama Canal Subcommittee * * *." 126 Cong. Rec. H6891 (daily ed. July 31, 1980).

The report referred to was H.R. Rep. No. 96-882, 96th Cong., 2d Sess. (1980) on H.R. 6515, the proposed Panama Canal Appropriations Authorization Act, Fiscal Year 1981 (which was not enacted). The report stated that--

"* * * The bill also authorizes appropriations, subject to prescribed maximum limits, for certain purposes regulated by general law applicable to all Government agencies such as * * * expenses incident to the operation and maintenance of official residences for senior officials of the United States in foreign countries (5 U.S.C. 5913).

"The limitations on the authorization for these specific objects are in all cases, except three, the amounts the Commission advised the Committee has been included in the budget for those objects.* * *"
(Page 5.)

Official residence expenses were not included among the three exceptions. The report further stated as follows:

"Expenditures to be made for the residence for the Administrator included in the appropriation language are not shown in the Justifications. The answers to questions submitted by the Commission showed [an] estimate[s] of * * * \$60,000 for 1981. Supplementary data furnished by the Commission show additional estimated expenditures of * * * \$48,000 in 1981, not included in the line item for the residence of the Administrator, bringing the total estimate to * * * \$108,000 in 1981." (Page 9.)

In Hearings on H.R. 6515 and H.R. 6516 before the Subcommittee on the Panama Canal, 96th Cong., 1st and 2d Sess. (1979, 1980), the Administrator submitted an estimate of \$60,000 for his residence which included: Maintenance of structure and equipment, \$34,000; Power and telephone service, \$13,000; Supplies and minor equipment, \$6,000; and Custodial and other services, \$7,000 (page 113).

The Administrator was asked for additional information regarding the staffing of the residence. Supplemental information supplied to the Subcommittee indicated that--

"* * * Although a staff of four employees is retained at the residence, for budget purposes the payroll expenses of these employees have historically been included in the costs of the Administrator's Office and Staff * * *. The FY 81 costs of their salaries * * * are as follows: 1 Housekeeper (\$9,800); 1 Cook (\$14,500) and 2 Maids (\$16,700)."
(Page 165.)

Additionally, the \$7,000 cost for structural repairs to the residence, funded elsewhere, was shown.

Analysis

The Fiscal Year 1981 appropriation for the Panama Canal Commission's operating expenses includes a \$60,000 limitation for maintenance of the Administrator's residence. According to the Chairman of the Subcommittee on the Panama Canal, this provision had the same restrictions as the almost identically worded provision in H.R. 6515 which was to authorize Panama Canal appropriations. The Committee on Merchant Marine and Fisheries report on H.R. 6515, in explaining the imposition of the limitation, indicated that the Commission's budget request had been accepted.

At the same time, the report referred to information supplied by the Commission as part of the hearings on the proposed bill—that there were additional estimated expenditures "not included in the line item for the residence of the Administrator" (\$60,000), bringing the total estimate to \$108,000 for Fiscal Year 1981. This additional information shows that the total estimate consisted of the following:

\$60,000 - maintenance of structure and equipment, power and telephone, supplies, minor equipment and commercial services, and custodial and other services.

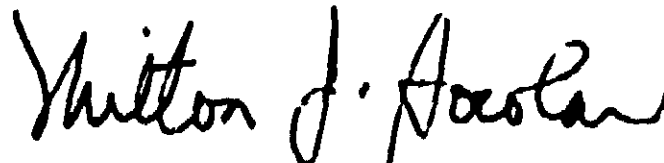
\$41,000 - salaries of a housekeeper, a cook, and two maids

\$7,000 - structural repairs due to termites
\$108,000

From the foregoing, it appears that the Committee on Merchant Marine and Fisheries accepted not only the \$60,000 budget estimate for the items specified by the Commission but also the additional \$41,000 for residence employees' salaries which, in accordance with past practice, it included with the Administrator's Office staffing expenses. Further, to subject the total cost estimate of \$108,000 to the \$60,000 limit, would have resulted in an almost 45 percent reduction in total requests relating to the Administrator's residence. This would be inconsistent with the Committee's stated acceptance in full of the \$60,000 request if the other requests totalling \$48,000, would have had to come from the same \$60,000. We note that reductions in requests in other categories were specifically stated and were established at 20 percent below budget estimates (Report, page 5). However, there was no reference to any reductions for costs associated with the Administrator's residence.

Conclusion

In the absence of any indication that the Congress in adopting the \$60,000 limitation on maintenance intended to include the salaries of residence employees within this amount, it is our opinion, as stated in our report, "Panama Canal Commission Expenditures for Entertainment, Official Residence, and Supervisory Board", that the residential salary expenses are not subject to the limitation in question.

for 
Comptroller General
of the United States