

## Office of the General Counsel

B-251994

September 24, 1993

The Honorable Gilberto Guardia  
Administrator  
Panama Canal Commission  
Unit 2300  
APO AA 34011

Dear Mr. Guardia:

This is in response to a request from \_\_\_\_\_, Staff Assistant to the Administrator, Panama Canal Commission (Commission), that we relieve her from liability for an improper payment of \$558.80. Ms. \_\_\_\_\_ approved the payment in her capacity as a Commission certifying officer. For the reasons stated below, we conclude that Ms. \_\_\_\_\_ cannot be held personally liable for the payment in question because the applicable statute of limitations has expired. We are addressing our response to you because of our concerns about the handling of this matter.

**Background** \_\_\_\_\_, and apparently Ms. Pascoe's certification and the Commission's payment for the tour, occurs. The Commission is funded through a revolving fund that is available to carry out authorized Commission purposes, functions, and powers, including official reception and representation expenses of the Supervisory Board of the Commission, the Secretary of the Commission, and the Administrator of the Commission. 22 U.S.C. § 3712(a)(1)(C). However, no funds may be obligated or expended in any fiscal year for administrative expenses except to the extent or in such amounts as are provided in appropriations acts. 22 U.S.C. § 3712(c)(2). Annual appropriations for the Commission typically contain spending limits on amounts that can be used for official reception and representation purposes. E.g., Public Law 101-164, 103 Stat. 1090 (1989).

The Inspector General of the Commission audited reception and representation accounts for fiscal year 1990 and, after consulting with the Commission's General Counsel, reported that:

\_\_\_\_\_ and \_\_\_\_\_ are not entitled to reimbursement for the tour. Accordingly, we will use October \_\_\_\_\_ as the date of reference with the understanding that cost and payment even if it occurred shortly thereafter would be the same result.

"For the October 1989 board meeting in Tampa, only wives of Commission employees and U.S. board members attended the city [sightseeing] tours. Consequently, tours should not have been charged to the Supervisory Board operating account or to any of the official reception and representation accounts. Participants should have paid for the tours.

"Accountability for funds rests with the certifying officer who is required to make good to the government amounts of any illegal or improper payment resulting from his or her certification. Records showed that the costs of the city tours in Tampa, Florida were certified by the Staff Assistant to the Administrator. As such, she is accountable for the improper payment."<sup>1</sup>

We have been advised that by letter dated April 24, 1991, Ms. [redacted] requested relief from liability for the \$558.80 cost of the city tours. We, however, have no record of receiving such a request, and it was not until about December 1993, when the Commission was following up on the request that we received notice of an outstanding request. We received a facsimile copy of Ms. [redacted] April 24, 1991 request on January 13, 1993.

#### Discussion

The city tours, and apparently Ms. [redacted] certification and the Commission's payment for the tours, occurred in October 1989.<sup>2</sup> However, we did not receive a request for relief until January, 1993. Under 31 U.S.C. § 3526(c), "[t]he Comptroller General shall settle an account of an accountable official within 3 years after the date the Comptroller General receives the account." Moreover, "[t]he settlement of an account is conclusive on the Comptroller General after 3 years after the account is received by the Comptroller General." *Id.* Thus, the question we must first

<sup>1</sup>Inspector General, Panama Canal Commission, Audit of Fiscal Year 1990 Official Reception and Representation Accounts, Audit Report No. 468 (February 22, 1991).

<sup>2</sup>The exact date of the certification and payment does not affect our resolution of the statute of limitations issue presented here. Accordingly, we will use October 1989 for ease of reference with the understanding that certification and payment even if it occurred shortly thereafter would yield the same result.

consider is whether the account has been settled by passage of time, i.e., by operation of law.

In this regard, we need to identify when, at what point in time, the statute of limitation began to run. If the 3-year period began to run from the date of certification in October 1989, then the statute of limitations already had expired by the time we received Ms. facsimile. However, if the 3-year period began to run on September 30, 1990, the end of the fiscal year during which the erroneous payment was made, then the statute of limitations does not expire until September 30, 1993, a position advanced by Commission counsel.<sup>3</sup>

The statute of limitations contained in 31 U.S.C. § 3526(c) was enacted by the Act of May 19, 1947, ch. 78, 61 Stat. 101. As originally proposed, the statute of limitations was to run from the expiration of the period covered by an accountable officer's account. S. Rep. No. 99, 80th Cong., 1st Sess. (1947), reprinted in 1947 U.S.C.C.A.N. 1075, 1076. At the time, accounts were presented to the General Accounting Office for settlement on a monthly or quarterly basis. Because delays in submitting accounts to GAO would reduce the actual time GAO had to settle the accounts to less than three years, the Comptroller General recommended, and Congress agreed, that the proposal be changed to have the statute of limitations run from when GAO received substantially complete accounts. Id. at 1078-1079.

begin on October 31 for the dispersing officer. The nature of our settlement work has changed dramatically since 1947. For example, section 116 of the Budget and Accounting Act of 1921, which requires that certain officers be custodians of public funds. Accordingly, certifying

<sup>3</sup>In correspondence dated June 29, 1993, Commission counsel argues that the Commission's "accounts were not settled until February 21, 1991, which is the date of our Inspector General's report which discovered the overpayment. [This date is] within the three-year statute of limitations period." If this is to suggest that the statute of limitations began to run on February 21, 1991, we disagree. To delay the beginning of the 3-year period until an audit is completed leaves the accountable officer in limbo for a potentially indefinite period of time awaiting the audit, during which time the ability to recover an improper payment from the payee erodes and the risk to the accountable officer increases. This is the exact situation the statute of limitations was designed to alleviate. Alternatively, if counsel means that the Inspector General's report actually settled the Commission's accounts and fixed liability for improper payments so as to render the statute of limitations inapplicable, existing statutes and decisions of this Office do not support that proposition.



Accounting Act of 1950 authorized GAO to discontinue maintaining ledger accounts, 31 U.S.C. § 3514, and section 117(a), (c) of the 1950 Act provided GAO substantial discretion to decide when, how and where to audit agency transactions (current version as amended at 31 U.S.C. § 3523 (a), (c)(1)). As a result of these and other changes, GAO requires agencies to maintain the accounts. GAO, Policies and Procedures Manual for Guidance of Federal Agencies, tit. 7, § 8.5 (TS No. 7-43, May 18, 1993).

Similarly, the focal point for beginning the 3-year period has changed from when GAO received accounts from the agencies to when the agencies themselves are able to identify discrepancies in their accounts. Accordingly, our general policy is that the 3-year period begins to run on the date a "substantially complete" account is available to the agency for audit. E.g., B-181466, July 10, 1974 (non-decision letter). This generally will be at the end of the period covered by the applicable statement of accountability.<sup>4</sup> 7 GAO-PPM § 8.7. See also, 7 GAO-PPM § 8.5, and appendix I for applicable reporting forms.

The Commission's disbursing officer prepares monthly statements of accountability. Accordingly, the payment for the city tours at issue here would be included in the disbursing officer's statement for October 1989. Consistent with the above discussion, the 3-year period for the disbursements included on such statement generally would begin on October 31 for the disbursing officer.

Unlike disbursing officers, certifying officers are not custodians of public funds. Accordingly, certifying officers do not have "accounts" and statements of accountability in the same manner disbursing officers do. For purposes of audit and settlement, we have considered the certifying officer's account to be the certified vouchers and supporting papers relating to payments made by a disbursing officer over a particular accounting period.

<sup>4</sup>We have treated later dates as beginning the 3-year period when the agency was not in a position to identify the discrepancy as of the date the statement of accountability was certified. In cases involving fraud by other than the accountable officer, the period begins when the loss is known by appropriate agency officials. 7 GAO-PPM § 8.7. For example, when the agency has no way of knowing that an improper payment has occurred until it receives a debit voucher from Treasury, such as in duplicate check and some fraud cases, the 3-year period begins when the agency receives the debit voucher (or the voucher date if the receipt date is unknown). B-226393, Apr. 29, 1988.

B-161457-O.M., Jan. 19, 1977; B-147293-O.M., Feb. 21, 1962. In other words, for payments comprising a disbursing officer's statement of accountability, the 3-year period is essentially the same for the disbursing officer and for the certifying officers on whose certifications the disbursing officer relied.

Once the disbursing officer made payment for the city tours, Ms. had in her possession the certified voucher and supporting papers that would enable an auditor to determine whether the payment was improper. The fact that Ms. certifications are audited on a fiscal year basis is irrelevant to the determination of when Ms. had a substantially complete "account" for audit purposes. The 3-year period applicable to Ms. certification for the city tour began to run at the end of October 1989 when her "account" was substantially complete for purposes of audit. Accordingly, the statute of limitations had already expired when our Office received Ms. request for relief in January 1993.

#### Other Matters

We have been advised that it is "in keeping with generally followed procedures" to have Commission accountable officers submit their own relief requests.<sup>5</sup> As explained above, we have three years within which to settle an accountable officer's account and take exception to any improper or erroneous expenditure of taxpayer funds. It is therefore critical that agencies ensure that questions of relief be resolved during that period rather than leaving the matter to the accountable officer who will benefit if such requests are not timely considered.

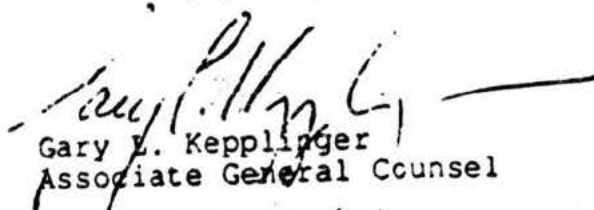
Further, relief requests do not adequately inform us of the views of the agency itself. While certain agency determinations in support of relief are not statutorily required before GAO grants relief to certifying officers under 31 U.S.C. § 3528, as they are for relief to accountable officers under 31 U.S.C. § 3527, the views of the agency help complete the record and are useful in resolving some relief requests. Accordingly, we recommend

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<sup>5</sup>Letter to Mr. George Ruppert, GAO/OGC, from Albert J. Joyce, Commission/OGC, dated February 18, 1993. However, we note that requests for relief to this Office have come from the Commissions' Administrator, B-241201, Apr. 15, 1992, and Chief Financial Officer, B-246415, July 28, 1992.

that the Commission adopt internal procedures to centrally control and transm. requests for relief of its certifying and disbursing officers.

Sincerely yours,

  
Gary L. Kepplinger  
Associate General Counsel

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