



Clarified by B-495492, Dec 13 1980

B-142538

FEB 8 1961

Honorable Alan T. Waterman, Director
National Science Foundation

Dear Dr. Waterman:

Your letter of December 21, 1960, requests a decision as to the latitude that may be exercised by the National Science Foundation in utilizing funds donated to it under authority of section 11(f) of the National Science Foundation Act of 1950, 64 Stat. 153, as amended, 42 U.S.C. 1870(f). This section provides that the Foundation shall have the authority--

"(f) to receive and use funds donated by others, if such funds are donated without restriction other than that they be used in furtherance of one or more of the general purposes of the Foundation."

In your letter you call attention to section 3 of the organic act which prescribes the functions and activities of the National Science Foundation. You describe some of these activities and cite examples of instances where the Foundation feels that the use of donated funds to cover certain expenses incident to the conduct of the activities, would have furthered one or more of the general purposes of the Foundation. The examples as stated in the letter are as follows:

"Section 3 (a) (5) of the Act authorizes and directs the Foundation 'to foster the interchange of scientific information among scientists in the United States and foreign countries.'

"Pursuant to this provision of the Act, the National Science Foundation shared in the sponsorship of the International Conference of Scientific Information held in Washington, D. C., from November 16 to November 21, 1958. The conference was held to discuss the state of art in the field of scientific information and to develop improved methods of organizing and disseminating scientific information. The formal expenses of the conference were paid by the three organizations sponsoring it. Attending the conference were many of the world leaders in the science information field.

766692/087637

"The National Science Foundation had special problems to discuss with the representatives of a number of the countries participating. Because of the full schedule established for the conference, it was necessary to schedule the individual country conferences during luncheon and dinner periods. As the host country, and as one of the three host agencies sponsoring the conference, it was expected that the cost of food and entertainment at these affairs be paid for by the National Science Foundation. The expenses amounted to \$400 and were paid from the personal funds of the employees of the National Science Foundation's Science Information Service.

"On March 13, 1959, the National Science Board gave a reception at the National Science Foundation building for Members of Congress, heads of various Government agencies, and certain members of the scientific community. The purpose of this reception was to give members of the Board an opportunity to become acquainted with individuals in the above categories 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. Catering expenses and flower decoration expenses were incurred in holding this reception. These expenses were paid from the donations account after informal discussions with members of your staff.

"The National Science Foundation Act was enacted 'to promote the progress of science.' Section 3 of the act referred to above, recites a number of scientific activities which the Foundation is authorized to 'develop,' 'encourage,' 'initiate,' and 'support.' In performing these functions the Foundation frequently brings together groups of specialists in various scientific fields. A typical group might include: (1) individuals from colleges and universities serving without charge or reimbursement from the Foundation; (2) consultants paid at a daily rate, plus subsistence, by the Foundation; and (3) pertinent NSF professional staff. Those individuals who are allowed subsistence are paid a per diem rate of \$12 in lieu of subsistence. This is inadequate to cover the subsistence expenses paid by these individuals. Luncheon and dinner expenses are sometimes incurred at these meetings in order to keep the group together and achieve maximum utilization of available time. Such expenses have, to date, been paid by the individuals involved. The Foundation would like to be in a position to pay expenses of this nature occasionally from the donations account whenever it appears to be in the best interests of the Government.

"The National Science Foundation is responsible for coordination and administration of over-all U. S. research interests and programs in the Antarctic. In carrying out this responsibility, the Foundation sponsors and organizes teams of U. S. scientists. Early each austral summer, U. S. scientific personnel and Navy support personnel gather in New Zealand en route to the Antarctic. Throughout the next several months while the expeditions are being organized, meetings are held with scientists and government officials of New Zealand. Frequent courtesies are exchanged in the form of parties and receptions for our scientific personnel. To date, the Foundation has not assisted scientific personnel in returning these courtesies. We believe that the successful pursuit of our program in and through New Zealand would be enhanced if our Antarctic Program Director could occasionally entertain government officials of New Zealand who have been, and continue to be, helpful to the United States Antarctic Program."

Private donations or contributions such as those here in question, received pursuant to the provisions of the section quoted above, constitute trust funds within the purview of section 20 of the Permanent Appropriation Repeal Act, 1934, 31 U.S.C. 725a to be disbursed in accordance with the terms of the trust. Under the terms of the latter statute there was established the trust fund account "National Science Foundation, Donations" to record transactions involving the receipt and expenditure of such funds. You state that since the establishment of the Foundation the sum of \$11,266 has been credited to the account and that the current balance therein is \$6,251.83.

Under the terms of section 11(f),^X quoted above, funds donated to and accepted by the Foundation are impressed with a trust that they be available for use "in furtherance of one or more of the general purposes of the Foundation." The responsibility of the Foundation, in respect of the accounting for and expenditure of such private funds, is not dissimilar from that imposed upon it in the use of funds annually appropriated by the Congress to the Foundation "For expenses necessary to carry out the purposes of the National Science Foundation Act of 1950,^X as amended * * *." See the language of the appropriation made to the Foundation in the Independent Offices Appropriation Act, 1961, Public Law 86-626, approved July 12, 1960, 74 Stat. 437. The material distinction between the two classes of funds goes to their differing origin and manner of use availability. The effect of the authority given to the Foundation to accept and use private donations is to augment appropriations of the Congress for making expenditures to accomplish the statutory purposes of the organic act.

The items of expense believed properly payable from donated funds, as set forth in the examples given in your letter, are classed as entertainment. With reference to appropriated public funds, we have consistently held that expenditures for such purposes may be made only when authorized by law and authorized or approved by proper administrative officers. See 5 Comp. Gen. 455, id. 1018, 26 id. 281. This is because entertainment, for whatever purpose offered, is basically received and enjoyed personally; so that as a general proposition, expenses of entertainment are of doubtful necessity and indefinite relationship to the accomplishment of statutory activities. And it is observed that when the Congress intends that departments and agencies of the Government be authorized to expend public funds for official entertainment, it has so provided in the law. There is found no indication of a legislative intent in the Foundation's organic act or in the appropriations made to it that any part thereof may be used for entertainment.

With reference to trust funds, however, it has been held that where Federal officers are authorized to accept such funds for a particular purpose, authority must of necessity be reposed in the custodians of the trust fund to make expenditures necessary to carry out the purpose of trust without reference to general regulatory and prohibitory statutes applicable to public funds. 16 Comp. Gen. 650, 655; 36 id. 774; B-131278, September 9, 1957. Therefore, it follows that the authority given to the Foundation to accept and use donations is broad enough to empower the Foundation to spend the funds for entertainment when it determines that such expenses are necessary to carry out effectively its authorized functions.

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 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. 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 referred to available to the Foundation for such purposes.

In the first example quoted above from your letter, 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. The matter of utilizing such funds for the furtherance of Foundation activities in the remaining examples is discussed so generally in your letter as not to admit of a categorical answer. However, assuming that the facts reasonably justify an administrative determination of necessity--as distinguished from desirability--for the various forms of entertainment to accomplish the authorized activities, there would be no objection to the use of donated funds to cover the expenses thereof. In this connection, it may be stated as advisory that the propriety of the use of donated funds for expenses of entertainment to cultivate cordial relations, manifest good will, or to reciprocate in kind hospitality extended by others to Foundation personnel, not having a direct connection with or reasonably necessary to the accomplishment of the Foundation's activities would appear to be questionable.

Regarding the question presented in the last paragraph of your letter, you are advised that since the organic act limits the use of donated funds to expenses in furtherance of the Foundation's general purposes, the propriety of the use of such funds and the amount thereof must be first determined, in each case, on the basis of the attending circumstances. Under the conclusion expressed herein that determination must, in each case, rest on responsible administrative officers. This procedure would assure that the funds are expended for authorized activities. Consequently, we feel that it would not be feasible or practicable to promulgate a Foundation policy document outlining the various permissible expenditures from the donated funds, for which reimbursement may be claimed on expense vouchers, as authority for approval of the vouchers.

Sincerely yours,

JOSEPH CAMPBELL

Comptroller General
of the United States