



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20543

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B-193444

March 27, 1979

The Honorable Lawton Chiles, Chairman
Subcommittee on Federal Spending
Practices and Open Government
Committee on Governmental Affairs
United States Senate

SEN 06609

Dear Mr. Chairman:

You have requested our assistance in determining ^{action of} the civil liability of certifying or disbursing officers, contracting officers, and other Federal employees for their errors or omissions, and our opinion as to whether there is a need for legislation that would establish civil liability for the errors and omissions of Federal employees.

The most clearcut form of liability is that of certifying officers and disbursing and other accountable officers. They are said to be insurers of the funds for which they are responsible. That is, if not for the statutes allowing this Office to grant relief when they are free of negligence, they would be liable regardless of fault.

More specifically, a certifying officer is personally liable to the United States for the amount of any illegal, improper, or inaccurate payment resulting from any false, inaccurate, or misleading certificate made by him, as well as for any payment prohibited by law or which did not represent a legal obligation under the appropriation or fund involved. 31 U.S.C. §§ 82c, 82d, 82f (1976). The officer's liability is limited to the amount of the payment, and the Comptroller General has discretion to relieve him of liability in certain circumstances. Id. § 82c. A certifying officer is exempted from liability for certain types of payments (such as overpayments on Government bills of lading as a result of using improper transportation rates or classifications), id. §§ 82g, 82h. Accounts of disbursing officers must be settled by this Office within 3 years from the date of receipt and a settlement of accounts is deemed final and conclusive on this Office 3 years from that date (except in cases of fraud or criminality). Id. § 82i.

A disbursing or other accountable officer is liable only for actual physical loss or deficiency of Government funds, and only to the extent of that loss or deficiency. Id. §§ 82a-1, 95a; see id. § 1202. This Office may relieve the officer of such liability if the employing agency certifies that the loss occurred without his fault or negligence and we concur, on the basis of the record. Id. § 82a-1. An accountable officer is also liable for illegal, improper or erroneous payments, but only to the extent of such payments, id. § 82a-2(a), (b), and the Comptroller General may also relieve him from such liability where the payment

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was not the result of bad faith or lack of due care. Id. § 82a-2(a), (c); see id. § 82b-1. A disbursing officer is also liable to the extent of errors of computation in vouchers. Id. § 82b. Like a certifying officer, he is exempt from liability for certain types of payments, id. §§ 82g, 82h, and his liability is similarly time-limited. Id. § 82i.

As a result of the complexity and volume of Government operations and the use of computer systems, an accountable officer may have almost no way of knowing if the information on which he bases a payment is correct. Few Government employees, in recent years, have been held liable for erroneous or negligent payments (as opposed to physical losses).

To the best of our knowledge (with a limited exception discussed below), there are no similar statutory provisions imposing liability on or assessing charges against Federal employees who are not accountable officers -- e.g., contracting officers -- for losses sustained by the Government as a result of errors in judgment or neglect. However, see 52 Comp. Gen. 964, 967 (1973) and 25 id. 299, 301 (1945), which suggest that agencies may promulgate specific regulations pursuant to law which impose such liability on individuals as a condition of employment. For an example of regulations establishing the liability of Federal officers for the negligent loss of property, see Accounting for Lost, Damaged, and Destroyed Property, (Army Regulation No. 735-II), effective January 1, 1979 (1978). We are not aware of any such regulations dealing with losses resulting from errors of judgment or neglect of duty by contracting officers or other employees other than in cases of loss of property entrusted to the employee's care.

There is one exception, referred to before, where a statute does permit the imposition of pecuniary liability upon a Federal officer or employee. 26 U.S.C. § 7803(c) (1976), authorizes the imposition of liability against an officer or employee of the Treasury Department to the extent of any failure by him to account for and pay over any money received under the internal revenue law.

Also, the so-called Antideficiency Act, 31 U.S.C. § 665(a) (1976), prohibits any officer or employee from creating or authorizing an obligation under any appropriation or fund in excess of the amount available therein. A violation of subsection 665(a) warrants appropriate administrative discipline, including possible suspension without pay or removal from office. Id. § 665(i)(1).

In addition to the specific provision in 31 U.S.C. § 665(a) for disciplinary action, there is general statutory authority for removal or suspension without pay of an individual in the competitive service for "such cause as will promote the efficiency of the service." 5 U.S.C. § 7501 (1976), as amended.

In United States v. Gilman, 347 U.S. 507 (1954), the Supreme Court gave great weight to the severity of those disciplinary actions in reaching its decision holding the United States barred from seeking indemnity from a negligent employee where the United States had been held liable as a result of the employee's negligence under the Federal Tort Claims Act, Title IV of c. 753, August 2, 1946, 60 Stat. 842, as amended, 28 U.S.C. §§ 1346(b), 2671 et seq. (1976). The Court noted:

"Discipline of the employee, the exactions which may be made of him, the merits or demerits he may suffer, the rate of his promotion are of great consequence to those who make government service their career."
347 U.S. at 509.

The Civil Service Reform Act of 1978, Pub. L. No. 95-454, October 13, 1978, 92 Stat. 1111, strengthened existing authority to discipline negligent employees. Section 101 of the 1978 Act added a new subsection 2301(b)(6), which provides:

"Employees should be retained on the basis of the adequacy of their performance, inadequate performance should be corrected, and employees should be separated who cannot or will not improve their performance to meet required standards."

Section 203 of the 1978 Act amended 5 U.S.C. § 4301 et seq. (1976) to provide for the reduction in grade or removal of an employee for unacceptable performance. Section 204 of the 1978 Act correspondingly amended 5 U.S.C. § 7501 et seq. (1976), retaining the "efficiency of the service" standard. Thus we conclude that there are relatively severe sanctions in existing legislation against employees whose performance is negligent or otherwise inefficient, even though those sanctions stop short of imposing pecuniary liability on the employee for the monetary loss he caused the Government to suffer.

You have also requested our opinion on whether there is a need for legislation that would establish civil liability for the errors and omissions of Federal employees. As noted above, there are disciplinary sanctions which may be imposed upon negligent Federal officers and employees. As the Supreme Court stated in Scheuer v. Rhodes, 416 U.S. 232, 240 (1974), the traditional immunity of Government officials from personal liability to third parties has rested on ---

"the injustice, particularly in the absence of bad faith, of subjecting to liability an officer who is required, by the legal obligations of his position, to exercise

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discretion; [and] the danger that the threat of such liability would deter his willingness to execute his office with the decisiveness and the judgment required by the public good",

The same considerations may apply to whether officials should be liable to the Government. The Joint Financial Management Improvement Program is currently studying the certifying and disbursing officer functions and considering whether some liability should be imposed on other Government employees.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "James B. Stacks". The signature is written in dark ink and is positioned to the right of the typed name.

Comptroller General
of the United States