



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Department of Agriculture - Relief of Liability
for National Forest Volunteer Collection Agents

File: B-207731.3

Date: June 7, 1989

DIGEST

National Forest Volunteer Collection Agents who sell permits and collect user fees in National Forests are subject to the provisions of 31 U.S.C. § 3527(a) pertaining to relief from liability of accountable officials and agents for certain types of physical losses or deficiencies of public funds. 62 Comp. Gen. 339 (1983) is superseded.

DECISION

The Department of Agriculture has asked us to reconsider 62 Comp. Gen. 339 (1983) which concluded that National Forest Volunteer Collection Agents were ineligible for relief from liability under 31 U.S.C. § 3527(a) for the physical loss of federal funds. Subsequent changes in law and regulations have undermined the rationale on which the conclusions of that case were based. Upon reconsideration, we now conclude that National Forest Volunteer Collection Agents are subject to the relief provisions of 31 U.S.C. § 3527(a). 62 Comp. Gen. 339 (1983) is superseded.

BACKGROUND

In 1972 Congress enacted the Volunteers in the National Forests Act of 1972, Pub. L. No. 92-300, 86 Stat. 147 (16 U.S.C. §§ 558a-558d) which authorized the Secretary of Agriculture to engage uncompensated volunteers to perform routine duties in the National Forest Program. Such duties included visitor information services, conservation measures and other Forest Service functions. The volunteers were not deemed to be federal employees for purposes of compensation or employee benefits, but were considered to be federal employees for purposes of the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b) and 2671 et seq., and for purposes of compensation to federal employees for work injuries under

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the provisions of subchapter I of chapter 81, Title 5 of the United States Code.

In 1982 the Secretary of Agriculture proposed to use some of the volunteers to collect user fees from the public for the use of National Forest facilities. The Secretary requested an opinion from this Office on the proposal. We reviewed the concept and concluded there was no indication in the Volunteers in the National Forest Act of 1972 that Congress intended that volunteers perform collection functions. We further determined that fee collection was an inherent governmental function which must be performed only by government employees. Accordingly, we were unable to concur in the volunteer collection agent proposal. 62 Comp. Gen. 339 (1983).

The Department of Agriculture continued to be interested in using National Forest Volunteers as collection agents and submitted a legislative proposal to Congress to obtain statutory authorization for this objective. Congress enacted such legislation in section 5201(c) of the Omnibus Budget Reconciliation Act of 1987, Pub. L. No. 100-203, 101 Stat. 1330-266. That provision, codified as 16 U.S.C. § 4601-6a(k), authorizes among other things the use of National Forest Volunteers at designated areas to sell permits and collect fees authorized or established under statutory authority. The provision requires that volunteers receive adequate training in the sale of permits and the collection of fees, and authorizes the Secretary of Agriculture to use federal funds to purchase a required surety bond for any volunteer engaged in the sale of permits or the collection of fees.

When the Department of Agriculture began to plan for the implementation of section 4601-6a(k), it became concerned with an issue raised in 62 Comp. Gen. 339 (1983), namely, the liability of bonded volunteers to the bonding company for the bonding company's payment of non-negligent losses to the government. The legal principle involved here is that sureties on the bond of the volunteer, on being charged with the default of the volunteer, are by virtue of their payment of the loss to the government, equitable assignees and subrogees of the government with respect to its liens, securities, and priorities, for purposes of obtaining reimbursement from the volunteer. Annot., 24 A.L.R. 1497 (1925); 148 A.L.R. 926 (1944). The exposure of volunteers to such liability could deter otherwise willing individuals from serving as collection agents, thereby defeating the purpose of section 4601-6a(k).

The problem of volunteer liability to the bonding company for non-negligent losses could be resolved if the government could relieve volunteers for such losses, and, when so relieved, release the bonding company from its obligation to indemnify the government. The Department of Agriculture has therefore asked this office to determine whether these Volunteer Collection Agents may be eligible for relief from liability for physical losses of federal funds under the provisions of 31 U.S.C. § 3527(a).

DISCUSSION

The provisions of 31 U.S.C. § 3527 authorize the Comptroller General to relieve an accountable official or agent of an agency responsible for the non-negligent physical loss or deficiency of public money, when the head of the agency decides that the official or agent was carrying out official duties when the loss or deficiency occurred, and the loss or deficiency was not the result of fault or negligence by the official or agent.

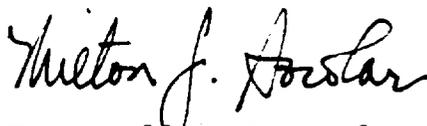
The basic question is whether we can consider a National Forest Volunteer Collection Agent an accountable official or agent of an agency for purposes of relieving them of liability for non-negligent losses under the provisions of 31 U.S.C. §§ 3527(a). In this regard, 16 U.S.C. § 558c specifically provides that a National Forest Volunteer shall not be deemed a federal employee except for statutes involving tort claims against the government and compensation of the volunteer for work related injuries sustained in the line of duty. Accordingly, we cannot classify National Forest Volunteers as officers or employees of the federal government for purposes of 31 U.S.C. § 3527(a).

On the other hand, these volunteers may qualify as agents of the Forest Service for purposes of 31 U.S.C. § 3527(a). In its broadest sense, an "agent" is no more than a person or entity who agrees to act on another's behalf, here the Forest Service, subject to such other person's control and direction. Restatement (second) of Agency § 1(1) (1958); 3 Am. Jur. 2d "Agency" § 1 (1986). Clearly, the statutory authorization coupled with the volunteers' agreement to collect fees for the Forest Service is sufficient to qualify the volunteers as agents of the Forest Service. See, In re Schulman Transport Enterprises, Inc., 744 F.2d 293 (1984). Accordingly, volunteers assigned duties involving permit sales and fee collections under 16 U.S.C. § 4601-6a(k) may be considered as "agents of an agency" for purposes of the relief provisions of 31 U.S.C. § 3527(a). In our opinion, this result is fully consistent with the intent of Congress

in enacting 16 U.S.C. § 4601-6a(k). Therefore, our decision in 62 Comp. Gen. 339 (1983) is no longer applicable.

Since the volunteers can be granted relief for non-negligent losses, the bond should not cover circumstances where relief is granted. However, when relief is not granted, the volunteer is liable for the loss and should be afforded the opportunity to reimburse the government. Where the volunteer is unable or unwilling to reimburse the government for the full amount of the loss, the agency should file a claim with the surety of the volunteer for any uncollected amount up to the maximum coverage of the bond. We note that under 7 GAO Policy and Procedures Manual for Guidance to Federal Agencies, subsection 28.14, agencies are authorized to grant relief for physical losses up to \$750.

Subsection 16 U.S.C. § 4601-6a(k)(1) requires that volunteers receive adequate training regarding the sale of permits and the collection of fees. We recommend that such training include appropriate material on the proper handling and safeguarding of funds such as that contained in the Manual of Procedures and Instructions for Cashiers promulgated by the Department of the Treasury Financial Management Service and the applicable Forest Service manual. This training should help volunteers reduce the number of incidents involving the negligent loss of federal funds. In addition, we also recommend that the Forest Service prepare a notice of liability to clearly advise volunteers of the risks they assume for federal funds when they undertake the duties of collection agents. The volunteers should be asked to sign the notice and copies should be retained in the files of the agency to rebut any subsequent claims by volunteers that they were unaware of the risks involved in the handling of federal funds.



Acting Comptroller General
of the United States