



United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

B-241744

May 31, 1991

E. M. Keeling
Director of Accounting
Federal Aviation Administration
U.S. Department of Transportation
800 Independence Avenue, S.W.
Washington, D.C. 20591

Dear Mr. Keeling:

This is in response to your letter of October 1, 1990, requesting our opinion as to the proper disposition of funds in your custody that belonged to a now inactive FAA employee club.

According to your letter, the Federal Aviation Club (Club) was established in the early 1960's as a non-profit organization to promote the welfare of, and goodfellowship among, Federal Aviation Administration (FAA) employees. During the mid-1980's Club activities declined; the Club currently has no active members and has, effectively, ceased operations. Your staff has been unable to locate any documentation reflecting the creation of the Club, e.g., charter or bylaws, or its dissolution.

In 1990 the FAA Office of the Inspector General (OIG) received a hotline complaint alleging that the Club's internal controls over funds received were inadequate. A subsequent OIG audit concluded that controls were indeed inadequate but that no funds were mismanaged or diverted. During the course of the audit, the OIG discovered a bank account in the Club's name with the local credit union. The account balance is \$10,000 consisting mainly of revenues received from Guest Services, Incorporated (GSI). GSI operates a beauty parlor and barber shop at the FAA headquarters building (Federal Building 10-A) which is operated by the General Services Administration (GSA).^{1/} A purported letter agreement, dated June 17, 1965,

^{1/} Your letter seems to question the absence of any provision for the payment of any rent or concession fees by GSI in the GSA-GSI contract. GSI's current contract was entered into on July 21, 1971. It does not have an expiration date but can be cancelled by either party on 196 days notice. Our Office has stated that such an agreement is not unlawful, improper or contrary to public policy. See generally LCD-78-316, May 5, 1978; See also 64 Comp. Gen. 217,220 (1985).

between GSI and the Club provides for quarterly payments representing 6.5 percent of the receipts from GSI's beauty/barbershop operations.^{2/} It is not known why this agreement was entered into or what it provided since no copy of the alleged agreement can be found by GSI or FAA. Nevertheless, we understand that GSI continues to make payments to the Club. The Club's account balance was deposited by your office into a trust account in Riggs National Bank pending a resolution of this matter.

DISCUSSION

Typically, any money an agency receives from whatever source outside the government must be deposited into the General Fund of the Treasury as miscellaneous receipts. 31 U.S.C. § 3302(b); see, e.g., 64 Comp. Gen. 431 (1985). By its terms, however, § 3302(b) applies only to funds received for the use of the government. Funds are considered received for the "use of the government" only if they are to be used to bear the expenses of the government or to pay the obligations of the United States. B-205901, May 19, 1982. Funds that are not received for the use of the United States need not be deposited into miscellaneous receipts. Id.

Thus, we have held that proceeds from the sale of diesel fuel furnished to the Federal Bureau of Investigation by a railroad to assist in an undercover investigation were not for the use of the government and could be returned to the railroad. See also B-205901, May 19, 1982; B-192035, Aug. 25, 1978 (balance of funds provided by cooperating country for overseas staff houses must revert to cooperating country upon termination of program).

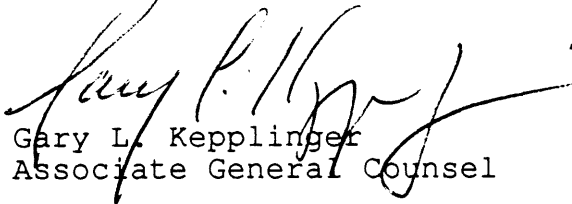
Clearly, in this case, the defunct Club's account balance is not for the use of the government nor does the FAA have an identifiable interest in the moneys except that it presently has custody of the moneys. In the diesel fuel case, however, the FBI and the railroad had agreed that after the conclusion of the investigation the railroad would get back either the fuel or its sales proceeds. Here we have not been advised that the Club's charter or bylaws provided for any particular disposition of Club funds upon dissolution. We think it fair to infer, however, that GSI's voluntary agreement to donate 6.5 percent of its receipts to the Club was intended to

^{2/} In the late 1980's, the Club's fundraising activities also included the sponsoring of vendors to sell merchandise in FAA headquarters. The vendors agreed to pay the Club 10 percent of any profits. In 1988 two FAA employees continued to sponsor vendors in the name of the Club and voluntarily contributed the funds to the FAA's Day Care Center.

finance the Clubs' morale enhancing purposes. That being the case, we would have no objection to the disposition of such funds for such purposes either to a successor employee morale organization or independently thereof. Naturally, any successor employee morale organization or reorganized Club must comply with Department of Transportation internal regulations.

However, should no successor organization step forward, under 31 U.S.C. § 3322, amounts held in trust for more than 1 year and representing moneys deemed unclaimed must be transferred to the Treasury trust receipt account "unclaimed moneys of individuals whose whereabouts are unknown." See Treasury Fiscal Manual, 6-3000.

Sincerely yours,



Gary L. Kepplinger
Associate General Counsel