



B-327671

February 19, 2016

The Honorable Shelley Moore Capito
Chairman
Subcommittee on the Legislative Branch
Committee on Appropriations
United States Senate

Subject: *Governmentwide Prohibition on the Use of Appropriations for the Painting of Portraits*

Dear Madam Chairman:

This responds to your December 16, 2015, request for our opinion as to whether the Senate, through the Senate Commission on Art (Commission), may incur obligations for the costs associated with accepting donated portraits under the Commission's gift acceptance authority. 2 U.S.C. § 2108(a). Specifically, you ask whether section 736 of the Financial Services and General Government Appropriations Act, 2016, which prohibits the use of appropriations to pay for the painting of a portrait, also prohibits the Commission from using appropriations to cover costs necessary and incident to accepting a donated portrait. As explained below, we conclude that section 736 does not bar the Commission from obligating and expending appropriated funds for such costs, where the Commission is relying on its gift acceptance authority.

BACKGROUND

The Commission, established to protect and display works of art and historical objects, is permanently authorized to "acquire (by gift, purchase, or otherwise) any work of art . . . for placement or exhibition in the Senate Wing of the Capitol, the Senate Office Buildings, or in rooms, spaces, or corridors thereof." Legislative Branch Appropriations Act, 2004, Pub. L. No. 108-83, title I, § 3, 117 Stat. 1007, 1010 (Sept. 30, 2003) *classified at* 2 U.S.C. § 2108(a)(1)(B). The contingent fund of the Senate, subject to the approval of the Committee on Appropriations of the Senate, is available to fund the expenses necessary to acquire these works of art,

as well as the administrative expenses of the Commission. 2 U.S.C. § 2107(a).¹ Among the works the Commission displays are painted portraits of senators.

In the fiscal year (FY) 2014 annual appropriations act, Congress included a recurring, governmentwide prohibition on the use of appropriated funds to pay for the painting of portraits of specified federal officials. Pub. L. No. 113-76, div. E, title VII, 128 Stat. 5, 238, § 736 (Jan. 17, 2014). Section 736 provides:

“None of the funds made available in this or any other Act may be used to pay for the painting of a portrait of an officer or employee of the Federal government, including the President, the Vice President, a member of Congress (including a Delegate or a Resident Commissioner to Congress), the head of an executive branch agency (as defined in section 133 of title 41, United States Code), or the head of an office of the legislative branch.”

Id. The FY 2015 and FY 2016 appropriations acts also include this prohibition. See Pub. L. No. 113-235, div. E, title VII, § 736, 128 Stat. 2130, 2332; Pub. L. No. 114-113, div. E, title VII, § 736, 129 Stat. 2242, ____ (Dec. 18, 2015).

You note that members of the public and non-profit organizations have expressed interest in donating portraits to the Commission. You ask whether the Commission, in an effort to ensure that the donated portraits are consistent with the quality, nature, and style of other displayed works, may obligate appropriated funds to meet with the artists, establish appropriate guidelines for the painting, and pay for other such costs necessary to acquire the donated art.

DISCUSSION

As with any question involving statutory interpretation, the analysis begins with the plain language of the statute. *Carcieri v. Salazar*, 555 U.S. 379, 387 (2009); *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009). As the Supreme Court has stated, “[t]here is, of course, no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes.” *United States v. American Trucking Ass’ns*, 310 U.S. 534, 543 (1940). When the language of a statute is clear and unambiguous on its face, it is the plain meaning of that language that controls. *Carcieri*, 555 U.S. at 387; B-326013, Aug. 21, 2014, at 4; B-324469, Nov. 8, 2013, at 3.

¹ We note that the Senate Preservation Fund may also be used for such expenses. See 2 U.S.C. § 2108(c) (“[t]he fund shall be available to the Commission for . . . any purposes for which funds from the contingent fund of the Senate may be used under [2 U.S.C. § 2107(a)]”).

The language of section 736 provides a bar on the use of appropriated funds to “pay for the painting of a portrait . . .” Pub. L. No. 114-113, § 736 (emphasis added). The prohibition is unambiguous in terms of what is being prescribed—payment for the act of creating pictures using paint. In our view, the statute prohibits only the use of appropriated funds to pay for the painting of a portrait of an officer or employee of the federal government. Thus, while section 736 prevents the Commission from using appropriated funds to directly pay for the painting of a portrait of an officer or employee of the federal government, nothing in section 736 prevents the Commission from exercising its gift acceptance authority to otherwise acquire a portrait. See 2 U.S.C. § 2108(a)(1)(B).

Having found that the prohibition in section 736 applies only to the use of appropriated funds for paying for the painting of portraits, we turn to the question of expenses associated with the acceptance of donated portraits. Appropriated funds may be used only for authorized purposes. 31 U.S.C. § 1301(a). Expenditures that are neither expressly authorized, nor prohibited, are permissible only if they are reasonably necessary or incident to the proper execution of an authorized agency function, and if they bear a logical relationship to the appropriation sought to be charged. B-323449, Aug. 14, 2012, at 4; B-260260, Dec. 28, 1995, at 2. The application of this “necessary expense rule” is determinative as to whether the Commission may incur obligations for the costs associated with accepting donated portraits under its gift acceptance authority.

We have consistently concluded that an agency may incur expenses necessary to carry out a statutorily authorized function. See, e.g., B-310865, Apr. 14, 2008 (finding that the Nuclear Regulatory Commission could use appropriated funds for credit monitoring services, where there was a statutory requirement to minimize damage resulting from security breaches); 2 Comp. Dec. 492 (1896) (concluding that an appropriation to erect a monument at the birthplace of George Washington could be used to construct an iron fence around the monument, where the fence was deemed necessary to protect the monument).

We have also determined that an agency may incur necessary expenses in exercising its authority to accept gifts. In 1995, we reviewed whether, under the Public Health Service’s gift acceptance statute, the National Institutes of Health (NIH), a Public Health Service component, could use its appropriated funds to apply for grants from non-governmental sources. We determined that, since NIH had the authority to accept grants as conditional gifts under the statute, it could also use its appropriated funds to cover the costs incurred in applying for such grants. B-255474, Apr. 3, 1995.

We do not view section 736 as preventing the Commission from incurring costs related to the exercise of its gift acceptance authority. Such costs could include, for example, costs incurred in meeting with an artist to ensure that a donated portrait achieves the same high quality as other artwork displayed in the Senate wing of the

Capitol. We conclude the Commission may incur such expenses it deems necessary in exercising its gift authority. 2 U.S.C. § 2108(a)(1)(B).

CONCLUSION

The prohibition found at section 736 does not bar the Commission from obligating and expending appropriated funds for the necessary expenses of accepting a portrait, where the Commission is relying on its gift authority. 2 U.S.C. § 2108(a). A plain reading of section 736 prevents the obligation and expenditure of appropriated funds for paying for the painting of a portrait of an officer or employee of the federal government, but would not affect the Commission's ability to acquire a portrait as a gift.

If you have any questions, please contact Edda Emmanuelli Perez, Managing Associate General Counsel, at (202) 512-2853, or Julia C. Matta, Assistant General Counsel for Appropriations Law, at (202) 512-4023.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Poling", written in a cursive style.

Susan A. Poling
General Counsel