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UNITED STATES GENERAL ACCOUNTING OFFICE

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July through September 1983

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July through September 1983

B-209717.2 July 1, 1983

A ACCOUNTABLE OFFICERS--RELIEF--ILLEGAL OR ERRONEOUS
PAYMENTS--WITHOUT FAULT OR NEGLIGENCE--

U.S. Army Finance and Accounting Officer is relieved of liability for improper payment made by subordinate cashier where he maintained and supervised adequate system of procedures designed to prevent improper payment. Cashier is also relieved of liability for making improper payment where she complied with existing procedures which did not detect criminal activity resulting in payment.

B-211661 July 7, 1983

A ACCOUNTABLE OFFICERS--PHYSICAL LOSSES, ETC. OF FUNDS,
VOUCHERS, ETC.--CASHIERS, ETC.--IMPREST FUND--RELIEF
GRANTED

Agricultural Research Service cashier is relieved of liability for deficiency of \$1,219.94 in her account resulting from burglary in which safe was physically removed from building. GAO concurs in determination of Dept. of Agriculture that cashier was acting in discharge of her official duties and loss occurred without negligence or fault on her part.

B-212061 July 7, 1983

A ACCOUNTABLE OFFICERS--PHYSICAL LOSSES, ETC. OF FUNDS,
VOUCHERS, ETC.--CASHIERS, ETC.--IMPREST FUND--RELIEF
GRANTED

Cashier is relieved of liability for loss of funds when record shows that building was broken into and locked safe, in which funds were stored, was opened by force. Record supports agency determination that loss occurred while officer was discharging his official duties and was not result of any fault or negligence on his part.

B-208108 July 8, 1983

PROPERTY--PUBLIC--DAMAGE, LOSS, ETC.--ACCOUNTABILITY OF
CIVILIAN AND MILITARY PERSONNEL--NEGLIGENCE OR ERRORS IN
JUDGMENT

Employee of Office of Inspector General, Interior Dept. had accident while driving Govt. motor vehicle on official business. Agency found that employee was not "grossly negligent" and declined to hold him liable for damage to vehicle, but assessed resulting towing charges against him. Assessment of liability was based on employee's abandonment of vehicle at scene of accident. GAO concludes that assessment was not in conformity with applicable regs. because there was no showing that abandonment caused or increased towing expense to Govt. Employee's indebtedness should therefore be removed.

B-211763 July 8, 1983

ACCOUNTABLE OFFICERS--EMBEZZLEMENT, LOSS
ETC.--BASIS FOR RELIEF--"WITHOUT FAULT" DETERMINATION

Relief granted to primary cashier for Pennsylvania Avenue Development Corp. under 31 U.S.C. 3527 (formerly 31 U.S.C. 82a-1) in amount of \$776.54 for loss of subvouchers. Evidence indicates that another embezzled subvouchers, without fault or negligence on the part of primary cashier.

B-201150 July 11, 1983

CLAIMS--EVIDENCE TO SUPPORT--SUFFICIENCY

In accord with difficulty of providing supporting evidence in China Claims Program cases, direct statements of claimant and claimant's sister together with circumstantial evidence provide sufficient basis for our finding that claimant held American Club debentures amounting to CN\$55,000, and thereby, is entitled to share of proceeds of Foreign Claims Settlement Commission award to American Club, Inc., discussed in B-201150, May 13, and Dec. 1, 1981.

B-207557 July 11, 1983

APPROPRIATIONS--FISCAL YEAR--BONA FIDE NEEDS FOR OBLIGATION

Where unauthorized services were rendered during fiscal year 1980 and constituted bona fide need of that fiscal

year, quantum meruit payment for such service is proper charge against fiscal year 1980 appropriation.

PAYMENTS--QUANTUM MERUIT/VALEBANT BASIS--ABSENCE, ETC. OF CONTRACT--GOVERNMENT ACCEPTANCE OF GOODS/SERVICES

Contractor who provided unauthorized services because proper delivery orders had not been issued, may be paid on quantum meruit basis because services constituted permissible procurement, Govt. received and accepted their benefit, contractor acted in good faith, and amount claimed represents reasonable value of benefit received.

B-209558 July 18, 1983

ACCOUNTABLE OFFICERS--PHYSICAL LOSSES, ETC. OF FUNDS, VOUCHERS, ETC.--DELEGATION OF RELIEF AUTHORITY

Dept. of State sought relief for imprest fund cashier for loss of \$287.52 from cashier's imprest fund account and additional \$1,452 from consular fee collections, missing as result of apparent burglary. Cashier is not accountable officer for consular fees. Since only loss for which she is responsible amounted to less than \$500, relief question returned to State for administrative resolution, pursuant to 54 Comp. Gen. 112 (1974).

ACCOUNTABLE OFFICERS--RELIEF--ADMINISTRATIVE RECOMMENDATION--ABSENT

Notwithstanding strong evidence that burglary took place, GAO is not authorized to grant relief for loss of consular fee receipts in absence of relief request from agency which identifies accountable officer, makes findings required by 31 U.S.C. 3527(a), and submits appropriate supporting evidence.

B-209978 July 18, 1983

DISBURSING OFFICERS--PHYSICAL LOSSES, ETC. OF FUNDS, VOUCHERS, ETC.--WITHOUT NEGLIGENCE OR FAULT

Relief granted under 31 U.S.C. 3527(a) to former U.S. Disbursing Officer stationed in Saigon, South Vietnam,

for liability for physical loss of \$2,614,855 in American green dollar currency. Accountable officer followed agency procedures in attempting to destroy currency. Only her forced evacuation from Embassy building prevented her from assuring that destruction had actually taken place. Under extraordinary circumstances, accountable officer fulfilled her duty of reasonable care with respect to funds entrusted to her custody.

B-211945 July 18, 1983

ACCOUNTABLE OFFICERS--PHYSICAL LOSSES, ETC. OF FUNDS, VOUCHERS, ETC.--CASHIERS, ETC.--IMPREST FUND--RELIEF GRANTED

Accountable officer seeks relief from liability for loss of Govt. funds which occurred while he was returning from cashing Govt. checks at bank. Officer, imprest fund cashier, was forcibly robbed of money intended to replenish VA clinic imprest fund. Relief is granted under 31 U.S.C. 3527.

B-211962 July 20, 1983

ACCOUNTABLE OFFICERS--RELIEF--REQUIREMENTS FOR GRANTING

Relief is not granted to cashier for Dept. of Labor, under 31 U.S.C. 3527(a) (formerly 31 U.S.C. 82a-1), for deficiency of \$8,202.00 in imprest fund. Agency recommendation that we apportion relief is not proper because wording of 31 U.S.C. 3527(a) and its legislative history indicate that accountable officer must be found by recommending agency to be in no way at fault for loss.

B-202074 July 21, 1983

ACCOUNTABLE OFFICERS--RELIEF--PHYSICAL LOSSES v. ILLEGAL, ETC. PAYMENTS

Legislative history of 31 U.S.C. 3527(b) and (c) (formerly 95a and 82a-2) demonstrates clear congressional acceptance of early GAO decisions concerning scope of terms "physical loss" and "improper payment." In view of this legislative history and GAO precedent, loss resulting from overpayment by Army disbursing officer due to fraudulent alteration of amount on Military Pay Voucher is not

"physical loss or deficiency." It is improper payment and proper relief statute is 31 U.S.C. 3527(c), not 31 U.S.C. 3527(b).

B-210358 July 21, 1983

*ACCOUNTABLE OFFICERS--PHYSICAL LOSSES, ETC. OF FUNDS,
VOUCHERS, ETC.--DELEGATION OF RELIEF AUTHORITY*

Where fire destroyed evidence of amounts collected by eight collection officers after presumed burglary of \$2,900 from National Park Service campground safe, it can be concluded that some officers must have collected less than \$500. If Park Service concludes that collection agents remain accountable in this case after turning in their daily receipts, Park Service should determine which collection officers collected less than \$500 and relieve them, if at all, on its own determination of fault.

*ACCOUNTABLE OFFICERS--PHYSICAL LOSSES, ETC. OF FUNDS,
VOUCHERS, ETC.--DELEGATION OF RELIEF AUTHORITY*

Class D Cashier who supplied \$50 change-making fund to each of two collection officials, is only involved in \$100 of \$2,900 loss. If National Park Service considers his account to be short, it should relieve him, if at all on its own determination of fault.

ACCOUNTABLE OFFICERS--RELIEF--DENIAL--LACK OF EVIDENCE

Two National Park Service collection officers who received campground receipts totaling \$2,800 from fellow collection officers are not relieved despite evidence of burglary of safe in which funds were stored. From information supplied, it cannot be determined whether these two officers complied with procedures and acted without fault or negligence.

B-202222 Aug. 2, 1983

*APPROPRIATIONS--DEFICIENCIES--ANTI-DEFICIENCY ACT--
VIOLATIONS--CONTRACTS--MODIFICATION*

Affirms dec. of Dec. 31, 1981, 61 Comp. Gen. 184, that Antideficiency Act, 31 U.S.C. 1341 was violated because no fiscal year 1980 funds were available at time obligation was incurred for severable services to be performed in fiscal year 1981.

B-202222 Aug. 2, 1983 - Con.

*APPROPRIATIONS--FISCAL YEAR--AVAILABILITY BEYOND--CONTRACTS--
MODIFICATION--PERFORMANCE EXTENSION*

Affirms dec. of Dec. 31, 1981, 61 Comp. Gen. 184, that Dept. of Interior's fiscal year 1981 appropriation should be charged for costs of modifications to contract between Youth Conservation Corps and Chico Unified School District, Chico, California because bona fide need for severable services to be performed in next fiscal year did not exist when contract modifications were executed in Sept. 1980. Fact that authorizing statute provided for expenditure of funds for 2 fiscal years does not exempt agency from requirements of 31 U.S.C. 1502.

Fact that fiscal year 1980 Dept. of Interior appropriation act restricted availability of funds for obligation to same fiscal year but did not mention availability of funds for expenditure purposes has no bearing on result. Funds are always available to liquidate valid obligations beyond fiscal year in which obligations were incurred, pursuant to 31 U.S.C. 1553(a). Failure to mention this in appropriation act is immaterial. In instant case, however, no valid obligation of fiscal year 1980 funds took place.

B-211649 Aug. 2, 1983

*ACCOUNTABLE OFFICERS--PHYSICAL LOSSES, ETC. OF FUNDS,
VOUCHERS, ETC.--CASHIERS, ETC.--FACILITIES ADEQUACY*

Three unexplained losses were discovered by cashiers at VA Outpatient Clinic within period of approximately 2 months. Office facilities and procedures for safeguarding funds were grossly inadequate. Accordingly, relief from liability for losses is granted under 31 U.S.C. 3527, inasmuch as deficient security measures served to rebut presumed negligence of accountable officers.

B-192567 Aug. 4, 1983
ACCOUNTABLE OFFICERS--PHYSICAL LOSSES, ETC. OF FUNDS,
VOUCHERS, ETC.--RELIEF GRANTED

Relief granted under 31 U.S.C. 3527, for two accountable officers, IRS Director, Kansas City Service Center, and District Cashier, for losses due to disappearance of funds collected by tellers, as result of theft or burglary. There is no evidence of negligence on part of these accountable officers, who were acting in discharge of their official duties. However, permanent teller who last had control of funds was negligent and should be held accountable for loss.

B-208888 Aug. 4, 1983
ACCOUNTABLE OFFICERS--PHYSICAL LOSSES, ETC. OF FUNDS,
VOUCHERS, ETC.--CASHIERS, ETC.--IMPREST FUND--RELIEF
GRANTED

Agent cashier at VA is relieved of liability under 31 U.S.C. 3527 for loss of funds collected by imprest fund cashier acting as alternate agent cashier. There is no documentary evidence to show that agent cashier ever had possession of funds. Without positive proof that agent cashier had possession of funds, we cannot hold her liable. However, agency should take collection action against cashier who collected funds unless it requests relief from GAO.

B-212336 Aug. 8, 1983
DISBURSING OFFICERS--RELIEF--ERRONEOUS PAYMENTS--NOT
RESULT OF BAD FAITH OR NEGLIGENCE

Relief is granted to disbursing officer, pursuant to 31 U.S.C. 3527(c) (1982), on basis that improper payment did not result from bad faith or lack of due care. Miscoding of allotment under which support check was issued to wrong person is type of clerical error which can occur in even well supervised office. It is further noted that disbursing officer cannot inspect each check which is processed by subordinates in large office.

B-212222 Aug. 23, 1983

INTEREST--DEBTS OWED U.S.--STATE, ETC. DEBTS--AUTHORITY

Secs. 10 and 11 of Debt Collection Act of 1982, 31 U.S.C. 3716 and 3717, authorize use of administrative offset and assessment of interest and other charges when collecting debts owed to Fed. Govt. by "persons." Statute further defines "person" as not including agencies of State or local govts. Absent any indication of contrary legislative intent, Secs. 10 and 11 are not exclusive and do not prohibit use of offset or charging of interest against State or local govts. when and to extent authorized by some other statute or under common law.

B-210361 Aug. 30, 1983

APPROPRIATIONS--AVAILABILITY--EXPENSES INCIDENT TO SPECIFIC PURPOSE--NECESSARY EXPENSES

Forest Service, Dept. of Agriculture appropriated funds are available to pay assessments levied by private homeowners' association against lot service acquired by donation under authority of Pub. L. 96-585. Assessments are enforceable against the U.S. as covenants running with land where assumption of obligation to pay is necessary condition for acquisition of lot.

APPROPRIATIONS--DEFICIENCIES--ANTI-DEFICIENCY ACT--OBLIGATIONS AUTHORIZED BY LAW--OBLIGATION NOT IN ADVANCE OF APPROPRIATION

Forest Service, Dept. of Agriculture did not violate Antideficiency act provision, 31 U.S.C. 1341(a)(1)(B) by accepting title to property subject to future homeowner association assessments. Provision prohibits obligations in advance of appropriations. No violation occurred because Service's appropriation, to be derived from Land and Water Conservation Fund, Pub. L. 97-100, 97th Cong., 1st Sess., 95 Stat. 1391, 1406 (1981) was made available for assessment payments, and its appropriation for land acquisition was enacted before Service took title to property.

B-210361 Aug. 30, 1983 - Con.

*PAYMENTS--ADVANCE--PROHIBITION--LUMP SUM CAPITALIZED
VALUE--ASSESSMENTS ON PROPERTY*

31 U.S.C. 3324(b) (formerly 31 U.S.C. 529 (1976)) (advance payment prohibition) prohibits Forest Service Dept. of Agriculture from paying in one lump sum capitalized value of homeowners' association assessments against lot service acquired by donation. Assessments are used to maintain and improve lot holders' (including U.S. commonly held property and are assessed annually in amounts determined to be necessary. By paying assessments in lump sum, Forest Service would be paying for services before payment is due and in amount not yet determined to be necessary. Advance payment prohibition does not, however, preclude Service from paying annual assessments when due since, like all other owners, Forest Service could not have acquired lot without assuming this obligation.

*CONSTITUTIONALITY--SUPREMACY CLAUSE--APPLICABILITY--
ASSESSMENTS AGAINST FEDERAL GOVERNMENT--ASSESSMENTS BY
OTHER THAN STATES, ETC.*

Doctrine based on Supremacy Clause of U.S. Constitution, Art. IV clause 2, that Federal agencies are exempt from paying assessments levied by state and local governmental authorities does not preclude Forest Service, Dept. of Agriculture from paying private homeowners' association assessments on lot acquired through donation.

B-210555.2 Sept. 1, 1983

*VEHICLES--GOVERNMENT--HOME TO WORK TRANSPORTATION--
GOVERNMENT EMPLOYEES--STATE DEPARTMENT*

U.S. Chief of Protocol holds position which is unique in Federal Govt. requiring attendance on virtually daily basis at clearly official functions held during other than business hours and locations away from State Dept. headquarters. Additional cost for transportation to or from Chief of Protocol's home instead of to or from State Dept. during non-business hours would appear to be minimal. GAO will not seek to distinguish between

circumstances when it would be permissible under 31 U.S.C. 1344 for Chief of Protocol to use Govt. car for home-to-work travel and those when it would not. Dept. of State should communicate to Office of Management and Budget special circumstances of Chief of Protocol, as well as needs of other officials, to aid in preparing proposed amendment to 31 U.S.C. 1344.

B-206273 Sept. 2, 1983

APPROPRIATIONS--AVAILABILITY--PUBLICITY AND PROPAGANDA--OLYMPIC COIN PROGRAM--PROMOTION

Under special characteristics of Olympic coin program, GAO would not object to Treasury's use of public funds for staging of media events and receptions and costs of occasional donation of Olympic coin if (1) these expenditures are deemed necessary to fulfill statutory responsibilities of Treasury Dept. under Olympic Commemorative Coin Act, (2) reasonable nexus exists between each Olympic coin donation or other promotional expense and demonstrable anticipated media or marketing benefit for Olympic coin program to generate sales, and (3) promotional expenses are recouped from proceeds of sale of coins.

B-210210 Sept. 14, 1983

COMMODITY FUTURES TRADING COMMISSION--ENFORCEMENT AUTHORITY--USE OF SETTLEMENT AGREEMENTS--AUTHORITY

Commodity Futures Trading Commission lacks authority to adopt proposed practice of accepting charged party's promise to make educational donation as all or part of settlement agreement. Donations would be contractually tailored to aid in fulfillment of one of Commission's statutory goals, establishing and maintaining research and information programs. Such donations are not reasonably related to prosecutorial authority.

B-207433 Sept. 16, 1983

APPROPRIATIONS--FISCAL YEAR--AVAILABILITY BEYOND--CONTRACTS--TWO FISCAL YEARS

Once period of availability expires for appropriation used to finance contract, Army may not use cost underrun money

which results from that contract to order additional quantity of items. Modification to increase quantity would exceed scope of original contract and would be chargeable only to funds current at time of modification.

B-208627 Sept. 16, 1983

PROPERTY--PRIVATE--DAMAGE, LOSS, ETC.--PERSONAL PROPERTY--CLAIMS ACT OF 1964--THIRD PARTY LIABILITY

Customs Service employee submitted claim under Military Personnel and Civilian Employees' Claims Act for loss and damage incident to change of duty station. Customs allowed portion representing loss or damage to personal property but disallowed motel and meal expenses. Customs subsequently received settlement check from carrier's insurance company. Since record clearly shows that insurance settlement did not include motel and meal expenses but represented only allowances on items of personal property, claimant is not entitled to receive any portion of insurance settlement. Customs may retain proceeds for credit to appropriation used to pay original claim.

B-208527 Sept. 20, 1983

ENTERTAINMENT--APPROPRIATION AVAILABILITY--DEFENSE DEPARTMENT--U.S. MILITARY ACADEMY--SOCIAL FUNCTIONS

Funds appropriated to Dept. of the Army are not available to reimburse U.S. Military Academy commissioned and non-commissioned officers for expenses incurred in entertaining cadets and their guests in officers' homes during special Academy occasions. GAO does not accept rationale offered by Commandant of Academy that expenditures for such social functions are essential part of cadets' training and development. Parties are primarily entertainment and appropriated funds are not available for entertainment unless specifically authorized by statute. Since there is no specific authority for entertainment of cadets by Academy officers, Army appropriated funds are not available to reimburse them. 4 Comp. Gen. 169 (1924), 60 Comp. Gen. 303 (1981) cited. 60 Comp. Gen. 303 and B-199387, Mar. 23, 1982, distinguished.

B-197274 Sept. 23, 1983

*APPROPRIATIONS--FISCAL YEAR--AVAILABILITY BEYOND--CONTRACTS--
LETTER CONTRACTS--SUPERSEDING AGREEMENT IN NEXT FISCAL YEAR*

Where letter contract and subsequent superseding agreement are entered into during same fiscal year, cost of both contracts is obligated against same fiscal year appropriation. However, when letter contract is entered into during one year and superseding agreement is not definitized until next fiscal year, then it is appropriate to obligate only maximum liability which may be incurred under letter contract against appropriations current when it is entered into. Superseding contract is obligated against appropriations current when it is definitized and entered into.

B-212145 Sept. 27, 1983

*APPROPRIATIONS--OBLIGATION--ESTIMATED BASIS--PAYMENTS IN
LIEU OF TAXES ACT*

Payments in Lieu of Taxes Act, 31 U.S.C. 6902, requires payment to units of general local government in which entitlement lands, such as National parks, forests, etc. are located, under formula stated in Act. Because of holding in pending sixth circuit case, and subsequent congressional enactment, BLM is unable to indentify specific local Govt. payees or exact amounts payable, before end of fiscal year. Entire fiscal year 1983 appropriation may be properly obligated under 31 U.S.C. 1501(a)(5)(A) on behalf of all eligible units within each state on estimated basis.

B-207320 Sept. 28, 1983

*APPROPRIATIONS--AVAILABILITY--CONTRACTS--INTERNATIONAL
AGREEMENTS--WAR RISK CLAUSE EFFECT*

In implementation of international agreement, Navy, acting as construction agent for U.S. on reimbursable basis, contracted with private firm to build airfield at Ream, in former Khmer Republic. Because of incomplete, illegible, and conflicting documentation as to which of three possible sources is financially responsible

for funding this contract, GAO is unable to indentify available appropriation to pay proposed settlement with contractor for damage to his equipment by enemy agents under War Risk clause in his contract. Unless funds are available to charge these costs contractor's claim must fail in accordance with provision in clause itself.

B-208697 Sept. 28, 1983

APPROPRIATIONS--AVAILABILITY--OBJECTS OTHER THAN AS SPECIFIED--PROHIBITION

GSA Working Capital Fund is not available for purposes not specified by statute. 40 U.S.C. 293 (1976) established Working Capital Fund for central blueprinting, photostating, and duplicating services. Fund is therefore not available for payment of central library, travel ticketing office, or other unauthorized activities.

B-208697 Sept. 28, 1983

APPROPRIATIONS--DEFICIENCIES--ANTI-DEFICIENCY ACT--OBLIGATIONS AUTHORIZED BY LAW

Subpara. (a) of Antidefiency Act, 31 U.S.C. 1341 (formerly 31 U.S.C. 665(a)), is not violated by working Capital Fund expenditures for unauthorized purposes so long as benefiting appropriations are available to reimburse Fund.

B-208398 Sept. 29, 1983

ACCOUNTABLE OFFICERS--HOLDING PROPERTY IN CUSTODY--CHECKS--DISHONORED

Undeclared check for \$35,000 seized by Customs Service pursuant to authority contained in 31 U.S.C. 5317(b) was dishonored when Customs attempted to deposit it for custodial purposes. Regional Commissioner is not accountable for \$35,000 since his account never effectively received that sum. No physical loss or deficiency resulted when check was dishonored, and relief from liability pursuant to 31 U.S.C. 3527(a) is unnecessary.

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