

DECISION

24708

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE:B-207731

DATE: April 22, 1983

MATTER OF: Collection of recreation user fees by National Forest volunteers

- DIGEST:** 1. Collection of fees owed the United States is an inherent governmental function which may be performed only by Federal employees.
2. GAO questions the feasibility of developing a system of alternative controls to protect the Government against loss in the event that volunteers collect Government monies.

The Secretary of Agriculture has requested our opinion on whether individuals who are designated for public volunteer service pursuant to the Volunteers in the National Forests Act of 1972 may collect camping fees and similar types of recreation user fees owed the United States. The submission notes that before using volunteers for this purpose, the Department of Agriculture plans to develop proper guidelines and procedures to assure the security of public funds. We cannot approve the proposal since the collection of fees owed the United States is, in our view, an inherent governmental function which may be performed only by Federal employees. Furthermore, as will be explained below, we question the feasibility of developing alternate controls to assure the security of funds collected.

The submission notes that about half of the 2,000 National Forest campgrounds are currently staffed by a campground host serving as a volunteer under the authority of the Volunteers Act. Most of the campground hosts, we are told, are middle-aged, mature persons who have led responsible lives and can be trusted to perform their job in accordance with the agreement signed by them and the unit manager. Fee collection is largely dependent upon the good faith of campers using the campgrounds, who are expected to deposit their payments in a locked box, which is emptied periodically by a Forest Service employee. The Forest Service anticipates that the presence of a campground host who collects fees will increase payment compliance among campers, as well as decrease the opportunity for vandalism of the collection boxes.

The Volunteers in the National Forests Act of 1972, Public Law 92-300, codified at 16 U.S.C. §§ 558a-d, authorizes the use of volunteers "for or in aid of interpretive functions, visitor services, conservation measures and development, or other activities in and related to areas administered by the Secretary [of Agriculture]

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through the Forest Service." Neither the Act itself nor the committee reports (Senate Report No. 92-696 and House Report No. 92-982) authorize the use of volunteers to collect fees. The House report describes the functions to be performed by the volunteers as follows:

"The duties of the volunteers would include providing special information services to visitors, assisting at historical and special events, increasing the availability of interpretive programs, providing special skills, training volunteers in specialized cases, assisting in special research projects such as historical research of a ghost town, writing brochures on trees, plants, birds, and mammals or other features of interest, working on special projects, and teaching special subjects." H. Rpt. No. 92-982, 1972 U.S. CODE CONG. & AD. NEWS 2298-9.

Although the use of volunteers for collection purposes is not explicitly prohibited in either this enumeration of volunteer activities nor in the language of the Act itself, it is clear that fee collection was not a function that Congress had in mind when it enacted the Volunteers Act.

When asked by the Forest Service whether non-employees could be designated as agents of the Government to perform limited collection duties, the Department of Agriculture's Office of General Counsel noted that OMB Circular A-76, March 29, 1979, "Policies for Acquiring Commercial or Industrial Products and Services Needed by the Government," defined governmental functions which were required to be performed in-house "due to a special relationship in executing governmental responsibilities" as including "monetary transactions and entitlements." Agriculture's legal staff expressed the opinion that the contracting out of the collection function was thus precluded, and that, by analogy, "the delegation of such function outside the Department to a non-employee would appear to be inappropriate." We agree. The handling of public funds, exemplified in this case by the collection of fees owed to the United States, is an inherent governmental function which must be performed by Government employees.

Further support for this conclusion may be found in the legislative history of a "companion statute," the Volunteers in the Parks Act of 1969, 16 U.S.C. § 18g. In reporting on this legislation, the Senate Committee on Interior and Insular Affairs noted that the intent of the legislation was to authorize the use of

volunteers, for example, to "help to provide special information, services to visitors, assist in archeological digs, conduct special research, or help in the interpretation of historical events." The Committee emphasized that the legislation was not intended to authorize the use of volunteers "to do the jobs normally assigned to regular career employees." S. Rep. No. 91-1013 (to accompany H.R. 12758), reprinted in 1969 U.S. CODE CONG. & AD. NEWS 3579, 3580. In our view, handling public funds is a function that should always be assigned to employees.

Agriculture's legal staff also pointed out that employees charged with the safekeeping of public monies are personally accountable for funds entrusted to them, and that if a deficiency occurs, there are statutorily imposed penalties and remedies by which the Government may recover the funds. Non-employees, in contrast, would not be subject to strict accountability under any existing law, and in the event of a non-employee's withholding of funds, the Government's only remedy would be to seek a judgment in the courts.

The Forest Service responded to these concerns by specifying that the following conditions would need to be satisfied before the responsibility of collecting fees would be assigned to non-employees:

- (1) The volunteer must secure a surety bond from a Federally approved bonding institution.
- (2) The volunteer must agree to be strictly accountable for any deficiency in funds of the United States entrusted to him or her.
- (3) The volunteer must understand and agree to the directions, policies, and procedures pertaining to the collection of campground fees (currently set forth in the Forest Service's Collection Officer Handbook).

Although the imposition of strict accountability on the volunteer, coupled with the requirement that he or she obtain a surety bond payable in the event of either a negligent or a non-negligent loss, would provide adequate assurance that U.S. funds are secure, we have doubts as to the feasibility of obtaining such bonds. We also have reservations about subjecting a volunteer to the sort of potential liability to which he or she would be subject under such strict liability guidelines.

As we pointed out in discussions with Forest Service officials, making a volunteer strictly accountable for funds entrusted to him or her does not necessarily place the volunteer on equal footing with Government employees to whom funds have been entrusted. Although accountable officers of the Government are strictly liable for funds in their possession, the GAO has statutory authority to relieve the officers of such liability under certain circumstances. For example, 31 U.S.C. § 3527(a) (former 31 U.S.C. § 82a-1) authorizes this Office to relieve an accountable officer of liability for physical loss or deficiency of Government funds if we agree with the determination of the agency (1) that the loss or deficiency occurred while the officer or agent was acting in the discharge of his official duties, or by reason of the act or omission of a subordinate of the officer or agent; and (2) that the loss or deficiency occurred without fault or negligence on the part of the officer or agent. It is not clear, however, that we would have statutory authority to relieve volunteers for losses which are not attributable to their own fault or negligence.

This in turn means that 31 U.S.C. § 3527(d), which permits the adjustment of the account of an official or agent who is granted relief, would not apply. In order to protect the Government against the possibility of loss, volunteers would accordingly need to obtain bonds which would indemnify against non-negligent losses as well as those caused by the volunteer's negligence. It is unclear to us that such coverage may be obtained at a cost which a volunteer would be willing to bear.

Moreover, it must be recognized that the sort of bonds which Federal employees obtained prior to the enactment of Public Law 93-310, June 6, 1972, did not protect the bonded employee personally. A bonding company which made good a loss to the Government was entitled to proceed against the bonded employee to recover from him or her the amount paid. See, e.g., B-186922, April 8, 1977. Thus, under any proposal to use volunteers in this manner, the volunteers could find themselves held personally liable for losses occurring during the course of their service, even where they had obtained surety bonds. This is another consideration which causes us to question the feasibility of the Forest Service's proposal, even if it were otherwise acceptable.

In conclusion, we cannot approve the Forest Service's proposal that volunteers be used to collect recreation user fees owed the United States since:

(1) there is no indication that Congress intended that volunteers would perform such a function;

(2) fee collection is an inherent governmental function which may be performed only by Government employees; and

(3) in order to protect the Government fully against loss, volunteers would need to obtain surety bonds payable in the event of both negligent and non-negligent losses, and it is not clear that such bonds are available at a cost that either the agency^{1/} or the individual volunteer would be willing to bear.

for *Harry R. Van Cleave*
Comptroller General
of the United States

^{1/} A Forest Service representative had informally asked that we include a discussion of the availability of agency funds to purchase the surety bonds. In view of the conclusions in the text, it is not necessary to address this issue.