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UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

OFFICE OF GENERAL COUNSEL

B-194782

AUG 25 1980

*[Request for Relief from Liability]*

Mr. P. M. Baldino, Chief of Finance  
and Accounting Division  
Resources Management Office  
Office of the Chief of Engineers  
Department of the Army

Dear Mr. Baldino:

This is in response to your letter dated June 23, 1980, with enclosures, (reference DAEN-RMF-A) requesting that relief from liability be granted to Recreational Fee Cashier, Thomas P. Long, a civilian employee of the Department of the Army, for the loss by theft of \$5,500 in recreational fees and change funds. We grant relief, for the reasons detailed below.

The record indicates that during the night of July 4-5, 1976, someone entered the U.S. Army Corps of Engineers compound at Lake Rathbun, Iowa, by breaching a barbed wire-topped chain link fence. Inside the compound, a mobile home was forcibly entered via a window. A large steel container, weighing about 300 lbs. and containing over \$5,000 in Government funds, was then entirely removed from the mobile home and carried away from the compound aboard a pickup truck that was also stolen from within the compound. None of the funds have been recovered.

The steel container that was stolen had been fabricated from 11 discrete containers that were bolted or welded together to provide a secure depository for cash collections. Each of the 11 containers was closed with a key operated lock.

The pertinent regulation, AR 37-103, chapter 3, Section IV, Paragraph 3-77 (May 15, 1972), prescribed that public funds such as those in question should be kept in a safe of certain specifications including a combination lock. The steel strongbox in the instant case did not conform to the requisite specifications. On the basis of the non-regulation strongbox, the Corps of Engineers investigating officer concluded in his report of September 22, 1976, that Mr. Long had been negligent in "failing to properly safeguard Government funds." Notwithstanding the findings of the investigating officer, the Corps of Engineers concluded that the loss was not caused by the negligence of Mr. Long.

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Examination of the record reveals that the stolen funds comprised the recreational fee collections of a number of park rangers. Because the park rangers worked from 2:00 p.m. to 10:30 p.m. they were unable to surrender their cash collections of July 4, 1976, to the Recreational Fee Cashier, who worked from 8:00 a.m. to 4:30 p.m., until the next work-day. Moreover, in accordance with regulations, no one but the Recreational Fee Cashier was permitted access to the office's only regulation-type safe. Thus, a procedure was followed which allowed the park rangers to secure their cash collections overnight in the multi-compartmented strongbox in question.

The park rangers, however, did not relinquish actual custody of the funds simply because they deposited them in the strongbox. And it was not the responsibility of the Recreational Fee Cashier to safeguard the funds until he had actually received physical custody of them or added them to his account. Inasmuch as Thomas Long, the Recreational Fee Cashier had not actually received custody of the funds nor added the funds to his account at the time they were stolen, he cannot be held liable for their loss.

Section 82a-1 of title 31, United States Code (1976), under which relief has been requested, provides in pertinent part as follows:

"The General Accounting Office is authorized, after consideration of the pertinent findings and if in concurrence with the determinations and recommendations of the head of the department or independent establishment concerned, to relieve any disbursing or other accountable officer or agent or former disbursing or other accountable officer or agent of any such department or independent establishment of the Government charged with responsibility on account of physical loss or deficiency of Government funds, vouchers, records, checks, securities, or papers in his charge, \* \* \* if the head of the department or independent establishment determines (1) that such loss or deficiency occurred while such officer or agent was acting in the discharge of his official duties, or that such loss or deficiency occurred by reason of the act or omission of a subordinate of such officer or agent; and (2) that such loss or deficiency occurred without fault or negligence on the part of such officer or agent. \* \* \*"

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Generally, an "accountable officer" is considered to be any Government officer or employee, civilian or military, who by reason of his employment is responsible for, or has custody of, Government funds. B-188894, September 29, 1977. Such an officer is personally liable to the Government for any losses the Government may incur due to the officer's actions or failure to act, unless and until relief is granted or the loss is made up. Moreover, an officer who received and collects money for the Government is accountable to the Government for all money collected.

As stated above, Mr. Long never received custody of these funds. Since he, therefore, was not the employee accountable for this money, relief need not be requested for or granted to him. It is clear, in the instant case, that the park rangers collected recreational fees on behalf of the Government in the course of their official duties. Therefore, the park rangers whose funds were stolen along with the strongbox were accountable officers within the meaning of 31 U.S.C. § 82a-1.

We cannot formally consider or grant relief from liability to the park rangers at the present time because we have not received the requisite determinations by the head of the agency or his authorized designee. Should the proper determinations and a new request for relief be made in the future, the GAO must concur with the Department head's findings before relief may be granted. However, it appears from the facts presented that the park rangers exercised the same degree of care in safeguarding the funds that a reasonably prudent person would have exercised under similar circumstances and that none of their actions contributed to the loss of the funds. Upon submission of the requisite findings, we would, at least on the present record, grant relief to the park rangers.

Sincerely yours,

Harry R. Van Cleave

For Milton J. Socolar  
General Counsel