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DECISION

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

FILE: B-208604 **DATE:** April 9, 1985

MATTER OF: Accountable officer liability for lost or stolen travelers checks

DIGEST:

Blank travelers checks obtained by the Government for issuance to its employees in lieu of cash travel advances do constitute official Government funds, the physical loss or disappearance of which would entail financial liability for the accountable officer involved. That liability may be relieved by GAO, under 31 U.S.C. § 3527 (1982), in the same manner as liability for a loss involving cash or other Government funds.

The Acting Director of the Office of Finance and Management of the United States Department of Agriculture (USDA), has requested our opinion concerning the liability of imprest fund cashiers for lost, stolen, or otherwise unaccounted for commercial travelers checks which USDA is now issuing to its employees in lieu of cash travel advances. USDA asked whether we agree that blank travelers checks which have been entrusted to imprest fund cashiers under this program constitute official Government funds. If so, USDA also asks whether the cashiers would have the right, under 31 U.S.C. § 3527 (1982), to obtain relief from GAO for liability arising from a loss or shortage in cashiers' accounts with regard to the checks entrusted to them.

As explained below, we conclude that blank travelers checks obtained by the Government for issuance to its employees in lieu of cash travel advances do constitute official Government funds, the loss of which would entail financial liability for the accountable officers involved. We also conclude that an accountable officer's liability for a physical loss involving blank travelers checks is relievable under 31 U.S.C. § 3527 in the same manner as liability for a loss involving cash or other Government funds.

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BACKGROUND

In May 1984, USDA began issuing travel advances[1] to its employees in the form of travelers checks, rather than cash. This action was undertaken by USDA in accordance with the provisions of a General Services Administration (GSA) requirements contract (No. GS-00T-42299) with Citicorp Services, Inc. Under the contract, Citicorp agreed to provide blank travelers checks, as needed, to agencies of the Federal Government for use, in lieu of cash, when making authorized travel advances to Government employees.

The GSA contract provides that agencies will accept delivery of Citicorp travelers checks in accordance with the terms and conditions of a "Trust Receipt/Trust Agreement." Among other things, this trust receipt agreement contains provisions:

--Requiring the Government to safeguard the travelers checks, "giving them the same protection as cash and to hold the Checks at the [Government's] own sole risk of loss resulting from employee dishonesty or negligence or disappearance of any or all of the Checks." (paragraph (e));

--Requiring the Government to reimburse Citicorp for "the face value of any Checks which have disappeared or which the [Government] fails to return to [Citicorp] upon demand due to employee dishonesty or negligence" (paragraph (g));

--Requiring the Government to "maintain at all times insurance providing adequate coverage for any and all losses resulting from employee dishonesty or negligence

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[1] Under various statutes, e.g., 5 U.S.C. § 5705 (1982), the Government is authorized to give cash advances to employees assigned to official travel in order to cover their reimbursable expenses.

or the disappearance of any or all of the Checks" (paragraph (h));[2] and

--Specifying that "notwithstanding any notice to [Citicorp] that a Check has been lost, stolen, or destroyed, [Citicorp] may, at its sole discretion, pay such Check upon presentation, whether or not it is legally liable therefor" (paragraph (j)).

According to USDA, GSA has issued no guidance concerning the liability of accountable officers for the loss of travelers checks before they have been issued to and signed by traveling employees.[3] USDA added that:

> "While the contractor, Citicorp Services, Inc. (CSI), takes responsibility for losses or shortages up to a CSI-approved limit, absent employee malfeasance or negligence, we can envision certain circumstances where CSI would not take responsibility and for which we feel the cashier, as an

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[2] We are not aware that any Government agency under this program has actually purchased, or has been expected to purchase, commercial insurance. We understand that the trust receipt agreement is the same form Citicorp uses in dealing with private sector customers, and assume that the Government's policy of self-insurance would be viewed as compliance with the quoted provision. Further, in view of that policy, we question whether the purchase of commercial insurance in this context would be a permissible use of appropriated funds.

[3] GSA has promulgated a "Temporary Regulation" which sets the policies and procedures governing use of travelers checks in lieu of cash travel advances. 49 Fed. Reg. 33248 (1984) (to be codified in 41 C.F.R. ch. 101). However, that regulation does not discuss accountable officer liability for travelers checks.

accountable officer, would be able to request relief from [GAO]."[4]

Accountable officers are automatically and strictly liable for Government funds entrusted to them. E.g., Serrano v. United States, 612 F.2d 525, 528 (Ct. Cl. 1979); 54 Comp. Gen. 112, 114 (1974). However, under the provisions of 31 U.S.C. § 3527, GAO is authorized to relieve accountable officers from liability for "the physical loss or deficiency of public money, vouchers, checks, securities, or records" when GAO concurs with the determination of the head of the employing agency that the loss occurred in the course of the accountable officer's official duties, and was not the result of fault or negligence on the part of the accountable officer.

DISCUSSION

Legal commentators suggest that travelers checks were created in 1891:

> "* * * in response to the need for an instrument with the marketability of cash and yet the safety of a bank draft. The important feature of a traveler's check is the signature-countersignature scheme, and because of it the owner may carry the check without fear of suffering a financial setback if it is lost or stolen, but nevertheless may properly cash it without proving his identity. To assure continued acceptance of traveler's checks by the public, issuers often absorb losses rather than assert possible defenses against redemption * * *." Annot., 42 A.L.R. 3d 846, 848 § 2 (1972) (citations omitted).

Travelers checks are generally regarded as negotiable, bearer instruments which were intended to be, and have become, widely accepted by the public as substitutes for

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[4] The situations in which Citicorp is contractually obligated to "take responsibility for losses or shortages" are not entirely clear to us. For purposes of this decision, however, it is sufficient to recognize that there will be situations in which the Government may be required to pay for lost or stolen checks.

cash.[5] The GSA contract and the trust receipt agreement reflect these facts. Citicorp travelers checks are to be issued in place of, and as the functional equivalent to, cash travel advances. Moreover, the contract and trust receipt agreement require the Government to "safeguard the Checks * * *, giving them the same protection as cash and to hold the Checks at the [Government's] sole risk of loss * * * or disappearance." Since the Government is liable for the loss of Citicorp travelers checks as though they were cash,[6] it stands to reason that accountable officers should be held liable for, and relievable from, losses of travelers checks as though they were cash.[7]

Another approach is reflected in our decision B-190506, December 20, 1979, in which we concluded that the disappearance of Treasury bonds and interest coupons resulted in a loss to the United States. In that case, the accountable

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5/ See, e.g., American Express Co. v. Anadarko Bank & Trust Co., 67 P.2d 55, 58 (Okla. 1937); Transcontinental & Western Air, Inc. v. Bank of America, 116 P.2d 791, 795-96 (Cal. Dist. Ct. App. 1941); American Express Co. v. Rona Travel Serv., 77 N.J. Super. 566, 187 A.2d 206, 210-11 (N.J. Super. Ct. Ch. Div. 1962); Ashford v. Thomas Cook & Son (Bankers) Ltd., 471 P.2d 530, 533-34 (Hawaii 1970). See also Note, 41 Georgetown L.J. 91 (1952); Annot., 42 A.L.R. 3d, supra, §§ 2, 3 at 848-55.

6/ Cf., e.g., American Express Co. v. Rona Travel Serv., 187 A.2d at 211-12 (terms of contract between travelers check company and travel agency selling checks on commission basis determined the liabilities of the parties and were construed to mean that travelers checks were the equivalent of cash, the loss of which must be borne by the travel agency, not the issuer of the checks). See also, Mellon Nat'l Bank v. Citizens Bank & Trust Co., 88 F.2d 128, 133 (8th Cir. 1937); Transcontinental & Western Air, Inc., 116 P.2d at 795.

7/ Cf., e.g., Ashford, 471 P.2d at 534 ("[I]f travelers checks are intended by the issuer and accepted by the public as a medium of exchange to take the place of money, they should be subject to the same rules of law applicable to money under like circumstances.")

offi argued that the United States suffered no loss for whic. .he accountable officer might legally be held liable. Her argument was based on the fact that the bonds had not yet been cashed and that a "stop payment" notice had been placed on them. We disagreed and pointed out that the bonds and coupons were negotiable, bearer instruments, and that a "stop payment" notice neither prevents the cashing of the bonds and coupons, nor completely extinguishes the Government's liability to pay on them. We think the analysis used in B-190506, supra, may be applied with equal force to the facts of the present case. Both cases involve negotiable, bearer instruments.8/ In neither case can the Government effectively prevent the payment of the stolen bonds or travelers checks.9/

CONCLUSIONS

Based on the foregoing, we conclude that the loss or disappearance of a travelers check while in the custody of an accountable officer, to the extent the Government is obligated to pay for it (i.e., to the extent the issuer, in

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8/ In Transcontinental & Western Air, Inc., 116 P.2d at 795-96, travelers checks are compared to and treated in the same manner as "Government bonds." Similarly, in Ashford, 471 P.2d at 534, quoting from Cooke v. United States, 91 U.S. 389 (1875), the court found that travelers checks should be treated in a manner similar to "Treasury notes." Cf., e.g., Peoples Savings Bank v. American Surety Co., 15 F. Supp. 911, 913-14 (D. Mich. 1936) (travelers checks are held to be "securities," for the purposes of an indemnity bond agreement covering losses that might be suffered by the bank).

9/ The contract, as quoted earlier, specifically provides that, notwithstanding any notice by the Government to Citicorp, stolen travelers checks may be paid by Citicorp. Even had the contract not so provided, there is case law to support the proposition that Citicorp might be required to honor stolen travelers checks if the signatures on the travelers check matched each other. See e.g., Transcontinental & Western Air, Inc., 116 P.2d at 795-96; American Express Co. v. Anadarko Bank & Trust Co., 67 P.2d at 57-58; Ashford, 471 P.2d at 533-34. See also, Annot., 42 A.L.R. 3d at 850-51 (discussing Uniform Commercial Code §§ 3-115, 3-407(3)).

this case Citicorp, has not accepted responsibility under the governing agreements), does give rise to a loss of Government funds for which the accountable officer involved would be liable. In addition, the relief authority provided in 31 U.S.C. § 3527 would be available in appropriate cases, just as with other losses of public funds.

As a final note, we emphasize that this decision is concerned solely with the liability and relief of accountable officers, and not the employee performing the travel. The "custody" of the accountable officer ends when the travelers check is properly turned over to the traveler. The traveler, while accountable for the funds, is not eligible for relief under the accountable officer statutes. 54 Comp. Gen. 190 (1974); B-183489, June 30, 1975. However, under the terms of Citicorp's Travelers Checks Purchase Agreements, Federal employees who receive their travel advances in the form of travelers checks may be reimbursed by Citicorp for travelers checks that are lost or stolen.

Nancy R. Van Cleve
for Comptroller General
of the United States