

DECISION

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

FILE: B-218989

DATE: January 27, 1986

MATTER OF: Debt Collection Due to Overpayment of Former
President Ford's Staff

DIGEST:

1. The General Services Administration may not terminate collection of a debt arising from the payment of salaries in excess of the statutory maximum to the staff of former President Ford. Neither the head of an agency nor the General Accounting Office may terminate collection of a debt which exceeds \$20,000. As the overpayments exceeded \$20,000, only the Department of Justice has authority to terminate collection.
2. The General Services Administration should proceed with collection of a debt arising from the payment of salaries in excess of the statutory maximum to the staff of former President Ford. Under the Federal Claims Collection Standards collection action may be terminated on the basis of a claim legally without merit only if there is no legal basis for recovery by the United States.

An authorized official of the General Services Administration (GSA) asks whether the agency should terminate collection action in regard to an overpayment during fiscal year 1980 for the staff of former President Ford under the Former Presidents Act of 1958, as amended. As will be explained below, there exists no law or regulation which would authorize a termination of collection action and, therefore, the debt should be collected. The General Services Administration, however, may offset the debt against future payments made to former President Ford's staff as opposed to seeking repayment.

BACKGROUND

Under the Former Presidents Act of 1958, Pub. L. No. 85-745, 72 Stat. 838, codified at 3 U.S.C. § 102 note, the Administrator of GSA provides former Presidents with an office staff. Under the law, the former President chooses his staff members and the GSA Administrator pays them, without regard to civil service and classification laws. However, the law limits the amount of funds which can be spent for this purpose.

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Prior to October 1, 1977, former Presidents were entitled to receive a maximum of \$96,000 per annum for staff salaries. 3 U.S.C. § 102 note (1976). Effective October 1, 1977, the law was amended to provide that for the first 30 months that he was entitled to staff assistance under the Former Presidents Act, the former President would receive a maximum of \$150,000 per annum; thereafter, his entitlement would again be a maximum of \$96,000 per annum. Pub. L. No. 95-138, 91 Stat. 1170.

Another statute, the Presidential Transition Act of 1963, provides that a former President becomes entitled to a paid staff under the Former Presidents Act 6 months after the expiration of his term of office. Presidential Transition Act of 1963, § 4, Pub. L. No. 88-277, 78 Stat. 153, 3 U.S.C. § 102 note. As former President Ford left office on January 20, 1977, his entitlement to staff under the Former Presidents Act began on July 21, 1977. Since the 1977 amendment authorized a former President to receive an increased staff allowance only "for the first 30-month period during which [he] is entitled to staff assistance under" the Former Presidents Act, former President Ford's increased entitlement ran from October 1, 1977 (the effective date of the amendment) through January 20, 1980 (the end of the 30-month period).

The GSA, in its inquiry letter, takes the position that the period of increased entitlement for Mr. Ford extended through March 30, 1980, 30 months from the effective date of the 1977 amendment. However, under the clear language of the 1977 amendment, the 30-month period begins when the former President is first entitled to staff assistance under the Act rather than on the effective date of the amendment.

We are aware that the Congress thought that the 30-month period would begin on October 1, 1977. In describing the amendment, Representative Lott stated:

"The bill increases the funds authorized to pay salaries for staff of former Presidents for the 30-month period following expiration of Transition Act funds from \$96,000 per year to \$150,000 per year. Since the General Accounting Office has determined that funds under that act for former President Ford are available only until September 30, 1977, this bill becomes effective October 1, 1977." 123 Cong. Rec. 31706 (1977).

Other members of the House also described the 30-month period as beginning with the expiration of Presidential Transition Act funds, although the amendment's language is unambiguous that the 30-month period begins with entitlement under the Former Presidents Act. The misunderstanding arises from a misreading of a 1969 decision of the Comptroller General and informal views expressed by this Office in 1977.

From a reading of the Presidential Transition Act and the Former Presidents Act together it is clear that former Presidents were meant to receive staff assistance under the first Act for 6 months after leaving office and under the second Act thereafter. There is no maximum amount for staff assistance specified in the Presidential Transition Act. However, in appropriating funds under the Presidential Transition Act for former President Johnson, the Congress made the funds available through June 30, 1970, although the 6-month period under the Act ended July 20, 1969. In our decision published at 48 Comp. Gen. 786 (1969), we held that the later-in-time appropriations act was controlling and that Mr. Johnson was entitled to staff assistance under the Presidential Transition Act until June 30, 1970. However, we also concluded that he was entitled to staff under the Former Presidents Act starting July 21, 1969. Thus, during the overlap period, July 21, 1969 through June 30, 1970, Mr. Johnson was entitled to staff under both acts. Id. at 789.

A similar situation occurred with former President Ford. Funds under the Presidential Transition Act were appropriated through September 30, 1977, although under that Act, entitlement to staff was to last only through July 20, 1977 (6-months from the date he left office). Based on our 1969 decision, GSA concluded that Mr. Ford was entitled to staff assistance under the Transition Act through September 30, 1977. Informally, we indicated our agreement. Apparently this is the GAO determination to which Representative Lott was referring in his remarks that we quoted above. Both GSA and the Congress, however, overlooked the part of our 1969 decision, and our informal views, which indicated that while the expiration of Transition Act funds and the start of entitlement under the Former Presidents Act were meant to be sequential under section 4 of the Former President's Act, when the Congress, in a later enactment, chooses to extend the availability of the Transition Act appropriation beyond the initial 6-month period, we are bound to honor the resulting overlap as the latest expression of congressional intent. In other words, although the Congress may have intended that the 30 months of increased staff salaries begin at the expiration of the extended Transition Act funding, it used statutory language in the 1977

amendment which began the 30 months at the start of Mr. Ford's actual entitlement under the Former Presidents Act.^{1/}

Consistent with the Former Presidents Act, Mr. Ford's entitlement for staff increased on October 1, 1977, but should have decreased on January 20, 1980, when his 30 months was over. Thus, for fiscal year 1980; former President Ford was entitled to staff salaries at an annual \$150,000 rate from October 1, 1979 through January 20, 1980, and at an annual \$96,000 rate from January 21, 1981 through September 30, 1981.

The submission indicates that for fiscal year 1980 President Ford's staff was paid \$146,048 which exceeded his authorized amount for staff salaries by \$33,634. According to the record, the overpayment was the result of administrative error in that the appropriation request under the Former Presidents Act for fiscal year 1980 included \$150,000 for Mr. Ford's staff for the entire fiscal year and subsequently GSA allocated this amount to pay Mr. Ford's staff.

Since Congress appropriated the funds to pay for allowances and staff for all former Presidents in one lump sum appropriation, the overpayment to President Ford's staff did not result in payments exceeding the appropriation. See Pub. L. No. 96-74, 93 Stat. 569 (1979), in which \$759,500 was appropriated to carry out the Former Presidents Act for fiscal year 1980. Nevertheless the payment to Mr. Ford's staff violated the authorization for his staff under 3 U.S.C. § 102 note for fiscal year 1980.

Although recognizing that the authorization had been exceeded, GSA has taken no steps to recover the excess payments. GSA determined that collection of the overpayments from Mr. Ford or his staff would be against equity and good conscience and not in the best interest of the United States. Ordinarily such a determination would be grounds for submission of the claim to GAO for consideration of waiver of collection under 5 U.S.C. § 5584. However, as GSA correctly recognized in its submission, there can be no waiver because the waiver statute only applies to employees of executive agencies and certain congressional agencies. See 5 U.S.C. § 5584(g).

^{1/} In a report to the House Committee on Government Operations, issued after the enactment of the 1977 amendment, we noted the overlap of Presidential Transition Act and Former Presidents Act funding, and recommended statutory changes to deal with it. See GAO, Audit of Ford-Carter Presidential Transition Expenditures, at 25-26 (GGD-78-36, B-149372, December 23, 1977).

GSA has submitted the case to us because it would like us to concur in its conclusion that there could and should be a termination of collection action in accordance with the provisions of 4 C.F.R. § 104.3(d), based on the lack of a meritorious claim by the Government. However, we cannot concur.

DISCUSSION

Under 31 U.S.C. § 3711(a)(1) (1982), the head of an executive agency generally is required to collect a claim of the United States Government for money arising out of activities of the agency. In so doing, the agency head follows certain standards promulgated by the Attorney General and the Comptroller General. 31 U.S.C. § 3711(e)(2). These standards are set out in 4 C.F.R. §§ 101.1-105 (1985).

Neither the head of an agency nor the General Accounting Office have the authority to terminate collection action with respect to the overpayment to Mr. Ford's staff since the amount involved exceeds \$20,000. Such authority is solely within the discretion of the Department of Justice.^{2/} See 31 U.S.C. §§ 3711(a)(3)(b), as implemented by 4 C.F.R. § 104.1(b). The matter, however, is appropriate for our consideration because it involves a claim involving doubt as to the merits of suspending or terminating collection. See 4 C.F.R. § 105.1(c).

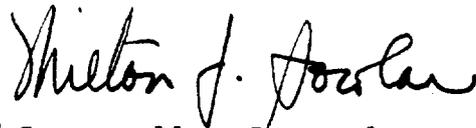
Under the Claims Collection Standards, collection action may be suspended or terminated for any of the following reasons: (1) inability to collect any substantial amounts; (2) inability to locate the debtor; (3) the cost of collection will exceed the amount of recovery; (4) the Government's claim is legally without merit; and (5) the Government's claim cannot be substantiated by evidence. It is the fourth of these reasons which GSA relies on, referring in its inquiry letter to a "lack of a meritorious claim by the Government."

^{2/} Under 4 C.F.R. § 104.1(b) an agency head can terminate a claim, regardless of the amount involved, and without need for Department of Justice concurrence, if the claim is plainly erroneous or "clearly" without legal merit. In referring to this exception to the \$20,000 limit, the "Supplementary Information" accompanying the publication of the Standards said, "[t]his exception is intended to apply only in cases of clear error. If there is room for reasonable disagreement, Justice Department concurrence should be sought." 49 Fed. Reg. 8895 (1984).

We do not agree with GSA that this claim is legally without merit. In our opinion, a claim is legally without merit only if there is no legal basis for recovery by the United States. In other words, if the United States were to sue on such a claim, the United States would be unsuccessful. The payments to Mr. Ford's staff were in excess of the authorization contained in the Former Presidents Act. The payments in excess of the statutory limit were unlawful and must be recovered by GSA.

We are aware that the excess payments involved here were accepted honestly and in good faith. We also recognize the difficulty in collecting the funds from any particular staff members. Likewise, we would be reluctant to request former President Ford to refund the excess payments which he disbursed in reliance on GSA's allocation. Rather, we would suggest that GSA collect back the money by administrative offset against future amounts appropriated for Mr. Ford's staff after providing Mr. Ford with his full procedural rights to challenge the debt or to propose an alternative collection method. Such a collection procedure is provided for under 31 U.S.C. § 3716 as implemented by 4 C.F.R. § 102.3. In its own proposed rules for debt collection, GSA also provides for administrative offset. See 49 Fed. Reg. 30080, 30082-83 (1984) (proposed to appear at 41 C.F.R. § 105-55.007).

Accordingly, GSA must proceed with collection action in accord with the above discussion.



Acting Comptroller General
of the United States