



SMITHSONIAN DIRECTIVE 150

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SMITHSONIAN INSTITUTION ORIGINS, GOVERNANCE, AND RELATIONSHIP TO THE FEDERAL GOVERNMENT

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Background

Unique within the Federal establishment, the Smithsonian Institution is a charitable trust with a statutory charter approved by Congress and the President in 1846. How this public trust came to be created by the Government, yet without the function of governing, is a story told against the backdrop of more than a century and a half of the Nation's history and shaped by standards imposed by law on those who manage charitable trusts. Those standards guide every Smithsonian activity, whether its interaction with the Congress, the management of its resources, or its relationships with the myriad of constituencies surrounding it.

The relationship of the Smithsonian Institution to the Government of the United States is, at first glance, familiar and, indeed, conventional. That relationship and the processes devolving from it have many ramifications for the Institution and a profound effect on its operations, requiring, among much else, that the Smithsonian justify extensively its policies and plans to the Congress and to the Administration.

An examination of the nature of the Smithsonian and its development reveals that those ramifications are elements -- and not the entire story -- of a complex Institution that is neither an agency of the Government nor even within the Executive Branch. Neither, as some may believe, are there two Smithsonians -- one Federal and one Trust -- nor is the Institution a hybrid, having a Federal side and a Trust side and changing identity to suit its advantage.

History

The Institution originated in the mind of James Smithson, an English scientist who died in 1829. He had never visited the United States, but apparently had great faith in this country because in his will he provided that:

In the case of the death of my ... nephew without leaving a child >which occurred] ... I then bequeath the whole of my property ... to the United States of America, to found at Washington, under the name of the Smithsonian Institution, an Establishment for the increase and diffusion of knowledge among men.

In essence, the Smithson will named the United States as trustee of a sizeable sum of money if the United States would agree to establish the Institution and administer it as a research and educational organization to benefit all of mankind, not just the people of the United States. The Smithson bequest amounted to more than half a million dollars, a magnificent sum in the early 1800s, and the matter was taken very seriously by the Government. In 1835, President Jackson wrote to Congress:

The Executive having no authority to take any steps for accepting the trust and obtaining the funds, the papers ... are communicated ...

*with a view of such measures as
Congress may deem necessary.*

By the Act of July 1, 1836, Congress accepted the trust and pledged the faith of the United States that all monies received for the trust would be separately accounted for, applied to the establishment of the Institution for the purposes set forth by Mr. Smithson, and serve the beneficiaries he named. Writing as chairman of the Select Committee of the House of Representatives that prepared the 1836 legislation, John Quincy Adams observed:

It is, then, a high and solemn trust which the testator has committed to the United States of America, and its execution devolves upon their Representatives in Congress duties of no ordinary importance.

In the commission of every trust, there is implied tribute of the soul to the integrity and intelligence of the trustees; and there is also an implied call for the faithful exercise of those properties to the fulfillment of the purpose of the trust.

Your Committee are fully persuaded, therefore, that ... the Congress of the United States, in accepting the bequest, will feel in all its power and plenitude the obligation of responding to the confidence reposed by him, with all the fidelity, disinterestedness and perseverance of exertion which may carry into effective execution the noble purpose of an endowment for the increase and diffusion of knowledge among men.

Ten years elapsed as Congress debated the form that the Smithsonian should take. The Act of August 10, 1846, provided the basic charter for the Institution as it exists today and vested authority for management of the Smithsonian in a Board of Regents.

Board of Regents

Members of the Board of Regents are drawn from all three branches of Government, as well as from the private sector. They include the Chief Justice of the United States, the Vice President, three members of the Senate, three members of the House of Representatives, and nine citizens.

The Board of Regents bears the responsibility of the United States as trustee for carrying out the Smithsonian bequest and the public trust for which it provided. The primary obligation of the Board of Regents is to manage the resources of the Institution for the benefit of all of mankind.

Responsibilities of the Regents as Trustees

The responsibilities imposed on a trustee have their roots in English common law. A trust is a fiduciary relationship whereby a trustee holds and administers property for stated purposes on behalf of named beneficiaries. A trustee who holds legal title to trust property can use that property only in accordance with trust purposes to serve trust beneficiaries. In addition, a trustee must exercise prudent oversight of trust assets, keep strict accounts, make every effort to further trust purposes, and account for stewardship of the trust to all proper authorities.

These obligations were well understood by the Congress in 1836 as it considered acceptance of the Smithsonian bequest and in 1846 as it created the Institution. In assuming responsibility for the Smithsonian trust, Congress acknowledged that its management had to be separated from the functions of Government and that

Smithsonian assets had to be devoted solely to trust purposes and accounted for separately from those of the Government.

The charter of the Smithsonian reflects those commitments. The Board of Regents benefits from representation from all three branches of Government, yet the Institution is not part of any branch. If it were, the composition of its Board of Regents and their method of appointment would be inconsistent with provisions of the U.S. Constitution.

The Board of Regents alone is responsible for setting Institution policy and for overseeing the management of Smithsonian assets: the collections, the buildings of the Institution, and the funds available to it. With this independence, however, come the obligations imposed by law on all trustees: to exercise good judgment in carrying out trust purposes, to be faithful to the trust and its beneficiaries, to exercise prudent oversight of trust activities, to maintain strict records of trust assets, and to be prepared to justify stewardship to all proper authorities.

Institutional Relationship to the Federal Government

From the inception of the trust, the Government was generous in its support. It was deemed appropriate that the United States pay the expenses of securing the Smithson bequest in the English courts and of transporting it to this country so that the trust fund itself would not be diminished. The Smithsonian "Castle" was paid for from the interest that had accrued on the Smithson money between 1838 and 1846. When the Castle was completed and collections then under the control of the Government were accepted for the new Institution, the Government paid the costs of moving and installing the collections, as well as \$4,000

annually for their care.

Over the years these annual payments increased as the Smithsonian grew. For the first thirty years or so, the funds were included in the budget of the Department of the Interior, which reimbursed the Institution. About 1880, however, the Congress, the Secretary of the Smithsonian, and the Secretary of the Interior agreed that it would be more efficient for the money to be appropriated to the Institution, thus beginning the Smithsonian's direct participation in Federal funding processes.

The increasing levels of financial support for the Institution and the additional functions, consistent with and under the general authority of the Board of Regents, that have been approved by the Congress have not in any way altered the trust nature of the Smithsonian or transformed it into an agency of the Government.

Stewardship

The Institution's activities are supported by funding from a variety of sources: its endowments, which include the original Smithson bequest; gifts; grants and contracts; revenue-producing activities; and Federal appropriations. The source of funds does not alter the responsibilities of the Board of Regents to set policy for and oversee the management of Smithsonian activities and to be accountable for the proper use of those funds.

Responding to the Congress and to the Administration in the course of the Federal budget and appropriations processes is one manifestation of the Smithsonian's compliance with its trust obligation for stewardship and accountability. Another is in the daily extension of activities that increase and diffuse knowledge among the public that

visits the Institution's sites on the Mall and elsewhere and through printed, electronic, and other means to people around the world.

CANCELLATION: None.

INQUIRIES: Office of Planning, Management and Budget (OPMB).

RETENTION: Indefinite. Subject to review for currency 24 months from date of issuance.

FILING: File sequentially with other current directives.

COPIES: Print file or contact OPMB.

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