

GIFTS TO THE AIR FORCE

Whether a Loan of Artwork is a Gift to the Air Force

You asked whether a local museum's offer to lend paintings for display in an area of an Air Force general officer quarters (GOQ) used for official entertainment should be treated as a gift offer covered by 10 U.S.C. § 2601 and AFI 51-601, *Gifts to the Department of the Air Force* (2003). We concur with the advice you received from the Art Program Office (SAF/AFAPO) that the artwork should not be treated as a gift but could be accepted as a loan of historical artifacts.

Absent a Government-wide, DoD or Air Force rule saying otherwise, a loan of personal property is a gratuitous bailment and not a gift. Title does not transfer under a bailment, and the bailee has an obligation to return the property as agreed or on demand. 8 C.J.S. *Bailments* § 17 (2010). An obligation to return or repay the thing received is inconsistent with the theory of a gift. 38A C.J.S. *Gifts* § 7 (2010). Though we note that an offer of a temporary interest in real property may merit different treatment.

AFAPO, an AF/HO organization, opined the local Air Force museum could facilitate a loan agreement to accept and track the paintings. AF/HO has considerable discretion to accept items under AFI 84-103, *U.S. Air Force Heritage Program* (2004). Per paragraph 6.2.1, "Items are designated as historical artifacts by the [United States Air Force Heritage Program (USAFHP)] Director. Generally, such determinations are based on the item's association with an important person, event or place; because of traditional association with an Air Force organization; because it is a representative example of military equipment; or because it represents a significant technological contribution to military science or equipment." Under this broad authority, USAFHP could access an item without a connection to Air Force history, though their use of appropriated funds to do so would be more limited.

AFI 84-103 has the advantage of explicitly addressing loans of personal property to the Air Force:

6.11. Accepting Loaned Property. Acceptance of loaned property obligates the U.S. Air Force to private individuals, groups and other governmental agencies. Loans should only be considered under extraordinary circumstances for specialized short-term exhibit purposes. MAJCOM/HO must approve the loan in writing. Loans may be for no longer than one year.

6.11.1. Use AF Form 3572, USAF Museum System Loan Agreement, to document the loan. This form may be locally reproduced. Provide the lender with a copy of the form.

Because the present loan offer is for two years, you must request the office of primary responsibility for AFI 84-103 to grant an exception to the paragraph 6.11 restriction.

We recommend you support the request to accept the loan with a review which addresses the factors which would be relevant were this a conditional gift offer under AFI 51-601—especially

whether acceptance of the gift would raise a serious question of impropriety in light of the donor's present or prospective business relationships with the Department of the Air Force (paragraph 3.6.4) or if acceptance of the gift would otherwise not be in the best interest of the Air Force (paragraph 3.6.6).

GOQ furnishings regulations would not apply to this loan if no appropriated funds are to be spent to acquire or maintain the items. DoD 4165.63-M, *DoD Housing Management* (2010); AFI 32-6007, *Privatized Family Housing* (2005); and AFI32-6003, *General Officer Quarters* (2006) all address use of appropriated funds for GOQ/SCP furnishings. The AFI 32-6003 paragraph 3.1 limits on furnishings items not included in Attachment 5 is only that they not be purchased, maintained, repaired, or replaced at government expense. Finally, AFI 84-104, *Art Program* (2006) would not apply because the art works would not be titled to the Air Force.

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