



B-197970

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

April 1, 1980

The Honorable Carl D. Perkins
Chairman, Committee on Education
and Labor
House of Representatives

Do not make available to public reading

Dear Mr. Chairman:

You recently requested our opinion concerning your authority to approve payment of a witness' travel and per diem expenses where the Chairman of the Subcommittee on Labor Management Relations of the Committee on Education and Labor demanded the presence of the witness. You indicate that for many years it has been the policy of the Committee on Education and Labor not to pay witness expenses to attend hearings unless the witness were subpoenaed.

Specifically, you wish to know if payment of expenses to the witness in these circumstances would be consistent with the Rules of the House of Representatives and with the laws governing this matter.

You enclosed a copy of a letter to the witness, dated February 21, 1980, which stated that--

"This is to confirm that you have been requested to appear as a witness* * *.

"As has been stated to you, failure to appear at the hearings will result in a subpoena being issued requiring you to appear before the Subcommittee at a later date* * *".

The Rules of the House of Representatives for the Ninety-Sixth Congress (H.R. Doc. No. 95-403, 95th Cong., 2d Sess. (1979)) provide that the Rules of the House are the rules of its committees and subcommittees so far as applicable (Rule XI, cl. 1(a)(1)). Rule XXXV, Pay of Witnesses, is as follows:

"The rule for paying witnesses to appear before the House or any of its committees shall be as follows: For each day a witness shall attend, the same per diem rate as established, authorized, and regulated by the Committee on House Administration for Members and employees of the House, and actual expenses of travel in coming to or going from the place of examination; but no per diem shall be paid when a witness has been summoned at the place of examination." (Emphasis supplied.)

B-197970

Rule XXXV was last amended by House Resolution 517, 94th Cong., (agreed to July 28, 1975, 121 Cong. Rec. 25258-9). Prior to amendment the rule read in pertinent part as follows:

"The rule for paying witnesses subpoenaed to appear before the House or any of its committees shall be as follows: * * *" (Emphasis supplied.)

The Committee on House Administration's current regulation for Allowances and Expenses of Committees, Members and Employees, provides as follows:

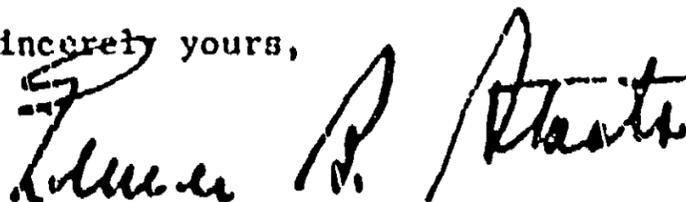
"J. WITNESSES

- "1. Payment of expenses of witnesses is an extraordinary measure. Reimbursement is not made to all witnesses. Payment will be made only when a hardship or special circumstances exist, and the chairman of the committee specifically authorizes the payment."

The witness' appearance was demanded and apparently obtained under threat of subpoena. House Rule XXXV no longer refers to paying expenses for witnesses "subpoenaed to appear," but only refers to "paying witnesses to appear before the House or any of its committees." Accordingly, a subpoena is not a threshold requirement for the payment of witness fees. The House Administration Committee's regulations make no reference to subpoenas, indicating only that payment of expenses is an extraordinary measure to be made only where special circumstances exist.

Since we understand that the witness' testimony was considered to be crucial to the hearing and that he was reluctant to attend, a letter of demand with threat of subpoena was used. These may be regarded as special circumstances within your discretion. Accordingly, in our view, your approval of the payment of the witness' travel and per diem expenses would be consistent with the applicable House Rule and the implementing regulation.

Sincerely yours,



Comptroller General
of the United States