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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20543

January 22, 1980

The Honorable Elizabeth Holtzman
House of Representatives

Dear Ms. Holtzman:

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This is in response to your request for a review of our decision, 31 Comp. Gen. 246 (1952) and, if this decision is still good law, for information on any exceptions to it which may have been developed.

The 1952 decision has not been overruled or modified. In that case, a Federal agency asked whether it might reimburse an employee for a fine imposed on and paid by him for double-parking. The violation involved a Government vehicle driven by the employee while on official business. The fine was imposed by the city of Denver. We held that there is no authority to use appropriated monies--

"* * * for the payment of a fine imposed by a court on a Government employee for an offense committed by him while in performance of, but not as part of, his official duties." 31 Comp. Gen. at 247.

We went on to say that such a fine or forfeiture of collateral "is imposed on the employee personally and payment thereof is his personal responsibility." Id.

In a more recent case, 44 Comp. Gen. 312 (1964), we addressed the question of whether a fine to punish contempt of court by a Federal employee could be paid by his agency. The Agent in Charge, Chicago office of the Federal Bureau of Investigation (FBI), declined to answer questions, despite the District Court's order that he do so. His refusal was based upon specific instructions from the Attorney General of the United States and upon regulations of his Department. An administrative determination was made that the fine was necessarily incurred in the accomplishment of official business for which the appropriation for salaries and expenses of the FBI was made. Payment from that appropriation was held to be authorized.

In distinguishing between 44 Comp. Gen. 312 and 31 Comp. Gen. 246, one significant factor is whether the action for which the fine is imposed was specifically directed by the Attorney General of the United States and is therefore a necessary part of the employee's official duties. Thus, the employee in 31 Comp. Gen. 246, while engaged in the performance of his official duties when he parked, was nevertheless not acting with approval of his employer, or pursuant to regulations or instructions. In other

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words, double-parking was not part of his official duties. He could presumably have made the delivery without double-parking in violation of the law. In 44 Comp. Gen. 312, however, it was clear that the offense which was the occasion for the fine--

"* * * arose by reason of the performance of [the employee's] duties * * * and his compliance with Department regulations and instructions, and was without fault or negligence on his part * * *,"
44 Comp. Gen. at 314.

In deciding whether, as in 44 Comp. Gen. 312, an employee's fine can be paid (or he can be reimbursed), a threshold question is whether there is any authority to impose the fine. States and municipalities may not tax or burden the Federal Government in the performance of its functions, but the Federal Government is obligated to abide by the normal traffic regulations of States or municipalities except in emergency situations. The test of whether a regulation imposed by a State can have any binding effect upon the Federal Government is the extent of the burden imposed upon the Federal Government.

In Johnson v. Maryland, 254 U.S. 51 (1920), the State attempted to impose a requirement (that a driver of a United States mail truck possess a Maryland driver's license), the effect of which was to prevent Federal employees from performing their official duties until they satisfied State law. The court held this to be an impermissible burden. On the other hand, in Oklahoma v. Willingham, 143 F. Supp. 445 (E.D. Okla. 1956), the court said that a Federal employee must obey the traffic laws of a State, although driving a Government vehicle on official business. In City of Norfolk v. McFarland, 145 F. Supp. 258 (E.D. Va. 1956), the court stated, in effect, that traffic ordinances prescribing rights-of-way and speed limits are ordinarily binding upon officials of the Federal Government, except in emergency situations.

These cases were relied on in our decision, 46 Comp. Gen. 624 (1967), where requiring a Federal employee to pay parking meter fees was in issue. We agreed that the requirement of payment of a local meter fee (where the fee is not a tax) incident to parking a Government-owned vehicle on a public street would normally not impose an impermissible burden on the Federal Government. Since Federal agencies are entitled to reimburse their employees for parking costs incurred, there is no reason for the employee to park illegally. It is the duty of the employee to pay street parking meter fees, for which he will be reimbursed by his agency, and the employee (and not the Government) will be held responsible for payment of any parking ticket resulting from his failure to do.

The test to determine whether a Federal employee can be reimbursed for a fine resulting from a violation of local traffic or parking

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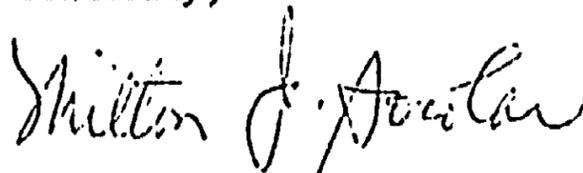
regulations during the performance of his duties is twofold. First, it must be determined whether the fine was based on a permissible regulation by the State or the Federal activity. If the answer is yes, then the circumstances surrounding the violation must be analyzed to determine whether the action for which the fine was imposed was a necessary part of the employee's official duties. With regard to the second part of the test, following the specific instructions of a superior may not be enough to relieve the employee of personal responsibility for the fine. (See B-155715, April 29, 1965, where a Government vehicle was towed away because it was illegally parked. The driver was specifically instructed by his superior to park in a "No Standing" zone. To recover the vehicle, collateral was posted by the driver's supervisor who was reimbursed from a petty cash fund. Based on these particular facts and since action had been taken by the agency involved to prevent a recurrence of the situation, we approved payment of the reimbursement voucher.)

In 44 Comp. Gen. 312, supra, where we allowed the FBI to pay its agent's contempt fine, there was no issue of immunity. The fine was imposed by a Federal district court. Where the Government is immune, however, because the State or local action is unduly burdensome, we are aware of no basis to waive the immunity. In this connection, if the activity is immune, then the local government or State may not collect the fine either from the Federal employee personally or from his agency.

Finally, these rules apply in general without regard to whether law enforcement personnel are involved. Of course, the nature of the employee's duties may be significant in determining whether the local regulation constitutes an impermissible burden on the Federal activity. Thus, parking restrictions may not unduly burden a Federal messenger but may interfere with an investigation by a Federal law enforcement officer.

I trust this information is responsive to your request.

Sincerely,



For the Comptroller General
of the United States