



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

B-178607

AUG 31 1973

Major K. J. Gors, FI ✓
Finance and Accounting Officer
Through Headquarters, Department
of the Army (DACA-FIS-PT)

Dear Major Gors:

Further reference is made to your letter dated February 13, 1973, reference ALSICC-F, forwarded to this Office by the Per Diem, Travel and Transportation Allowance Committee (PDTATAC Control No. 73-24), requesting an advance decision concerning the entitlement to per diem allowances in the case of Reserve Officers' Training Corps (ROTC) cadet James K. Boyd, [REDACTED]

The record indicates that Mr. Boyd, a Senior Division ROTC cadet at the University of Detroit, Detroit, Michigan, by Invitational Orders No. 11-0014, dated November 2, 1972, Headquarters, Fifth United States Army, confirming verbal orders of October 16, 1972, was invited to proceed on October 16, 1972, from the University of Detroit to Denby High School in Detroit for ROTC cadet recruiting activities. Upon completion of the mission Mr. Boyd was to return to the point of origin. By similar Orders No. 11-0012 of the same date, the cadet was invited to proceed to Osborne High School, Detroit, on October 23, 1972.

The orders further provide:

"* * * Travel to be performed is necessary in the public service. A per diem allowance is authorized per authority of COMARC Message 141929Z Jul 71, subject: Use of Cadets in ROTC Recruiting Activities, and reimbursement will be made in accordance with Joint Travel Regulations Volume 2, paragraphs C5000-4C and 10100-5. When travel for this recruiting trip requires a fraction of a day, per diem rate of \$11.80 is authorized for a full calendar day, or any fraction thereof, and is not subject to further reduction, for each day travel is performed under these orders. When travel for this recruiting trip requires overnight lodging, per diem rate of \$25.00 is authorized for a full calendar day, or any fraction thereof, and is not subject

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to further reduction, for each day travel is performed under these orders. If you do not use Government transportation, you will be reimbursed for the costs of transportation upon completion of the trip. * * *

By voucher dated November 29, 1972, Mr. Boyd made claim for per diem of \$11.80 for October 16, 1972, having left the University of Detroit at 7:30 in the morning, proceeding to Denby High School and returning to the University two hours later. He also claimed an additional \$11.80 in connection with a visit to Osborns High School on October 23, 1972; the period of time here involved was three hours. The voucher submitted by Mr. Boyd did not indicate that he incurred any personal expense. Government transportation was utilized.

You say that question arises as to whether Mr. Boyd as a ROTC cadet was in fact in a "travel status" so as to entitle him to per diem allowances as he did not perform travel away from the corporate limits of his place of business or home. You refer to paragraph C8050-3^{1/2} of the Joint Travel Regulations as stating that per diem allowances are not authorized for travel or duty within a permanent duty station area, with one exception which is not applicable to this case. It appears to you that in all instances per diem allowance conditions must be met prior to considering the rate payable in the circumstances. Further, if ROTC cadets performing temporary duty on invitational travel orders are not classified as consultants or experts but are considered to be private individuals serving without compensation, you express the opinion that the provisions of paragraph C8101-4b^{1/2} of the regulations also would preclude payment of per diem since the voucher presented shows no cost for subsistence having been incurred by the cadet.

ROTC cadets have no military status nor are they employees of the Government, and in the absence of indication that in the present circumstances they are utilized as consultants or experts, they must be considered as persons serving without pay.

Section 5703(c)^{1/2} of Title 5, United States Code, provides that an individual serving without pay or at \$1 a year may be allowed transportation expenses and a per diem allowance while en route and at his place of service or employment away from his home or regular place of business.

Paragraph C5000^{1/2}, volume II, of the Joint Travel Regulations, provides for transportation allowances and expense reimbursement for persons other than Government employees who perform travel in connection with official activities of the Department of Defense.

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Subparagraph 4c provides that per diem, actual expense, and mileage allowances will be in accordance with the applicable provisions of Chapter 8 of the regulations. Chapter 8, paragraph C8000 states that rates of reimbursement for allowances within the legal maximum should be so fixed as to approximate the necessary costs of official travel so that travelers are neither financially rewarded nor penalized by reason of their travel status.

Paragraph C8101-4b of the regulations states that a per diem rate in accordance with subparagraph 2a of C8101 is authorized for persons who perform invitational travel under the provisions of paragraph C5000 of the regulations.

In 32 Comp. Gen. 477 (1953), involving a claim for per diem allowance by a person serving without compensation pursuant to section 710(b) of the Defense Production Act of 1950, 64 Stat. 798, 819, which provided for transportation of such persons and for a "per diem in lieu of subsistence while away from their homes or regular places of business pursuant to such appointment," we stated that the apparent purpose of the per diem allowance was to reimburse persons serving without compensation for additional subsistence expense incurred by reason of such absence, and per diem allowance was permitted where a bona fide home was maintained outside of the metropolitan area of the place where the services were performed. See also decision B-148205, April 24, 1962, copy enclosed.

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While in the circumstances before us an ROTC cadet receives no compensation for his services, the purpose of the per diem allowances is to reimburse persons for additional subsistence expenses, and a cadet who remains within the city where he resides or attends an educational institution is not likely to incur additional subsistence expenses.

The University of Detroit, where he is a student, and the two high schools visited by him are all located in Detroit. Since he was furnished Government transportation to both high schools and spent two hours one morning and three hours another morning at each school, it is our view that in the absence of a showing that he incurred additional subsistence expenses in compliance with the invitational orders, he may not be considered as being away from his home or regular place of business within the meaning of 5 U.S.C. 5703(c) and implementing regulations so as to be in a travel status for per diem purposes.

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Since payment is not authorized on the vouchers submitted by you, they will be retained here.

Sincerely yours,

Paul G. Dembling
For the Comptroller General
of the United States

Enclosure - 1