



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

PLM-

9303

B-175031 (MRV)

March 6, 1979

The Honorable Edward M. Kennedy
United States Senate

Reimbursement of Legal Fees for Department of Agriculture Employee

Dear Senator Kennedy:

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This is in response to your letter of January 2, 1979, requesting reconsideration of our decision (B-175031, April 28, 1978, 57 Comp. Gen. 444) in which we denied the claim of Mr. Norman E. Guidaboni for reimbursement of certain legal fees.

As your letter points out, Mr. Guidaboni was employed by the Animal and Plant Health Inspection Service (APHIS), Department of Agriculture, when he wrote several letters during the summer of 1976 concerning the allegedly improper activities of a meat packing plant in Rhode Island. In response to certain allegations contained in those letters, Mr. Guidaboni's supervisor filed suit in a state court in Rhode Island alleging that the letters were libelous and constituted malicious defamation. It appears that, through private counsel, Mr. Guidaboni had the lawsuit transferred to Federal court and then later had it dismissed in both state and Federal courts. Mr. Guidaboni's claim for legal fees in the amount of \$852.94 was denied by our Office in our decision cited above.

Your letter states that it would be wrong to, in effect, penalize an employee because he brings allegations of wrongdoing to the attention of his agency or Congress, and you suggest that such actions on the part of an employee are not outside the scope of his employment.

As we stated in our decision, our Office has long held that the hiring of an attorney is a matter between the attorney and the client, and that absent express statutory authority, reimbursement of attorney's fees may not be allowed. A suit against a Government employee in his individual capacity is his responsibility to the same extent as it is of a private person. However, it is the policy of the Department of Justice to represent Federal employees who are sued for actions which reasonably appear to have been performed within the scope of their employment. The authority for such representation is contained in 28 U.S.C. §§ 517, 518 (1976) and 28 C.F.R. §§ 50.15, 50.16 (1978). Counsel is provided under these circumstances not as a matter of entitlement but, rather, as a matter of policy, such representation being considered to be in the interest of the United States.

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Thus, for legal representation to be provided a Government employee who is sued in his individual capacity, there must first be a determination by the employing agency and ultimately by the Department of Justice that the acts of the defendant-employee are within the scope of his official duties. Absent that determination, counsel will not be provided. In the present case, Mr. Guidaboni's employing agency, the Department of Agriculture, was unwilling to state that all of the acts of the defendant-employee were within the scope of his official duties. Furthermore, the Department of Justice did not recommend reimbursement for legal fees since the suit seemed to be based primarily on the defamatory implications of the letters written by Mr. Guidaboni. In the circumstances we know of no basis upon which to allow reimbursement from Government funds for the legal fees in question.

We regret that our determination is not more favorable to your constituent.

Sincerely yours,


Deputy Comptroller General,
of the United States