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Office of the General Counsel

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Walter W. Pleines
Department of Health and
Human Services
Social Security Administration
Division of Finance
Baltimore, Maryland 21235

Reference #: S6CB-215

Dear Mr. Pleines:

This responds to your request for clarification of our prior decisions dealing with the costs of meals and breaks at employee's official duty stations. According to your letter, the Social Security Administration (SSA) periodically sponsors offsite training sessions, conferences and management seminars where attendance by certain employees is compulsory. Often charges for meals, coffee breaks or refreshments are incurred as part of the training conference or seminar. You presented us with a number of issues regarding when the costs of meals, breaks or refreshments are payable or reimbursable for government and nongovernment sponsored meetings, conferences and seminars.^{1/} We answer and discuss your queries below.

Specific statutory authority exists for the government to pay for the meals of government personnel in travel status. 5 U.S.C. § 5702 (Supp. V. 1987). Thus, authority exists to pay for meals for civilian personnel in travel status as long as the total cost does not exceed the maximum per diem allowance. See Federal Travel Regulations (FTR), para. 1-7.1 (supp. 20, July 1, 1986). See also 60 Comp. Gen. 181 (1981). Actual subsistence expenses are also available when such expenses are unusually high due to special or unusual circumstances. FTR, para. 1-8.1 (Supp. 20, July 1, 1986).

^{1/} We have assumed for purposes of the discussion that follows that you would charge the need and refreshment expenses against regular operating appropriations, not against your official Representation and Reception appropriation. See Pub. L. 108-166, § 103 Stat. 1159, 1177 (1989). With respect to the latter, see B-223678, June 5, 1989 and cases cited therein.

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For those employees not in travel status, it is well established that in the absence of statutory authority, the government may not pay per diem, subsistence expenses, or furnish free meals or refreshments to employees at their official duty stations. See FTR, paras. 1-7.4a and 1-8.1a (Supp. 20, July 1, 1986); 65 Comp. Gen. 508 (1986); 53 Comp. Gen. 457 (1974); 38 Comp. Gen. 134 (1958). This rule applies even though the employees may be working under unusual circumstances. 42 Comp. Gen. 149 (1962). The rationale is that the cost of meals and refreshments is a personal expense which a government employee is expected to bear from his or her salary. 65 Comp. Gen. 738, 739 (1986). Thus, free food, classified in some of our opinions under the generic term "entertainment," normally cannot be justified as a "necessary expense" under an appropriation. Id. This is not to say, however, that there are not situations where agencies have specific statutory authority to incur such costs or where we have recognized limited exceptions to the general rule.^{2/}

Our Office has recognized that the Government Employees Training Act (Training Act) 5 U.S.C. § 4109, authorizes agencies to reimburse necessary subsistence expenses incurred by those who attend training programs^{3/} at their duty stations. 50 Comp. Gen. 610 (1971); B-223500, Mar. 16, 1987 (payment of meal costs not allowed); B-193034, July 31, 1979 (subsistence expenses of employees conducting training at headquarters allowed). With respect to the Training Act, your letter references several of our decisions dealing with coffee and refreshment breaks that you believe require clarification. In one case, we approved the payment of the cost of catering

^{2/} Although not directly relevant to the circumstances giving rise to your questions, we have recognized an exception to the general rule prohibiting the use of appropriated funds for payment of "entertainment expenses" when it is necessary for employees to work in extreme emergency situations involving danger to human life or destruction of federal property. B-232487, Jan. 26, 1989; B-202104, July 2, 1981; 53 Comp. Gen. 71 (1973). See also 5 U.S.C. § 5706a (Supp. IV. 1986) (subsistence and travel expenses for threatened law enforcement personnel).

^{3/} The Government Employees Training Act defines "training" as "the process of providing for and making available to an employee . . . a planned, prepared, and coordinated program, course, curriculum, subject, system, or routine of instruction or education, in . . . fiscal, administrative or other fields which are . . . directly related to the performance by the employee of official duties for the government . . ." 5 U.S.C. § 4101(4).

services including catered coffee service at an Agricultural Research Service sponsored conference even though employees attending were not in a travel status. 50 Comp. Gen. 610 (1971). However, you cite four other cases where we denied payment for similar breaks. B-188078, May 5, 1977; B-182527, Feb. 12, 1975; B-168774, Sept. 2, 1970; and B-159633, May 20, 1974, rev'd in part by 54 Comp. Gen. 1055 (1975). The principal difference between these cases is that in 50 Comp. Gen. 610 (1971), the costs of meals and coffee breaks were found necessary to achieve the objectives of a training program under the Training Act. Our review of the other cases indicates that with one exception, B-159633, May 20, 1974, none of the cases involved "training" as that term is defined in the Training Act and applied in our cases. Thus, since neither the Training Act nor any other statutory authority or recognized exception to the general rule authorized the expenditures in those three cases, we denied payment.

The Training Act, 5 U.S.C. § 4110 (1988), also provides the basis for two exceptions that are not strictly limited to training situations. The statute reads:

"Appropriations available to an agency for travel expenses are available for expenses of attendance at meetings which are concerned with the functions or activities for which the appropriation is made or which will contribute to improved conduct, supervision, or management of the functions or activities."

The first exception permits payment of a registration or attendance fee that includes a nonseparable charge for the cost of a meal representing an incidental part of an externally organized or sponsored conference or meeting. 64 Comp. Gen. 406, 407 (1985); 38 Comp. Gen. 134 (1958). Further, meetings at which a registration fee is paid must involve the functions or activities of the agency for which the employees are working or for which agency appropriations are made. B-210479, Dec. 30, 1983 (reimbursement denied for cost of CFC luncheon); B-195045, Feb. 8, 1980.

The other meeting exception permits payment for meals where the cost of the meal is not included in the conference or meeting's registration fee and a separate charge is made. In order to pay the cost of such a meal a determination must be made that the meal is (1) incidental to the meeting, (2) that attendance at the meal is necessary to full participation, and (3) that the employees are not free to take meals elsewhere without missing essential formal discussions, lectures or speeches concerning the purpose of the meeting. Gerald Goldberg, et al., B-198471, May 1, 1980; see also, 65 Comp. Gen. 143 (1985) (Goldberg test met and reimbursement allowed).

We hasten to add that merely meeting the three part Goldberg test cited above is not sufficient. It must also be shown that the meal is part of a formal meeting or conference that includes not only functions such as speeches or business carried on during a seating at a meal, but also includes substantial functions taking place separate from a meal. 65 Comp. Gen. 508, 510 (1986); 64 Comp. Gen. 406 (1985).

Our office recently addressed whether the exceptions authorize reimbursement of "meal" expenses incurred in connection with internal business meetings or conferences sponsored by government agencies. B-230576, Aug. 14, 1989. One recent case, for example, involved federal employees attending a Customs Service sponsored meeting of the United States-Bahamas working group, an interagency task force. The employees were either within their official duty stations or not entitled to travel expenses. In denying payment, we noted that:

"there is a clear distinction between the payment of meals incidental to formal conferences or meetings, typically externally organized or sponsored, involving topical matters of general interest to governmental and nongovernmental participants and internal business or information meetings primarily involving the day-to-day operations of government. With respect to the latter, 5 U.S.C. § 4110 has little bearing
....."

B-230576, Aug. 14, 1989; see also B-230930, Aug. 14, 1989. Thus, we concluded that there was no basis to use appropriated funds to reimburse the cost of meals served at what are essentially agency business meetings.

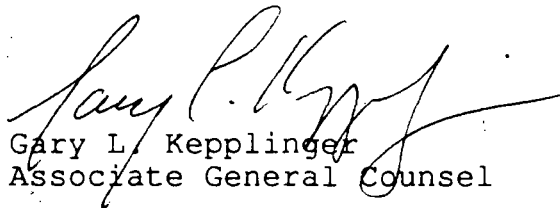
Finally, we have determined that payment of refreshment expenses under the Government Employees Incentive Awards Act, 5 U.S.C. §§ 4501-4506, may be allowed in certain circumstances. In 65 Comp. Gen. 738 (1986), we held that if an agency determined that a reception with refreshments, in accord with Office of Personnel Management regulations, would materially enhance the effectiveness of its awards ceremony, the costs of those refreshments could be considered a "necessary expense" for purposes of the Incentive Awards Act. Id. at 740.

In several cases our Office also allowed the use of appropriated funds to pay refreshment or entertainment expenses in promoting Equal Employment Opportunity objectives. In B-199387, Mar. 23, 1982, we held the Army could pay for samples of ethnic foods prepared and served as

part of a celebration intended to promote EEO objectives by increasing employee appreciation for the cultural heritage of differing ethnic groups. See also, 60 Comp. Gen. 303 (1981). But see, 64 Comp. Gen. 802 (1985); B-202028, May 14, 1981.

I trust the foregoing responds to your questions and is helpful to you.

Sincerely,



Gary L. Kepplinger
Associate General Counsel