

**DECISION**

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

FILE: B-162642

DATE: AUG 9 1976

61313  
098712  
498712

MATTER OF: Lunches furnished public school officials--Marine  
Corps recruiting campaign

DIGEST: Provisions of 10 U.S.C. § 503, providing for intensive recruiting campaigns, do not authorize purchase of meals for school officials assisting such campaigns. Provisions of 37 U.S.C. § 428 and 1 JTR para. M5600 authorize reimbursement of out of pocket expenses--including occasional meals--incurred in performance of official duties by recruiting officers from appropriations available to Marine Corps, but do not appear to contemplate luncheon expenses incident to preplanned presentation to eleven public school officials who may assist recruiters. While we will not object to payment of subject voucher, similar expenses should not be incurred unless regulations are revised to authorize them.

This action is in response to a request from the Commandant of the Marine Corps for an advance decision as to the propriety of expending appropriated funds to furnish luncheons to public school officials in conjunction with Marine Corps recruiting efforts. A recruiter incurred \$55 of luncheon expenses on January 29, 1975, in favor of vendor Oxbow Steakhouse, Middlesex, New Jersey, in connection with a planned recruiting campaign presentation to the school officials. A guest speaker, the Assistant Commissioner of New Jersey's Department of Education, spoke at the luncheon to encourage cooperation with the Corps' recruiting personnel. We are advised that there are other outstanding vouchers involving similar circumstances relating to recruitment in the Marine Corps and its Reserve.

The Commandant states that the expenditure is necessary to the effectual performance of the Marine Corps' official recruiting function, as authorized by 10 U.S.C. § 503 (1970). He further states that the sponsorship of such events is authorized by 37 U.S.C. § 428 which provides for certain recruiting officer's expenses to be reimbursed by the United States.

The provisions of 10 U.S.C. § 503, supra, provide that the "Secretary concerned shall conduct intensive recruiting campaigns to obtain enlistments in the \* \* \* Regular Marine Corps." It has been our consistent position that in the absence of authorizing

legislation, appropriated funds may not be used to purchase meals or other food items. See, for example, 43 Comp. Gen. 305 (1963). Compare also our decisions in which we have held that absent specific legislative authority, appropriated funds may not be used to purchase small gifts or or mementos for individuals in recognition of their support of an agency's programs. See 55 Comp. Gen. 346 (1975).

There is also for consideration the provisions of section 428 of title 37, United States Code, which was added by the Act of September 28, 1971, title II, section 203(a), Pub. L. No. 92-129, 85 Stat. 343, 359. That section provides as follows:

"In addition to other pay or allowances authorized by law, and under uniform regulations prescribed by the Secretaries concerned, a member who is assigned to recruiting duties for his armed force may be reimbursed for actual and necessary expenses incurred in connection with those duties."

Pursuant to 37 U.S.C. § 428, 1 JTR para. M5600, (1972) authorizes certain expenses of recruiters to be reimbursed. It states in pertinent part:

"A member of the Armed Forces whose primary assignment is to perform a recruiting duty is entitled to reimbursement for actual and necessary expenses defrayed from personal funds in the performance of his recruiting duties. Such expenses are limited to:

- "1. snacks, non-alcoholic beverages, and occasional but not frequent lunches and dinners when purchased by the member for prospective recruits, candidates, and their immediate families, or other individuals who directly assist in the recruiting effort;

\* \* \* \* \*

"Except in unusual cases, the refreshments authorized by this Part will not exceed \$20 to \$25 in any month. \* \* \*"  
(Emphasis added.)

The purpose of the statutory provision that authorizes reimbursement of actual and necessary recruiting expenses was stated in a letter dated January 29, 1971, from the Deputy Secretary of Defense to the President of the Senate, proposing its enactment:

"The purpose of the proposed legislation is to provide reimbursement to members of the armed forces on recruiting duty for actual and necessary out-of-pocket expenses incurred by them incident to their recruiting duties.

"In recruiting work, personnel on recruiting duty must project themselves as being willing to discuss their service's selling qualities with any interested party at almost any hour. Consequently, luncheons, snacks, coffee, and even dinner engagements with prospects or their families are not unusual. Parking fees while at itinerary stops, telephone calls while working away from the office, purchase of photostatic copies of vital documents for prospective recruits and candidates and other small but necessary expenditures are costs that the serviceman must pay from his own pocket.

"\* \* \* None of these costs are borne by the Government for whose benefit they are incurred. \* \* \* Enactment of this legislation would assist the member in meeting costs he incurs in the performance of his recruiting duties and would, therefore, contribute substantially to the total recruitment effort." (Emphasis added.)

Senate Report No. 92-93, 92 Cong., 1st Sess., May 5, 1971, p. 29, which accompanied H.R. 6531 in the Senate, the bill which eventually became Pub. L. No. 92-129, explains the section as follows:

"OUT-OF-POCKET EXPENSES FOR RECRUITERS

"Both the Committee proposal and the House version would provide \$2.9 million for out-of-pocket expenses incurred by recruiters incident to their recruiting duty. Some of these expenses would include such things as telephone calls away from the office, luncheons, and snacks with prospective recruits \* \* \*." (Emphasis added.)

The House Report in H.R. 6531, March 25, 1971, p. 34 also provided some insight on the purpose of the new provision:

"The purpose of this section is to allow reimbursement to those on recruiting duty for

out-of-pocket expenses incurred incident to that recruiting duty. Recruiters must make themselves available to discuss their service with interested potential recruits at almost any time. Luncheons, snacks, coffee, and even dinner engagements with prospects or their families are not unusual. In addition, fees for parking, telephone calls while away from the office, purchase of photo copies of vital documents for prospective recruits, and other small but necessary expenditures are costs that the recruiter must pay out of his own pocket." (Emphasis added.)

The legislative history of the reimbursement statute clearly indicates that the intent of the legislature was to reimburse officers who in the performance of their official duties incur small out-of-pocket expenses necessary to the carrying out of the recruiters' assignments. It is also clear from the legislative history that this provision was intended to authorize the payment from appropriated funds of snacks and occasional meals for recruits, candidates, and their families. The Joint Travel Regulations define, to a limited extent, the parameters of these payments.

It is difficult to analogize a planned luncheon with a guest speaker, at a cost of \$55 (\$5 per person), involving a formal presentation to a number of public school officials, to the small "actual and necessary" out-of-pocket expenditures--such as telephone calls and parking fees incurred while at itinerary stops--contemplated in both the legislative history of 37 U.S.C. § 428, *supra*, and the regulations. We note in this regard that the regulations limit the amount of reimbursement for all of these kinds of expenses to \$20 to \$25 per month per recruiter, unless there are unusual circumstances.

Since the statute is worded broadly, speaking of reimbursing the recruiter for "actual and necessary" expenses incurred, and the regulations are not very restrictive, we will not object to the certifying of the vouchers involved in this case, since it was administratively determined that the expenses incurred were actual and necessary, and represent an "unusual" case as described in the regulations. The circumstances surrounding the other outstanding vouchers should also be scrutinized and may only be paid if there is a similar administrative determination.

We would, however, be required to object to the incurring of similar expenses in the future unless the appropriate officials in the Department of Defense determine in advance that the provision of such meals represents an actual and necessary expense for which recruiting officials

B-162642

should be reimbursed and make necessary revisions in the regulations setting forth guidelines as to when the recruiter may incur such expense and placing any limitations deemed necessary on the amount of such expense.

R. F. KELLER

Deputy Comptroller General  
of the United States