

DECISION



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

FILE: B-185484

DATE: MAY 21 1976

MATTER OF: District of Columbia court reporters

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DIGEST: Section 1727(b) of title 11, D.C. Code, which permits court reporters to augment their salaries by collecting fees from litigants for transcript sales but states that reporters shall furnish all supplies at their own expense, precludes reporters from retaining fees for transcripts produced through computer-aided transcription system to be financed by Federal grant funds or District of Columbia Court appropriations where reporters bear less than full cost of equipment for transcription system, including maintenance and telephone charges.

The Executive Officer of the District of Columbia Courts requests our opinion on several legal questions arising from a proposed \$75,000 subgrant by the Law Enforcement Assistance Administration, Department of Justice, to the Superior Court of the District of Columbia for a project entitled "Computer-aided Transcription of Superior Court Proceedings."

The subgrant would finance a pilot program designed to provide four to six of the Superior Court's 46 court reporters with a computer software system to be procured from a contractor. The participating court reporters would record court proceedings on stenographic machines equipped with magnetic tape cartridges. The cartridges would be inserted into a mini-computer, and notes of testimony from the cartridges would be transmitted by telephone lines to the contractor's large-scale computer for translation into English. The translation is returned to the mini-computer, which then prints a draft transcript to be submitted for the reporter's review and correction. After corrections are made, the final transcript is printed, collated, and trimmed for delivery.

Subgrant funds would be used to procure from the contractor all necessary equipment, such as the mini-computer, stenographic machines, cartridges, etc.; maintenance for the system; and "tuning and programming," apparently including training, of the participating court reporters. In addition, the contractor would charge approximately 50 cents for each page of computer-aided copy. This per page charge would be paid by the court reporters.

Section 1727 of title 11, D.C. Code (1973), enacted by the District of Columbia Court Reorganization Act of 1970, Pub. L. No. 91-358 (July 29, 1970), title I, § 111, 84 Stat. 512, authorizes the Executive Officer of the District of Columbia Courts to appoint salaried, full-time court reporters. Subsection 1727(b) provides:

"In addition to their annual salaries, court reporters may charge and collect from parties, including the United States and the District of Columbia, who request transcripts of the original records of proceedings, only such fees as may be prescribed from time to time by the Executive Officer. The reporters shall furnish all supplies at their own expense. The Executive Officer shall prescribe such rules, practice, and procedure pertaining to fees for transcripts as he deems necessary, conforming as nearly as practicable to the rules, practice, and procedure established for the United States District Court for the District of Columbia. A fee may not be charged or taxed for a copy of a transcript delivered to a judge at his request or for copies of a transcript delivered to the clerk of a court for the records of the court. Except as to transcripts that are to be paid for by the United States or the District of Columbia, the reporters may require a party requesting a transcript to prepay the estimated fee therefor in advance of delivery of the transcript." (Emphasis added.)

As noted previously, all equipment for the computer-aided system under the instant project would be financed by grant funds, with the reporters paying only the contractor's charge for each page of copy. [In view of this arrangement, and [the provision of 11 D.C. Code § 1727(b) that "the reporters shall furnish all supplies at their own expense," the Executive Officer poses the following specific questions:

"(1) May court reporters sell for personal gain the transcripts of proceedings produced by the grant-funded system } under the authority of Title 11, Section 1727(b) of the District of Columbia Code?

"(2) } May court reporters sell for personal gain the transcripts of proceedings produced from this system if the court purchases or leases the mini-computer system during the grant period or after its expiration?

"(3) } If the answer to either of the above questions is in the affirmative, would the participating court reporters be required to reimburse the Superior Court for costs such as monthly maintenance charges and commercial telephones, among other things?"

We believe it is clear from the language of 11 D.C. Code § 1727(b) that the furnishing of all necessary equipment by court reporters at their own expense is a prerequisite to their right to profit from the sale of transcripts. This conclusion is supported by the legislative history of Pub. L. No. 91-358, supra, which enacted the D.C. Code provision, as well as related considerations.

While court reporters are salaried employees of the District of Columbia Courts, they are also entrepreneurs whose income derives in part from the sale of transcripts to litigants. The version of the District of Columbia court reorganization legislation (S. 2601, 91st Congress) reported by the Senate Committee on the District of Columbia would have put court reporters on a straight salary basis in order to "place the cost of reporters on the court system rather than the litigants." S. Rep. No. 91-405, 33 (1969). Under this version, court reporters would not have been permitted to charge fees for transcripts; nor would they have been required to furnish their own supplies. However, the House version of the court reorganization legislation, which included the provision ultimately enacted as 11 D.C. Code § 1727, rejected the Senate approach. Thus the report on this version (H.R. 16196, 91st Congress) by the House District of Columbia Committee observed, H.R. Rep. No. 91-907, 42 (1970):

"The provision for court reporters, as amended, is the same as present law which gives them basic salaries plus fees from sales of transcripts. It was suggested to your Committee that since the availability of transcripts of proceedings is such an intrinsic element of the judicial process court reporters should be placed upon a straight salary with no right to fees from sale of transcripts. Convincing evidence has been presented to your Committee to substantiate that removal of the individual incentive of sale of transcripts would cripple—or possibly destroy—this vital function in the courts; or, that the alternative straight salary would result in exorbitant costs and token productivity."

We note that the approach followed in 11 D.C. Code § 1727 is substantively similar in this respect to the statute governing court reporters in the United States District Courts, which permits the charging of transcript fees by reporters but requires them to provide all supplies at their own expense. See 28 U.S.C. §§ 753(e) and (f) (1970). This statute also appears to treat the furnishing of supplies by court reporters as a quid pro quo for their retention of transcript fees. Cf., Texas City Tort Claims v. United States, 188 F.2d 900,

901-902 (5th Cir. 1951), discussing the legislative history of the title 28 provision. Finally, the fees for transcripts prescribed by the Executive Officer of the District of Columbia Courts, as set forth in Court Reporter Rule (CRR) 8(a), are presumably based upon the premise that reporters undertake a substantial personal investment of equipment and time in the preparation of transcripts. In fact, CRR 5 expressly incorporates the statutory requirement that reporters furnish all necessary equipment and supplies.

Applying these considerations to the instant matter, we must conclude, in response to the Executive Officer's first question, that court reporters may not sell for personal gain transcripts produced by the grant-funded computer system under the proposed arrangement presented to us. Under this proposal, the per page charge to be paid by the reporters apparently represents only a charge for the use of the system, and is not designed to recover the cost of equipment. Rather, the full cost of the equipment would be financed by the subgrant to the District of Columbia Courts. The clear effect of this arrangement, in our view, is that equipment would be furnished free of charge by the Courts to the participating reporters.

In response to the second question, we believe the same conclusion would apply if the computer system was purchased, assuming that reporters would still bear only the per page charge for computer-aided transcripts. In fact, the conclusion is even clearer here since the Courts would be directly providing equipment to reporters by use of appropriated funds. Finally, in response to the third question, we believe that maintenance and telephone charges incident to the computer system constitute part of the equipment costs subject to 11 D.C. Code § 1727(b).

*/ The current per page fees, which vary according to the time deadline for delivery of transcripts, are as follows:

	<u>Ordinary</u> <u>copy</u>	<u>Special</u> <u>copy</u>	<u>Daily</u> <u>copy</u>
First carbon	\$1.40	\$2.00	\$2.50
First additional carbon	.40	.45	.50
Other additional carbons	.25	.35	.45

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We recognize the importance of the instant project as a potential means of increasing the efficiency of the judicial process. The grant application recites in detail the reporting and transcription burdens imposed upon the Superior Court, and states that the primary objective of the grant is to reduce the time interval for the production of regular transcripts from the present 60 to 70 days to 30 days. Certainly the possibility of a computer-aided transcription system was not contemplated at the time that 11 D.C. Code § 1727 was enacted. Nevertheless, for the reasons stated herein, the clear terms of the statute appear to preclude implementation of the grant proposal as written. We suggest, however, that (absent feasible alternatives to the instant proposal, consideration might be given to seeking legislation that would permit full testing of the computer-aided system.)

R.F. KELLER

Deputy

Comptroller General
of the United States