



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

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November 13, 1972

Mr. Alfred P. Murrah  
Director, Federal Judicial Center  
Dolley Madison House  
1520 H Street, N. W.  
The Federal Judicial Center  
Washington, D. C. 20005

Dear Mr. Murrah:

This refers to your letter dated July 14, 1972, presenting for our decision the question of whether the Federal Judicial Center ("Center") may properly reimburse as a necessary expense the travel and transportation costs incurred by the Center's new appointee to the position of Director of Continuing Education and Training, Mr. Kenneth C. Crawford, incident to his relocation from Dallas, Texas, to Washington, D. C.

You refer to the following provisions contained in 28 U.S.C. 625(e), as added by Public Law 90-219, approved December 20, 1967, 81 Stat. 666:

"(e) The Director is authorized to incur necessary travel and other miscellaneous expenses incident to the operation of the Center."

The letter of July 14, 1972, states in pertinent part as follows:

"The question assumes my determination, concurred in by the Director of the Administrative Office of the United States Courts, the lack of candidates qualified for the extraordinary demands of this unique office constituted a 'manpower shortage', that the travel and moving costs actually offered to the candidate in this case constituted part of a package necessary to attract a man of extraordinary capabilities and salary potential, and that implicit in 28 U.S.C. 625(3) [(SIC) 625(e)] is the administrative authority to reimburse an appointee on an analogous basis to that which would obtain in executive agencies and other agencies covered by 5 U.S.C. 5721 et seq.

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"I have assumed that the provisions of Chapter 57, subch. II of Title 5, United States Code, do not apply to the Federal Judicial Center. (See 5 U.S.C. 5721 for definitions). I have also assumed that neither the new appointee of the Federal Judicial Center nor the Federal Judicial Center itself is covered by the regulations prescribed by the President (Circular A-56, revised). Under the definitions promulgated in Circular No. A-56, 'employee' is defined as a 'civilian officer or employee of a department as defined here . . . ' (section 1.2(b)). Department is defined in section 1.2(c) as an executive department, independent establishment or other executive agency.' It is our belief that the Federal Judicial Center was not intended to be included in the scope of the transportation statutes or the regulations issued pursuant thereto, but has been given legislative authority to develop its own administrative policies in this area in cooperation with the Director of the Administrative Office (28 U.S.C. 604)."

Chapter 57, subchapter II of title 5, United States Code, pertains to the travel and transportation entitlements of certain Government employees including new appointees to positions in the United States for which the Civil Service Commission has determined there is a manpower shortage. The following definitions of the agencies of the Government, whose employees are subject to such provisions, are set forth in 5 U.S.C. 5721:

"For the purpose of this subchapter—

"(1) 'agency' means—

\* \* \* \* \*

"(C) a court of the United States;

"(D) the Administrative Office of the United States Courts;"

The provisions of 5 U.S.C. 5721 were derived from sections 18 and 19 of the Administrative Expenses Act of 1946, 60 Stat. 806, approved August 2, 1946, and were previously codified in 5 U.S.C. 73b-4 (1964 ed.) as follows, without any substitution or clarification of wording:

"§73b-4. Definitions.

"The word 'department' as used in this Act shall be construed to include independent establishments, other agencies, wholly owned Government corporations (the transactions of which corporations shall be subject to the authorizations and limitations of this Act, except that section 5 of Title 41 shall apply to their administrative transactions only), and the government of the District of Columbia, but shall not include the Senate, House of Representatives, or office of the Architect of the Capitol, or the officers or employees thereof. The words 'continental United States' as used in sections 73b-1 and 73b-3 of this title shall be construed to mean the forty-eight States and the District of Columbia. The word 'Government' shall be construed to include the government of the District of Columbia. The word 'appropriation' shall be construed as including funds made available by legislation under section 849 of Title 31."

When title 5, United States Code, was codified and enacted as positive law in 1966 the Congress made it clear that the purpose of the 1966 act was to "restate in comprehensive form, without substantive change, the statutes in effect before July 1, 1965." (Emphasis added.) See Senate Report No. 1380, page 18. In accordance with that purpose, we understand the revisors of title 5 made clarifications and changes in language to express uniformity and to reflect the interpretations of language by appropriate authority.

Under the wording of the statute, as indicated in 5 U.S.C. 73b-4 (1964 ed.), we held in 27 Comp. Gen. 313 (1947) that although the "judicial branch" was not specifically mentioned therein, the definition of "department" was sufficiently broad to include the judicial branch. Apparently, the revisors of title 5 were aware of this interpretation and specifically listed "the Administrative Office of United States Courts" and "a court of the United States" to accord with such interpretation. At that time those two activities embraced the entire judicial branch. However, we do not believe the listing in that manner requires our Office to exclude any new

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activity which might be created as a part of the judicial branch in the future. Our view is that employees of the Federal Judicial Center as a part of the judicial branch would come within the scope of 5 U.S.C. 5721 et seq., regardless of the fact that such activity is not specifically listed therein. It follows that the travel and transportation expenses of the employee here in question would be reimbursable only if the position to which he was appointed was one for which the Civil Service Commission had determined a manpower shortage to exist pursuant to 5 U.S.C. 5723.

While we recognize the basis for your view that the provisions of 5 U.S.C. 5721 et seq. are not applicable to the Center, we point out that even if that view be adopted there still would be no authority for payment of the expenses here involved. As indicated in 22 Comp. Gen. 885, it long has been held that unless otherwise provided by statute or regulations having the force of statutes an officer or employee of the Government must place himself at his first duty station at his own expense. It was because of this rule that the provisions of 5 U.S.C. 5723 authorizing travel expenses of new appointees to their first duty station in manpower shortage situations were enacted.

Sincerely yours,

R.F.KELLEY

Deputy Comptroller General  
of the United States