

DOCUMENT RESUME

03205 - [A2373508]

[Retention of Jury Expense Allowance in State of Kentucky].
B-183711. August 23, 1977. 3 pp.

Decision re: William A. Lamb; by Robert P. Keller, Acting
Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation
(305).

Contact: Office of the General Counsel: Civilian Personnel.
Budget Function: General Government: Central Personnel
Management (805).

Organization Concerned: Department of the Army.

Authority: 5 U.S.C. 5515. 5 U.S.C. 6322. 52 Comp. Gen. 325.
Kentucky Revised Statutes, sec. 29.390.

Lt. Col. H. G. Shugart, Finance and Accounting Officer
of the Department of the Army, requested an advance decision as
to whether an employee may be allowed a claim for the refund of
State payment of expense allowances received while serving as a
juror in the Kentucky State courts. Since the Kentucky statute
provides for the expense allowance for jurors, the employee may
retain the amount received. GAO will not look beyond the prima
facie intent of the statute. (Author/SC)

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David Agamarian
Civ. Per.



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

DECISION

FILE: B-183711

DATE: August 23, 1977

MATTER OF: William A. Lamb - Retention of jury expense allowance in State of Kentucky

DIGEST: Where Kentucky statute provides for expense allowance for jurors in amount of \$7.50 per day, civilian employee of Department of Army may retain \$45 received for expense allowance incident to jury service. GAO will not look beyond prima facie intent of statute and payments for expenses are not within purview of 5 U.S.C. § 5515 (1970) and may be retained by employee.

This action is in response to a request for an advance decision by Lieutenant Colonel H. G. Shugart, FC, Finance and Accounting Officer of the Department of the Army, as to whether Mr. William A. Lamb, a civilian employee of the Department of the Army, Fort Knox, Kentucky, may be allowed his claim of \$45 for refund of state payment of expense allowances received while serving as a juror in the Kentucky State courts. The agency has collected Mr. Lamb's payments for expense allowances and has deposited the amount in question in a suspense account pending the decision of this Office. In addition, the agency has collected juror's fees paid Mr. Lamb in the amount of \$30.

The record shows that Mr. Lamb was summoned to jury duty in the Jefferson County Circuit Court of the State of Kentucky and that he served as a juror for 6 days during the period October 19-21 and October 26-28, 1976. For each day of jury service Mr. Lamb received from the State of Kentucky \$5 for "pay" and \$7.50 for "expense allowances" for a total amount of \$30 and \$45, respectively.

When a Government employee is entitled to leave for jury duty under 5 U.S.C. § 6322 (1970) any amount received from the state as fees for jury service are required by 5 U.S.C. § 5515 (1970) to be credited against the employee's compensation payable by the United States.

Section 29.390 of the Kentucky Revised Statutes (KRS) (1975) provides in pertinent part as follows:

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"29.390 Pay of jurors

"(1) Grand jurors and petit jurors in circuit court shall each be paid five dollars (\$5.00) per day for jury service. Persons whose names are on the jury list for jury service in circuit court, or are summoned under KRS 29.280 to supply a deficiency, who appear in person in court in response to summons who do not claim exemption or ask to be relieved from jury service, shall receive five dollars (\$5.00) per day for each day they are required to be and are in attendance, even though they are not sworn or accepted for jury service. * * *"

As the above-quoted section expressly provides for the "pay of jurors," 5 U.S.C. § 5515 (1970) requires that any amounts received by jurors under this section be credited against the employee's Government salary. Accordingly, Mr. Lamb may not retain the amount of \$30 which he received from the State of Kentucky pursuant to section 29.370 of KRS, and this payment was properly collected by the agency.

The provision of Kentucky State law allowing for reimbursement of expenses for jurors and persons summoned for jury service is KRS 32.070 which provides in pertinent part as follows:

"32.070 Expense allowances for grand jurors, petit jurors, and persons summoned for jury service

"Beginning July 1, 1976 or at such earlier date as may be fixed as hereinafter provided, grand jurors, petit jurors and persons summoned for jury service in circuit court eligible for payment of the compensation designated in KRS 29.390(1) shall be paid, in addition thereto, the sum of seven dollars and fifty cents (\$7.50) per day as reimbursement of expenses incurred, which sum is hereby determined to be the equivalent of the minimum daily expenses reasonably to be incurred by such juror or person. * * *"

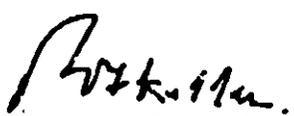
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In our decision 52 Comp. Gen. 325 (1972) we held that where the pertinent Maryland statutes authorized payment of travel expenses to jurors serving in the State courts, the payments thereof are not subject to deduction under 5 U.S.C. § 5515 (1970). More recently, our Office has considered a Georgia statute which provided that jurors in the Georgia State courts would receive a daily expense allowance of not less than \$5 nor more than \$25 per diem. The Georgia statute is substantially similar to the Kentucky statute under consideration here, as the Georgia law also provided for a daily expense allowance without specifying that these payments would be for expenses of travel. In our decision in this matter B-183711, October 21, 1975, we held that our decision in 52 Comp. Gen. 325 (1972) was applicable and that the amounts received would not be for collection by the Government. We stated in B-183711, supra, in pertinent part that:

"Since the prima facie intent of the statute is merely to reimburse the jurors for out of pocket expenses and the amount provided therefor does not appear to be unreasonable, we will not object to the amount received by the jurors being treated as an expense allowance rather than compensation in the nature of a salary."

We see no reason to question the intent of the Kentucky legislature, which has seen fit to provide jurors in that State with a daily expense allowance of \$7.50 in addition to \$5 per day for jury service.

Accordingly, Mr. Lamb is entitled to a refund of \$45 paid to him as an expense allowance while serving as a juror in the Kentucky State court.


Acting Comptroller General
of the United States