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*Elder
Civ. P. no*

DECISION



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

FILE: B-192085

DATE: July 6, 1978

MATTER OF: Department of State - Family Travel Under Section 911(10) of Foreign Service Act of 1946

DIGEST: Department of State requests legal opinion regarding its authority under Section 911(10) of Foreign Service Act of 1946, as amended, to pay travel expenses for family members. We believe Department of State has authority to pay family travel expenses to temporary duty (TDY) station when home leave follows TDY. Since the consultation or training incident to TDY is generally essential to new assignment, authorization of home leave subsequent to TDY should not be viewed as contravening the "en route" requirement of Section 911(10).

This decision is rendered in response to the Department of State's inquiry concerning the scope of its authority under Section 911(10) of the Foreign Service Act of 1946, as amended (22 U. S. C. § 1136(10)). Section 911(10) provides:

"The Secretary may, under such regulations as he shall prescribe, pay the travel expenses of members of the family accompanying, preceding, or following an officer or employee, if, while he is en route to his post of assignment, he is ordered temporarily for orientation and training or is given other temporary duty."

In the past, the Department of State has given the words "en route to his post of assignment" a somewhat restrictive construction, authorizing payment only when an employee was directly en route to the post of assignment. For example, if an employee was transferred from Post A to Post B with temporary duty (TDY) and home leave, the travel of family members to the TDY point has been paid only if home leave preceded the TDY.

Our decision is requested as to the legality of construing this provision less restrictively, so as to encompass situations where TDY occurs in the segment of travel that does not immediately end at the new post of assignment. Specifically, the question presented is whether the authorization of home leave following a temporary duty assignment and before travel to the new post of assignment contravenes the "en route" requirement of Section 911(10).

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The Department of State believes that the Act gives it the requisite authority to issue regulations providing for payment of family travel expenses to the TDY point when home leave follows TDY. The Department urges that an employee assigned to "extended" temporary duty should not be required to maintain two temporary residences, one at the home leave address for the family and a second at the TDY point for the employee. Therefore, the Department proposes to pay travel expenses for family members to a TDY point which occurs between two posts of assignment when the TDY exceeds 30 days, provided such action is within the authority granted to it by Section 911(10).

A review of the legislative history reveals nothing that would serve to aid our interpretation of Section 911(10) of the Foreign Service Act, as amended. Neither do any past decisions of our Office help to clarify the scope of Section 911(10), although we have in the past acceded to the Department's restrictive interpretation of the "en route" provision.

However, Section 911, by its terms, vests discretionary power in the Secretary to promulgate regulations consonant with its provisions. Absent any express prohibition otherwise, we can see no reason why the Secretary lacks legal authority to promulgate regulations providing payment for travel expenses of family members to a TDY station when it is followed by home leave. We believe that the "en route" provision of Section 911(10) is broad enough to encompass such a situation. TDY may reasonably be viewed an incident to travel performed between old and new posts of assignment, even if followed by home leave, since TDY typically involves consultation or professional or language training, and the new assignment generally could not be consummated until completion of such consultation or training.

Moreover, by viewing Section 911(10) in conjunction with Section 911(2), it likewise seems reasonable to conclude that the authorization of home leave between TDY and post of assignment does not contravene the "en route" requirement of Section 911(10). Section 911(2) provides:

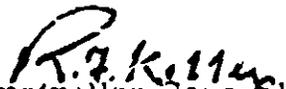
"The Secretary may, under such regulations as he shall prescribe, pay the travel expenses of the members of the family of an officer or employee of the Service when proceeding to or returning from his post of duty; accompanying him on authorized home leave; * * * or otherwise traveling in accordance with au-

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thority granted pursuant to the terms of this chapter or any other Act."

Since payment is authorized when either temporary duty or home leave comes between two posts of assignment, we would find it difficult to disallow payment when both TDY and home leave come between two posts of assignment. Furthermore, since the order of TDY and home leave is oftentimes, although not necessarily, prescribed for the convenience of the Government, justification for the present policy of allowing payment when TDY follows home leave, yet disallowing payment when TDY precedes home leave, appears tenuous.

Hence, in view of the foregoing considerations, and by reading Section 911(10) in conjunction with Section 911(2), we believe the Department of State does have authority to pay family travel expenses to the TDY station when home leave follows a temporary duty assignment, absent any express prohibition otherwise.


Deputy Comptroller General
of the United States