

**DECISION**



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

FILE: B-195393

DATE: August 10, 1979

MATTER OF: Dr. Karl P. Magyar - Intergovernmental Personnel Act - Cost-of-living differential by *Request for Employee Detailed to Executive Agency*

DIGEST: 1. Reimbursement under the Intergovernmental Personnel Act (IPA) may not be made for item in the agreement providing that Department of Commerce will reimburse the American Graduate School of International Marketing \$5,000 representing a "cost-of-living difference" for assignee. Cost-of-living differential is not considered item of pay which may be reimbursed by executive agency to institution of higher education under 5 U.S.C. 3374(c). Cf. 54 Comp. Gen. 210 (1974).

2. Cost-of-living differential is in the nature of allowances authorized under 5 U.S.C. 3375. While an assignee under the IPA may be allowed per diem by an executive agency for an assignment in the nature of temporary duty, he may not receive both a per diem for the entire assignment period and change-of-station allowances authorized by 5 U.S.C. 3375. 53 Comp. Gen. 81 (1973).

May reimbursement be made by an executive agency to an institution of higher education for a cost-of-living difference for an employee detailed to an executive agency pursuant to an agreement under the Intergovernmental Personnel Act (IPA)? For the following reasons the answer is no.

This question was, in effect, presented by the Acting Director, Office of Budget, Industry and Trade Administration, Department of Commerce, although the question was stated in terms of whether an erroneous payment under the IPA could be waived under 5 U.S.C. 5584 (1976). *DLG 02573*

Pursuant to an IPA agreement between the Industry and Trade Administration, Department of Commerce, and the American Graduate School of International Marketing, Dr. Karl P. Magyar was detailed to the Department of *DLG 02574*

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Commerce. Under the agreement the Department would reimburse the School \$26,000, representing Dr. Magyar's \$21,000 salary and a \$5,000 "cost-of-living difference" between Arizona and Washington, D.C. The school would grant Dr. Magyar \$26,000. The agreement also provided for the travel and moving expenses of the individual, his family and effects and for a 30-day living allowance to Dr. Magyar and his family on arrival in Washington, D.C.

By letter dated December 7, 1978, several months after entering into the agreement, the Industry and Trade Administration was advised by the Civil Service Commission (now Office of Personnel Management) that a cost-of-living payment is not authorized under the IPA in such circumstances. On June 8, 1979, the School advised the Administration that they would not release any further payments to Dr. Magyar until a determination had been made concerning the entitlement to the cost-of-living differential. At that time the School had paid Dr. Magyar \$20,583.27. The School had received \$19,500 from the Administration. Dr. Magyar was paid change-of-station allowances for himself and his family on moving to Washington, D.C.

At the outset, we would like to point out that it is doubtful that a waiver could be granted under 5 U.S.C. 5584, if there was an erroneous payment involved since Dr. Magyar is paid by the School, and any payments that could be considered for waiver under 5 U.S.C. 5584 must be pay and allowances paid by the United States. In any event on the basis of the facts presented, it does not appear that an erroneous payment has been made.

Title IV of the IPA, 5 U.S.C. 3371, et seq., provides for the assignment of personnel between the Federal Government and State and local Governments and institutions of higher learning for periods which should generally not exceed 2 years.

Subsection 3374(c) of title 5, United States Code, provides in part that a State or local Government employee on detail to an executive agency is not entitled to pay from the agency. Also, a detail of a State or local Government employee to an executive agency may be made with or without

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reimbursement by the executive agency for the pay, or a part thereof, of the employee during the period of the assignment.

As can be seen this provision limits that which can be reimbursed by the Federal agency to the pay (including fringe benefits, such as retirement, hospitalization, etc.) the detailed employee receives directly or indirectly from the State or local Government or institution of higher learning. See 54 Comp. Gen. 210 (1974).

In the agreement Dr. Magyar's salary is stated to be \$21,000. No mention is made of any other pay or salary that he receives from the School or fringe benefits which would be reimbursable. Accordingly, it is our view that the \$5,000 cost-of-living differential may not be reimbursed to the School as "pay" under the IPA.

The cost-of-living allowance referred to in the agreement appears to be similar to a per diem allowance which under appropriate circumstances could be paid or reimbursed under 5 U.S.C. 3375. That provision authorizes the use of an agency's appropriations to pay travel, to and from the assignment location; a per diem allowance at the assignment location during the period of the assignment and travel, including a per diem allowance while traveling on official business away from his designated post of duty during the assignment. Provision is also made for the payment of expenses of transportation of his immediate family and of his household goods and personal effects to and from the assignment location.

In this regard, we have held that an IPA assignee is not entitled to both per diem and change-of-station allowance for the same assignment. See 53 Comp. Gen. 81 (1973).

We have been advised that Dr. Magyar has received payment for the change-of-station allowances authorized under 5 U.S.C. 3375 for his travel to Washington, D.C., with his family. Thus, he would not be entitled to a per diem--or the cost-of-living allowance--for the period of his assignment in Washington, D.C. He is entitled to a payment or reimbursement for the expenses he will incur

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for his and his family's travel, and transportation of his household goods and personal effects, returning to Arizona.

While it is unfortunate that Dr. Magyar may have been misled by the terms of the agreement, we are not aware of any provision of law which would authorize the cost-of-living differential.

  
Acting Comptroller General  
of the United States