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DECISION



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

FILE: B-204215

DATE: December 28, 1981

MATTER OF: State Bar Membership Fee

DIGEST: An estate tax attorney with the Internal Revenue Service, who is required by the terms of his employment to maintain bar membership in good standing, may not be reimbursed state bar membership fee required of active members. That the state requires certain civilian attorneys of the Federal Government to be active members, where those attorneys previously were permitted to maintain inactive bar memberships and thus to avoid the fee assessment, does not alter the fact that payment of the fee was a personal expense incurred by the attorney to qualify for his Government employment. Reimbursement of the attorney is prohibited under previous GAO decisions. Reimbursement is also expressly prohibited by 5 U.S.C. § 5946.

An authorized certifying officer of the Internal Revenue Service has requested an advance decision regarding reimbursement of an annual fee paid by an employee to the Clients' Security Fund of the Bar of New Jersey. For the reasons indicated below, we conclude that the fee is not reimbursable.

The employee, Mr. David Cohen, is an estate tax attorney with the Internal Revenue Service. To qualify as an estate tax attorney with the Service, a person must be or become within 14 months of his or her employment a member in good standing of any state bar or of the bar of the District of Columbia. To fulfill this requirement, Mr. Cohen chose to be admitted to the New Jersey State Bar. New Jersey requires active members of the bar to make an annual \$50.00 payment to the bar's Clients' Security Fund.

Mr. Cohen asserts that he draws no personal benefit from maintaining his active status in the New Jersey bar, since Internal Revenue Service attorneys are restricted to practicing law only for the Service. Because maintaining bar membership is a condition to his continued employment, Mr. Cohen believes that all the benefits of his bar membership inure to the Government and that the Government, therefore, should reimburse him the \$50.00 annual fee.

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Where a Federal employee must secure permits or licenses to perform the duties of his or her position, we have repeatedly held that compliance is a matter of personal qualification and that payment by the Government of any fees incident to obtaining those permits or licenses is not authorized, B-193862, April 30, 1979; B-186512, January 17, 1977; 51 Comp. Gen. 701, 702 (1972).

Specifically, we have held that bar membership is a matter of personal qualification for which employees may not be reimbursed. See B-187525, October 15, 1976; 51 Comp. Gen., supra, at 703; B-171667, March 2, 1971.

Mr. Cohen seeks to distinguish these cases on the grounds that the State of New Jersey formerly permitted attorneys to maintain good standing in the bar with inactive memberships, thus exempting them from payment of the annual fee. However, our decisions did not hinge on whether or not the attorney had a choice between paying a fee and not paying a fee to maintain good standing. They turned instead on the fact that the expenses incurred by the attorney were necessary to qualify him for his Government position and thus were primarily for his own benefit.

Mr. Cohen cites 5 U.S.C. § 5945 (1976) as supporting the proposition that the Government should reimburse its attorneys for their bar membership dues. Section 5945, Title 5, specifically entitles civilian employees to reimbursement of expenses required in obtaining commissions as notaries public. On its face, this provision applies only to notaries. It is not applicable to attorneys. Further, Section 5946 of Title 5 specifically prohibits the payment of membership fees or dues of an employee unless the payment is authorized by a specific appropriation or by express terms of a general appropriation. We are unaware of any appropriation act which would indicate that the exceptions in 5 U.S.C. § 5946 apply here.

Finally, Mr. Cohen argues that the prohibition of 5 U.S.C. § 5946 did not preclude this Office from allowing reimbursement of employees' membership dues in 24 Comp. Gen. 814 (1945). However, in that case we held only that an agency may use appropriated funds for its own membership fees, not those of its employees.

The voucher does not represent a reimbursable expense and, therefore, may not be certified for payment.

For the

Harry D. Van Cleave
Comptroller General
of the United States