



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: HUD Gifts, Meals, and Entertainment Expenses

File: B-231627

Date: February 3, 1989

DIGEST

A federal agency may not use operating appropriations to purchase or pay contractors for gifts, meals, or receptions for foreign and domestic participants in U.S. government-sponsored cooperative activities under international agreement. Official reception and representation funds are available for official entertainment but may not be used for entertainment in connection with an unauthorized activity.

DECISION

The Inspector General of the Department of Housing and Urban Development (HUD) has requested our opinion concerning the availability of HUD appropriations to pay for food, entertainment, and gift items provided by contractors in support of Stroyindustriya 1987, an international trade show for construction equipment and technology mounted in the Soviet Union, under the purported auspices of the U.S./U.S.S.R. bilateral agreement on Cooperation in the Field of Housing and Other Construction. In testimony and a separate legal opinion, B-229732, Dec. 22, 1988, GAO has stated its opinion that, although HUD had authority to engage in general activities in support of the bilateral agreement, the Department had no authority specifically to undertake sponsorship of the international trade show. Accordingly operating appropriations may not be used to pay for meals, gifts, and entertainment provided in connection with these unauthorized activities. Moreover, as explained below, even if the trade show were authorized, HUD may not use operating appropriations to pay for these expenses. Furthermore, funds from HUD's official reception and representation account, which could normally have been

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charged for official entertainment expenses, were not available for entertainment in connection with the unauthorized Stroyindustriya show.

BACKGROUND

The Secretary is authorized under 12 U.S.C. § 1701d-4 (1982) to participate in international conferences for the exchange of information beneficial to the mission of the Department. This section authorizes general activities in support of the bilateral Agreement on Housing and Other Construction (June 28, 1974, United States - Union of Soviet Socialist Republics, TIAS No. 7898). Related authority to conduct demonstration projects and other information generating activities is found in 12 U.S.C. 1701z-1 (1982). However, GAO testified in August 1988 that, in our opinion, HUD lacked authority under the cited sections to undertake trade promotion activities such as the Stroyindustriya exhibit. HUD Participation in the Moscow Trade Show, Hearings Before the Subcommittee on Employment and Housing of the House Committee on Government Operations, 100th Cong., 2d Sess., passim (1988) (Hearing).

Independent of the GAO testimony, and of our opinion that HUD's sponsorship of Stroyindustriya was unauthorized, the Department's Inspector General inquired about entertainment-type expenses claimed by three different contractors who provided trade promotion related services to HUD's Policy Development and Research division in fiscal years 1985, 1986 and 1987. The Inspector General's question was grounded in the well recognized rule of appropriations law that prohibits the use of appropriated funds for entertainment and gifts, unless specifically authorized. The Inspector General questioned expenses totalling \$34,500. The expenses broke down as follows: \$5,500 from one contractor in fiscal years 1986 and 1987 for lunches served at meetings with potential Stroyindustriya exhibitors; \$4,000 from a second contractor in fiscal years 1985 and 1986 for food, entertainment, and gifts to Russian exhibit organizers and participants, and \$25,000 from a third contractor for an American sponsored reception held in Moscow during the Stroyindustriya exhibit in May 1987.

RESEARCH AND TECHNOLOGY APPROPRIATION

HUD receives an annual appropriation for "contracts, grants, and necessary expenses of programs of research and studies relating to housing and urban problems, not otherwise provided for, as authorized by title V of the Housing and Urban Development Act of 1970, as amended (12 U.S.C.

§ 1701z-1 et seq.). . . ." 1/ Among other things, the Research and Technology appropriation is generally available for activities in support of the bilateral agreement.

Even if HUD were authorized to undertake sponsorship of the international trade show--and we have concluded it was not--the appropriation does not specifically authorize entertainment or permit the distribution of personal gifts to individuals. Previous decisions of this Office have consistently held that, absent specific authority, funds appropriated for government departments and agencies may not be used for such purposes. See, for example, 57 Comp. Gen. 385 (1978), 53 Comp. Gen. 770 (1974) (promotional items distributed as gifts at industry conferences), 57 Comp. Gen. 806 (1978) (meals for sequestered jurors), B-138081, Jan. 13, 1969 (breakfast served at Mexico City meeting between Chairman of the Securities and Exchange Commission (SEC) and Canadian officials); and 5 Comp. Gen. 455 (1925) (entertainment of officials in foreign countries to facilitate arrangements for around the world flight), B-193661, Jan. 19, 1979 (reception for Hispanic leaders in connection with planning conference). Applying these principles to the instant case, HUD expenditures for gifts, meals, and entertainment in support of the bilateral agreement did not constitute a proper use of the Department's appropriation for Research and Technology.

The rationale underlying all of the above cases is that, although the government usually derives some indirect benefit from the expenditure for food, gifts, and entertainment, these expenses are essentially personal in nature. Ascertaining the residual value of the expense to the government typically would be impossible or at least very difficult. Even where this is possible, we are still of the opinion that the expense should not be allowed. First, we doubt that useful standards for permissible entertainment could be articulated for practical application. Moreover, because of the corollary personal benefit in allowing such expenditures, the probability of abuse is significantly higher than is acceptable.

1/ See Department of Housing and Urban Development-Independent Agencies Appropriations Act, 1985, Pub. L. No. 98-371, 98 Stat. 1213, 1220; Department of Housing and Urban Development-Independent Agencies Appropriations Act, 1986, Pub. L. No. 99-160, 99 Stat. 909, 913; Department of Housing and Urban Development-Independent Agencies Appropriations Act, 1987, as enacted by Pub. L. No. 99-591, § 101 (g), 100 Stat. 3341, 3341-242.

There are some very limited exceptions to the personal expense rule. We have, on infrequent occasions, held that a particular gift or entertainment expense was so closely related to program activities that the personal expense rule did not apply. In B-193769, Jan. 24, 1979, we allowed the distribution of specimen lava rocks to national park visitors as a way of preventing defacement of the natural park setting. In B-199387, March 23, 1982, we approved providing small samples of ethnic food as a means of enhancing an agency's Equal Employment Opportunity (EEO) awareness program. Thus in these cases, the expenditure was essential to carrying out a legitimate program goal which would otherwise have been unfulfilled.

HUD asserts that the use of Research and Technology funds for the expenses in question was absolutely necessary to carry out the purposes for which the appropriation was made because there is an expected code of behavior in the conduct of international business and diplomacy that requires the extension of hospitality and the exchange of gifts. Hearing at 82. This assertion, however, unsupported by proof of the actual necessity, is insufficient to justify an exception to the personal expense rule. Moreover, in this case, the trade show was not an authorized program goal of the Department.

APPROPRIATIONS FOR OFFICIAL RECEPTION AND REPRESENTATION EXPENSES

In addition to its Research and Technology appropriation, the Department also receives an appropriation for Management and Administration. This appropriation is available for "necessary administrative and nonadministrative expenses . . . not otherwise provided for. . . ." During fiscal years 1985, 1986 and 1987, this appropriation included an amount of "not to exceed \$4,000 for official reception and representation expenses. . . ." Representation accounts provide the specific authority necessary to use government funds for entertainment and related expenses. 43 Comp. Gen. 305 (1963).

HUD argues that the official reception account is available only for domestic activities when the Secretary receives visitors, normally at HUD headquarters, in his capacity as Secretary and that it is not available for his participation as co-chairman of an international committee. Hearing at 82-83. The Secretary of HUD serves as Co-chairman of the U.S./U.S.S.R. Joint Committee on Cooperation in the Field of Housing and Other Construction by virtue of his position as the Secretary of Housing and Urban Development, the United

States agency responsible for implementation of the agreement. We have not found any previous decision of this Office or any other authority which limits the use of official reception and representation funds based upon a distinction between domestic and international activities. Accordingly, the allowance for official reception and representation expenses would ordinarily be available for entertainment in connection with authorized activities under the bilateral agreement. Stroyindustriya, however, was not authorized.

An agency head's custodianship of an official reception and representation account traditionally entails "a great deal of discretion" as to expenditures. 61 Comp. Gen. 261 (1982). This does not mean, however, that there are no limits on the proper expenditure of the fund. The appropriation act requires that entertainment be "official" in nature. In our view, entertainment cannot be "official" if its primary purpose is to further an unauthorized activity.

We stress that our decision here is based on the assumption that all of the expenditures were in direct furtherance of Stroyindustriya, an unauthorized activity. The decision might be different if the expenditures were in connection with an authorized activity, whether under the bilateral agreement or otherwise. In that case, the expenditures could be for "official" purposes and the limited reception and representation funds available could be applied to them. However, we do not have sufficient information to determine whether the expenditures involved here can be justified on some other "official" basis.



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