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Comptroller General  
of the United States

Washington, D.C. 20548

144989

## Decision

**Matter of:** Bureau of Indian Affairs - Subsistence  
Furnished to Emergency Firefighters

**File:** B-241708

**Date:** September 27, 1991

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### DIGEST

Bureau of Indian Affairs, Department of the Interior, practice of furnishing subsistence to emergency firefighters hired under special statutory authority and joint guidelines of the Interior Department and Agriculture Department is legally permissible. Although Agriculture has additional specific statutory authority to provide subsistence without charge to employees and Interior does not, both agencies have broad statutory authority to prescribe the pay and terms of employment of emergency firefighters. Further, firefighters of both agencies serve under the same conditions and it has been the longstanding practice to furnish them subsistence without charge. Interior's regular classified employees, however, are subject to charge under 5 U.S.C. § 5911 (1988) for subsistence furnished them.

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### DECISION

A certifying officer at the Bureau of Indian Affairs (BIA), Department of the Interior, requests our decision whether payment may be made to vendors who furnished meals and lodging pursuant to BIA purchase orders for the subsistence of emergency firefighters hired by the BIA.<sup>1/</sup> As explained below, payment may be made.

### BACKGROUND

During the summer of 1990 the Yakima Indian Agency, BIA, issued purchase orders to some local restaurants to provide hot meals and sack lunches for BIA emergency firefighters fighting wildfires in the area. When the invoices for the meals reached the BIA Disbursements Office, questions were raised as to the propriety of the agency providing meals for firefighters who were not on temporary duty travel. After

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<sup>1/</sup> The certifying officer is the Chief, Disbursements Section, Bureau of Indian Affairs, Albuquerque, New Mexico.

some internal discussion and disagreement within BIA, the certifying officer submitted the matter to our Office for decision. Subsequently, the certifying officer received bills for food and lodging procured by other BIA units for emergency firefighters under similar circumstances, and he also has submitted some of those bills.

The submission indicates that emergency firefighters are hired and paid in accordance with the provisions of the Interagency Fire Business Management Handbook. This Handbook, maintained by the Boise Interagency Fire Center, was developed under the auspices of the National Wildfire Coordinating Group, which was formed in 1976 by cooperative agreement of the Secretaries of Agriculture and the Interior. Among other things, it prescribes the conditions of employment, including procedures for hiring, paying and providing subsistence, for emergency firefighters. The Handbook contains the special administratively set pay rates applicable to these personnel, who generally serve only during a fire incident or during other times when there is high risk of fire outbreaks and are paid only while actually employed. Such employees are exempt from the classified pay system applicable to most federal employees. See 5 U.S.C. § 5102(c)(19).

The Handbook provides as follows concerning subsistence and lodging for the emergency firefighters:

"Whenever deemed practical and necessary by the Agency Official-in-Charge, the Government will furnish subsistence and lodging without cost. There will be no additional compensation for subsistence or lodging that the employee may furnish."  
Handbook, Exhibit 5, para. 8.

It is pursuant to this quoted provision that the BIA fire officials procured the meals and lodgings that are in question here.

The certifying officer states that the Department of the Interior has specific statutory authority, at 43 U.S.C. § 1469 (1988), to employ emergency firefighters as follows:

"Notwithstanding any other provision of law, persons may be employed or otherwise contracted with by the Secretary of the Interior to perform work occasioned by emergencies such as fire, flood, storm, or any other unavoidable cause and may be compensated at regular rates of pay without regard to Sundays, Federal holidays, and the regular workweek."

The certifying officer notes that the Department of Agriculture has similar authority, at 7 U.S.C. § 2226 (1988), to

employ emergency firefighters. Under these authorities the two Departments have established the joint employment and pay system applicable to emergency firefighters as set forth in the Handbook.

The certifying officer points out, however, that the Department of Agriculture has the following specific authority under 7 U.S.C. § 2228 to furnish subsistence at no charge to its employees:

"The Department of Agriculture is authorized to furnish subsistence to employees without consideration as, or deduction from, the compensation of such employees where warranted by emergency condition connected with the work under such regulations as the Secretary of Agriculture may prescribe."

Since the Department of the Interior does not have additional specific authority similar to 7 U.S.C. § 2228, the certifying officer questions whether the provision in the Interagency Handbook quoted previously is effective to authorize providing subsistence to Department of the Interior firefighters. He points to the general prohibition against an employee whose pay is fixed by statute or regulation receiving "additional pay or allowance" unless specifically authorized by law. 5 U.S.C. § 5536 (1988).

He also asks, if we find that furnishing subsistence without charge to Interior emergency firefighters is authorized, whether this authority extends to regular employees who are involved in the firefighting effort but are not employed under the emergency firefighter authority discussed above.

#### ANALYSIS

As the submission indicates, the well-established general rule is that, in the absence of authorizing legislation, the costs of subsistence furnished government employees who are not on temporary duty may not be paid with appropriated funds. See, e.g., 53 Comp. Gen. 71, 74 (1973); 42 Comp. Gen. 149 (1962). The prohibition against an employee receiving additional pay or allowances (5 U.S.C. § 5536) has also been cited in disallowing such payments. See 42 Comp. Gen. 149, 151, supra.

We have recognized situations in which a limited exception to the rule may be made, such as where meals were procured for a force of special police assembled and held on duty at the assembly point incident to an unauthorized occupation of the BIA building in Washington. See 53 Comp. Gen. 71, supra. This decision recognized, however, that while police, firefighters, and security guards often are required to work under emergency conditions, this fact alone does not warrant

departure from the general rule discussed above. Id. at 75. Therefore, we must look elsewhere to see whether providing subsistence in the present case is authorized by statute, either specifically or by necessary implication.

It has long been the practice for the Department of the Interior to employ emergency firefighters outside the regular classified system and provide them subsistence. In a 1930 decision, A-31696, June 12, 1930, our Office approved the furnishing of subsistence to Interior Department temporary firefighters who were hired by contract. This decision applied section 3 of the act of March 5, 1928, 45 Stat. 193, 5 U.S.C. § 75a (Supp. IV, 1931), which required that the reasonable value of quarters and subsistence be determined and considered as part of compensation in fixing the employees' salary. The decision held that the estimated cash value of the subsistence furnished to the firefighters should be stated on the payrolls to show compliance with its provisions. The current version of the 1931 statute, 5 U.S.C. § 5911 (1988), likewise requires that the value of quarters and facilities (which includes subsistence) be paid for by employees either directly or by deduction from their pay.

As noted previously, however, the Interior Department now has broad authority under 43 U.S.C. § 1469 to employ or otherwise contract with emergency firefighters and to fix their compensation "[n]otwithstanding any other provision of law." The Agriculture Department has similar authority under 7 U.S.C. § 2226. We recently contacted an Interior Department representative at the Boise Interagency Fire Center, who advised us that it has been the practice for many years to furnish subsistence to emergency firefighters without specifically relating subsistence expenses to their pay.

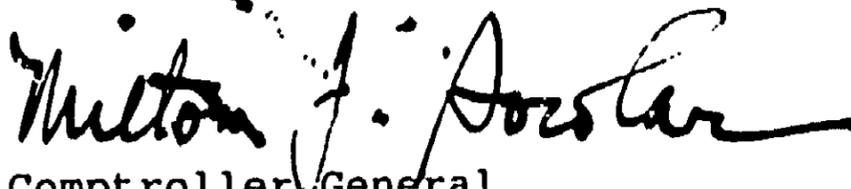
When the National Wildlife Coordinating Group was formed in 1976, under whose auspices the Handbook containing the conditions of employment and pay rates for emergency firefighters was developed, these broad statutory provisions were in effect. The Handbook resulted in a combined system under which the same provisions, including pay rates and furnishing quarters and subsistence, were applied to emergency firefighters of both agencies. This appears to be appropriate since lands of these agencies are often located near each other and they both often draw from the same labor pool.

While Interior does not have the specific additional statutory authority Agriculture has in 7 U.S.C. § 2228, supra, we believe that the authority it does have is broad enough to allow continuation of the practice of providing meals to emergency firefighters, which has apparently been followed for many years and is recognized and authorized in the Handbook. We doubt that Congress intended emergency firefighters of the

two departments to be treated differently. In this regard, we note that 7 U.S.C. § 2228 applies generally to Department of Agriculture employees. It does not focus specifically on firefighters, nor, it seems, was its enactment prompted by consideration of the firefighters' situation.<sup>2/</sup>

Accordingly, we have no objection to Interior continuing to furnish subsistence and quarters, when necessary, to emergency firefighters at no charge to them.

However, Interior's authority under 43 U.S.C. § 1469 does not apply to BIA employees who are not emergency firefighters. Therefore, unless these employees are in a travel status away from their duty stations, there appears to be no basis to furnish them quarters or meals free of charge. They should be charged for their meals in accordance with 5 U.S.C. § 5911, supra. In any event, there appears to be no reason to withhold payment on the contractors' invoices, assuming they are otherwise correct.



~~Assistant~~ Comptroller General  
of the United States

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<sup>2/</sup> The legislative history indicates that the provision was developed with a view toward certain Soil Conservation Service employees who performed emergency duties. See 1956 U.S. Code, Cong. & Admin. News 4366, 4368.