



Comptroller General  
of the United States

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Washington, D.C. 20548

## Decision

**Matter of:** Southern Illinois University-Edwardsville --  
Invalid Intergovernmental Personnel Act  
Assignment - Quantum Meruit

**File:** B-253988

**Date:** October 11, 1994

### DIGEST

1. An agency entered into an Intergovernmental Personnel Act (IPA) agreement to detail a university employee to the agency with the agency reimbursing the university for the employee's salary and benefits. Several months after the employee began work, the agency determined that the agreement was invalid because the individual selected for the assignment had not been a university employee for at least 90 days as required by IPA regulations. Accordingly, the agency declined to reimburse the university. Payment to the university is approved on a quantum meruit basis.

2. A federal agency terminated an employee's federal appointment and replaced it with an assignment under an Intergovernmental Personnel Act (IPA) agreement with a university whereby the individual would be assigned to the agency as an employee of the university. However, because the appointments overlapped for 2 weeks, the employee was paid by both the agency and the university for the same work. Upon beginning work under the IPA assignment, the employee's federal appointment would be considered as terminated. Thus, the federal pay she received while working under the IPA agreement is an erroneous payment subject to collection by the agency.

### DECISION

The Army Corps of Engineers has forwarded a request for payment of a claim by Southern Illinois University-Edwardsville (SIU-E), with whom the agency had entered into an Intergovernmental Personnel Act (IPA) agreement. Under the agreement, SIU-E would detail an individual to the agency with the agency reimbursing SIU-E for the individual's salary and benefits. The agency later

<sup>1</sup> 5 U.S.C. §§ 3371-3376 (1988).

determined the agreement to be invalid and declined payment to SIU-E, but forwarded the matter here for consideration. We approve payment to SIU-E on a quantum meruit basis for the reasonable value of the services the agency received.

#### BACKGROUND

The agency, SIU-E and the individual involved, Ms. Carol Hussey, entered into an IPA agreement for the detail of Ms. Hussey from SIU-E to the agency in the position of Geographer for the period October 1, 1991, to September 30, 1992. Under the agreement, Ms. Hussey was to receive salary and benefits as a university employee, for which the agency agreed to reimburse the university on a monthly basis.

At the time Ms. Hussey signed the agreement (August 27, 1991), she was a student at SIU-E serving under a temporary appointment as a part-time employee of the agency. Apparently, due to internal administrative deficiencies, the agency failed to terminate Ms. Hussey's federal appointment until October 16, 1991, after she had begun working under the IPA assignment. This resulted in her being paid by both the agency, as its employee, and SIU-E, under the IPA agreement, for her work between October 1 and October 16, 1991.

The Office of Personnel Management regulation implementing the IPA defines an employee for the purpose of an assignment to a federal agency from another unit of government or institution of higher education as "an individual employed for at least 90 days in a career position" in the other government unit or institution of higher education. 5 C.F.R. § 334.102 (1993). During a review of the agency IPA agreements, the agency determined that Ms. Hussey did not meet this requirement, and consequently, the agency terminated the agreement effective February 23, 1992.

Because the agency considers the agreement void, the agency has not paid SIU-E for Ms. Hussey's services under the IPA agreement. The agency now asks whether payment may be authorized on a quantum meruit basis and, if so, whether that payment should include the \$814.93 claimed by SIU-E for the October 10-16 period for which Ms. Hussey also was paid by the agency.

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<sup>2</sup>Ms. Hussey's federal appointment had been part of a Stay-In-School program for which Ms. Hussey became ineligible upon her graduation.

## OPINION

Under the doctrine of quantum meruit, a party that accepts the services of another without a valid contract is obligated to pay the reasonable value of the services. There are four requirements for payment under this doctrine: (1) the services would have been a permissible procurement had formal procedures been used, (2) the federal government received and accepted the benefit of the services provided, (3) the person seeking payment acted in good faith and (4) the amount claimed represents the reasonable value of the services provided. Latin American Management Association, B-251668, May 13, 1993; Bureau of Indian Affairs, B-237148, Mar. 15, 1991; Federal Railroad Administration, B-242405, Mar. 15, 1991; Wackenhut Services, Inc., B-240994, Oct. 15, 1990.

In this case, there is no dispute that the agency received and accepted the services Ms. Hussey provided under the agreement with SIU-E, that SIU-E's claim represents the fair value of the services, and that SIU-E acted in good faith in paying Ms. Hussey under the agreement. The question remains whether the first criteria is satisfied. In this regard, the pertinent inquiry is whether the agency could have acquired the services for which payment is sought had the proper procedures been followed. The record provides no reason why the Corps could not have legally obtained Ms. Hussey's services through a non-IPA contract with the university had it followed proper procedures.

We have denied payment on a quantum meruit basis to an individual who performed services for an agency where the agency was prohibited from procuring the services from that individual. See 64 Comp. Gen. 395, 405 (1985) (employment of an officer in the Public Health Service); and Ms. Sylvia Klimicek and Major Edgar Terrazas, B-251541, July 21, 1993 (employment of an Air Force Officer). In this case, the Corps was not prohibited from contracting with SIU-E or, for that matter, from employing Ms. Hussey directly, as long as the proper procedures were followed. Consequently, SIU-E's

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<sup>3</sup>The amount claimed appears to be based on the amounts agreed to in the IPA agreement for salary, medical benefits and retirement, for which 5 U.S.C. § 3374(c) authorizes an agency to reimburse the employer of an employee detailed to the agency under an IPA agreement. The IPA agreement in this case also provided that the agency would reimburse SIU-E an amount for "offsite overhead," which is not covered by 5 U.S.C. § 3374(c) as a reimbursable item. The agency later advised SIU-E that offsite overhead should not have been included in the agreement, and SIU-E's billings do not appear to include it.

claim meets the four requirements for payment on a quantum meruit basis.

As to whether payment to SIU-E should include the period for which the agency paid Ms. Hussey directly, October 1-16, since Ms. Hussey's service under the IPA was incompatible with her existing federal appointment, her federal appointment would be considered as terminated October 1 when she began work as an SIU-E employee detailed under the IPA agreement.<sup>4</sup> See e.g. John P. Maille, B-238271.2, Jan. 31, 1992. Consequently, the payment she received from the agency as a federal employee for the work she performed and was paid for by SIU-E under the IPA agreement was an erroneous payment and is subject to collection by the agency. However, that does not prevent payment to SIU-E for the expense it incurred for that period.

Accordingly, payment is authorized on SIU-E's claim, if otherwise correct, on a quantum meruit basis for the period of October 1, 1991-February 23, 1992.

Robert P. Murphy  
Acting General Counsel

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<sup>4</sup>We note also that 5 U.S.C. § 3374(c) provides that an employee detailed to an agency under an IPA assignment "is not entitled to pay from the agency" except to the extent the pay received from the detailing entity is less than the appropriate rate of pay which the duties would warrant under applicable federal pay authorities. There is no indication in the record that the exception would apply in this case.

<sup>5</sup>The debt may be considered for waiver under 5 U.S.C. § 5584 and 4 C.F.R. Part 91.