



## Decision

**Matter of:** Mine Safety and Health Administration—Disposition of National Coal Mine Rescue Contest Registration Fees

**File:** B-325396

**Date:** February 23, 2015

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### DIGEST

The miscellaneous receipts statute requires that “money for the Government” be deposited in the general fund of the Treasury, unless otherwise provided by law. 31 U.S.C. § 3302(b). The balance of registration fees paid by coal mine rescue teams and exhibiting vendors for the 2009 and 2011 national coal mine rescue contests, remaining after the contest expenses had been paid, is not “money for the Government” within the meaning of the miscellaneous receipts statute. The contests were the result of a cooperative program of private industry and the Mine Safety and Health Administration, and the registration fees were not collected to bear the expenses of the government or to pay obligations of the United States.

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### DECISION

The Assistant Secretary of Labor for Mine Safety and Health, Mine Safety and Health Administration (MSHA), requested a decision under 31 U.S.C. § 3529, regarding the proper disposition of \$326,308, representing the balance of registration fees paid by coal mine rescue teams and exhibiting vendors for the 2009 and 2011 national coal mine rescue contests.<sup>1</sup> Letter from Assistant Secretary of

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<sup>1</sup> The request for our decision results from an audit of national mine rescue contests by the Department of Labor’s Office of Inspector General (DOL OIG). Request Letter, at 1; DOL OIG, Report No. 05-13-004-06-001, *MSHA Should Continue to Reassess and Make Improvements to its Role in Mine Rescue Contests* (Sept. 30, 2013) (DOL OIG Report). MSHA agreed with a number of the recommendations in the DOL OIG Report, and has reported taking steps to address those recommendations. DOL OIG Report, at 5. The DOL OIG questioned, without taking a specific position, whether the \$326,308 should be deposited in the Treasury as

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Labor for Mine Safety and Health, MSHA, to General Counsel, GAO (Dec. 11, 2013) (Request Letter), at 1. As explained below, the funds are not “money for the Government” subject to the requirements of the miscellaneous receipts statute.

Our practice when rendering decisions is to obtain facts and legal views from the relevant agency. GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), available at [www.gao.gov/legal/resources.html](http://www.gao.gov/legal/resources.html). In its request, MSHA provided background information, MSHA’s legal opinion, and discussed and referenced, among other things, the DOL OIG Report. Request Letter; see DOL OIG Report. MSHA also provided additional factual background and legal analysis in response to a request from our office. Letter from Deputy Assistant Secretary for Policy, MSHA, to Assistant General Counsel for Appropriations Law, GAO (May 16, 2014) (Response Letter); Letter from Assistant General Counsel for Appropriations Law, GAO, to Assistant Secretary of Labor for Mine Safety and Health, MSHA (Feb. 6, 2014) (GAO Development Letter).

## BACKGROUND

MSHA’s mission includes the promotion of safe and healthful workplaces for miners. DOL OIG Report, at 1. Mine rescue contests have long been recognized as an important component in the training and preparation of mine rescue teams, and are also used to test the competency of the rescue teams. *Id.* MSHA and its predecessor agencies have been involved in mine rescue contests since 1911. Request Letter, at 2; DOL OIG Report, at 1. MSHA points to 30 U.S.C. § 962 as authority for its involvement in the national mine rescue contests, which provides in relevant part that MSHA is “authorized to promote health and safety education and training in the mining community through cooperative programs with States, industry, and safety associations.” Request Letter, at 2–3. MSHA notes that there is no statutory requirement that MSHA conduct or actively participate in national coal mine rescue contests, and that its involvement in the national coal mine rescue contests is elective, rather than mandatory.<sup>2</sup> *Id.*, at 2; Response Letter, at 2.

MSHA explains that it and mine industry stakeholders cooperated in a “public-private partnership” in conducting the 2009 and 2011 national coal mine rescue contests.

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miscellaneous receipts. DOL OIG Report, at 16–17. MSHA agreed to resolve the matter by requesting a decision from our office. Request Letter, at 1; DOL OIG Report, at 18.

<sup>2</sup> The DOL OIG Report concurs with MSHA’s assertion here, stating the “MSHA’s involvement [in mine rescue contests] is permissible given its mission,” and that “MSHA is not required to organize, host, participate or pay for any portion of the contests.” DOL OIG Report, at 3, 5.

Request Letter, at 3. MSHA states that its “collaboration with industry stakeholders in staging the contests has evolved over many decades.”<sup>3</sup> *Id.*, at 2. MSHA notes, however, that its role in the 2009 and 2011 national coal mine rescue contests, and the administrative structure of those contests, were essentially the same. *Id.* In this regard, a National Executive Committee (NEC) designed and managed the 2009 and 2011 national coal mine rescue contests. Response Letter, at 3. The NEC was composed of a contest director, the president of the National Mine Rescue Association, and one mine industry representative from each of the 11 MSHA districts. *Id.*, at 4. The contest director was an MSHA employee. *Id.*

The NEC calculated and approved the registration fees to be paid by the coal mine rescue teams and exhibiting vendors for the 2009 and 2011 contests. Response Letter, at 4–5. The registration fees were set at an amount to cover the mining industry’s costs of attending and participating in the mine rescue contests. *Id.* MSHA explains that the coal mine rescue teams’ and exhibiting vendors’ registration fees were paid by checks, made payable to the Nashville Convention and Visitors Bureau (NCVB), which was jointly designated by MSHA and mine industry stakeholders as the fiscal agent for the 2009 and 2011 national coal mine rescue contests. *Id.*, at 5; Request Letter, at 2. The NCVB collected and managed the fees at the direction of the NEC. Response Letter, at 4.

Registrants were required to mail their checks to MSHA, which recorded the receipt of the payment and registration information so it could organize and plan the assignment of contest personnel and ensure sufficient vendor space. Response Letter, at 5. MSHA explains that it needed the participant information from the registration forms for its own planning purposes to be able to provide MSHA personnel for scoring, as judges, and to hear appeals of scoring. *Id.*, at 6. MSHA explains that it provided such personnel in order to ensure the integrity of the contests, because the use of industry personnel in these roles would raise conflict of interest concerns. *Id.*, at 4. MSHA subsequently forwarded the checks to NCVB, and NCVB deposited the checks, and held the funds, in “an account under sole control of NCVB.” *Id.*, at 5.

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<sup>3</sup> Our office requested that MSHA provide documentation regarding the “partnership between MSHA and mine industry stakeholders” in conducting the 2009 and 2011 coal mine rescue contests. GAO Development Letter, at 1. MSHA did not provide any documentation setting forth the terms of its collaboration, partnership, or cooperative program with mine industry stakeholders, explaining that its partnership with “mine industry stakeholders in organizing and staging the 2009 and 2011 rescue contests is not formalized in a single written agreement.” Response Letter, at 2. MSHA explained that the planning and design of the contests, policies and procedures to be followed, and allocation of responsibilities, were discussed at meetings and during telephone conferences. *Id.*

MSHA also had a role in the invoicing process. Invoices for contest expenses were mailed to MSHA and logged into a register. *Id.*, at 7. The NEC discussed and approved contest expenses and major purchases for the 2009 and 2011 national coal mine rescue contests. *Id.* at 7–8. Once the NEC approved the expenses to be paid, a written direction was sent to NCVB to pay the invoices as authorized by the NEC. *Id.*, at 7. It is unclear as to who directed NCVB to pay the contest-related expenses authorized for payment by the NEC. The materials provided by MSHA identify the entity or individual as, alternatively: (1) “MSHA;” (2) unidentified “National Mine Rescue Key Officials,” and (3) the NEC contest director, who as stated above, is a MSHA employee. Request Letter, at 2, Response Letter, at 8; Response Letter, Attachment 2 (e-mails between NCVB Chief Financial Officer and MSHA employee); Response Letter, at 7. MSHA adds that the fees were not used to pay any of MSHA’s expenses or obligations. Request Letter, at 3, 4.

## DISCUSSION

At issue here is the nature of the \$326,308 remaining from the registration fees after the contest expenses had been paid—specifically, whether such funds constitute “money for the Government” within the meaning of the miscellaneous receipts statute, 31 U.S.C. § 3302(b), and as such, must be deposited in the general fund of the Treasury.

Under the miscellaneous receipts statute, “an official or agent of the Government receiving *money for the Government* from any source shall deposit the money in the Treasury as soon as practicable without deduction for any charge or claim.” 31 U.S.C. § 3302(b) (emphasis added). The primary purpose of the miscellaneous receipts statute is to ensure that Congress retains control of the public purse, and to protect Congress’s constitutional power to appropriate monies. B-322531, Mar. 30, 2012. The miscellaneous receipts statute is the primary basis against augmenting appropriations. B-247644, Apr. 9, 1993. When Congress makes an appropriation, it is establishing an authorized program level beyond which an agency cannot operate. *Id.* Allowing an agency to exceed this level with funds derived from some other source would usurp congressional prerogative and undercut the congressional power of the purse. *Id.*

Funds received constitute “money for the Government” if they are to be used to bear the expenses of the government or to pay the obligations of the United States. B-321729, Nov. 2, 2011; B-205901, May 19, 1982. The fact that a federal agency receives funds in the exercise of its lawful functions does not necessarily mean that the funds received constitute “money for the Government” within the meaning of the miscellaneous receipts statute. *Id.* A government agency may receive funds that do not constitute “money for the Government,” such as when the funds received are for the benefit of another. B-321729, at 4; B-200170, Oct. 10, 1980. In those instances, neither the miscellaneous receipts statute nor the Appropriations Clause is implicated. *Id.*; see, e.g., *United States v. Aiello*, 912 F.2d 4, 7 (2<sup>nd</sup> Cir. 1990) (“We do not believe that funds collected by the United States pursuant to a judgment of

the District Court are insulated by the Appropriations Clause from return to the rightful owner in the event of a reversal of that judgment simply because the funds are held in the U.S. Treasury during the course of the litigation.”).

Whether funds received constitute “money for the Government,” that is, funds to be used to bear the expenses of the government or to pay government obligations, is determined by analyzing all applicable facts. *Motor Coach Industries, Inc. v. Dole*, 725 F. 2d 958, 965 (4<sup>th</sup> Cir. 1984). No single factor transforms funds that are ostensibly private into “money for the Government.” *Id.* Factors to consider in determining whether funds constitute “money for the Government” include the purposes for which the funds were collected, the method by which the funds were collected, the public or private character of the entity spearheading the collection of the funds, the degree of control exercised by the public agency over disbursements, and other relevant details regarding the administration of the funds. *Id.*

In cases applying these factors, a key consideration involves whether the funds were collected to pay an agency’s costs of fulfilling its statutory requirements or to bear expenses for which the agency was liable. For example, in a case involving the Small Business Administration (SBA), fees were collected by an SBA contractor for services that SBA was expressly required by statute to perform and covered costs for which SBA would have been liable. B-300248, Jan. 15, 2004. In that case, we held that the fees constituted money for the government. *Id.* On the other hand, in a case involving the National Science Foundation (NSF), fees were collected by a private company for certain services pursuant to a cooperative agreement with the NSF where NSF could have performed the services, but was not statutorily required to do so. *Thomas v. Network Solutions, Inc.*, 176 F.3d 500, 510–12 (D.C. Cir. 1999), *cert. denied*, 528 U.S. 1115 (2000). In finding that the fees were not money for the government, the court specifically noted that there was no statutory mandate that NSF perform the services, and that the services were not transformed into a government service simply because NSF might have been able to perform them. *Id.*

The funds here were collected to pay the industry costs associated with the contests, and were not collected to fulfill any MSHA statutory requirement or MSHA expenses of participating in mine rescue contests. Further, there was no requirement that coal mine rescue teams and exhibiting vendors participate in the national coal mine rescue contests, and as such, the participation in the contests, and thus the payment of the fees, was voluntary. Although the registration fees and forms were initially mailed to MSHA for recording purposes, such fees were payable by check made out to the NCVB, and held in an NCVB account. Request Letter, at 2; Response Letter, at 5.

Further, while MSHA was involved in the national coal mine rescue contests, we conclude that the contests were not a government function or activity. Instead, MSHA participated in the contests through its authority “to promote health and safety education and training . . . through cooperative programs with . . . industry and safety associations.” 30 U.S.C. § 962. The NEC, which spearheaded the collection

of the registration fees, is not a public entity.<sup>4</sup> While we recognize that an MSHA employee served as the NEC contest director, the fact remains that the NEC was composed of 12 additional private sector employees, and, as represented by MSHA, reached determinations as a whole regarding the collection of the registration fees, as well as the disbursement of the fees collected in order to pay contest expenses.<sup>5</sup> Response Letter, at 7-8. In this regard, the fact that an agency performed a service or, as here, participated to some extent in the performance of a service through its employee's designation as the NEC contest director, does not transform what was a private activity into a government service. See *Network Solutions, Inc.*, 176 F.3d at 510-12.

The application of the considerations mentioned above to the facts at hand lead us to the conclusion that the \$326,308 at issue here, representing the balance of registration fees paid by coal mine rescue teams and exhibiting vendors for the 2009 and 2011 national coal mine rescue contests, is not "money for the Government" within the meaning of the miscellaneous receipts statute. Although MSHA participated in the national coal mine rescue contests, its voluntary involvement through its cooperative program with the mining industry does not change the character of the registration fees collected into "money for the Government." B-300248, at 8. The fees were not collected or used to bear the expenses of the government or to pay government obligations. Request Letter, at 3, 4; Response Letter, at 8.

## CONCLUSION

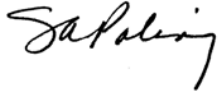
The registration fees collected from the coal mine rescue teams and exhibiting vendors for the 2009 and 2011 national coal mine rescue contests are not "money for the Government" within the meaning of the miscellaneous receipts statute. The registration fees were not collected to be used to bear the expenses of the government or to pay obligations of the United States. Rather, the registration fees were collected from the coal mine rescue teams and vendors to bear the mining industry's costs of attending and participating in the coal mine rescue contests. As such, the \$326,308 at issue here, representing the balance of the registration fees

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<sup>4</sup> Our conclusion that the NEC spearheaded the collection of the registration fees is based upon MSHA's representations that the NEC set the amounts to be collected from the mine rescue teams and exhibiting vendors, and that the NEC designated that the registration fees be paid by checks payable to the NCVB.

<sup>5</sup> The 12 private sector employees comprising the remainder of the NEC were the president of the National Mine Rescue Association, and one mine industry representative from each of the 11 MSHA districts. Response Letter, at 4.

remaining after the contest expenses had been paid, is not "money for the Government" subject to the requirements of the miscellaneous receipts statute.

A handwritten signature in black ink, appearing to read "S. Poling". The signature is written in a cursive, flowing style.

Susan A. Poling  
General Counsel