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Office of the General Counsel

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Lieutenant General Samuel E. Ebbesen, USA
Chairman, Per Diem, Travel and Transportation
Allowance Committee
Department of Defense
Hoffman Building 1,
2461 Eisenhower Avenue
Alexandria, Virginia 22331-1300

Dear General Ebbesen:

This responds to your letter dated March 1, 1996, in which you ask our opinion as to whether the statutes governing educational travel of student dependents of service members and civilian employees may be construed to authorize a change in the regulations to permit temporary storage or shipment of their unaccompanied baggage to an alternate location in lieu of shipment to and from an overseas location. In our opinion, the statutes involved would have to be amended to so permit.

Paragraph U5243-A5 of the Joint Federal Travel Regulations (JFTR), and paragraph C2306 of the Joint Travel Regulations (JTR), provide for shipment of unaccompanied baggage of student dependents of uniform members and Department of Defense (DOD) civilian employees who perform educational travel to and from an overseas residence. The JFTR provisions are authorized by 37 U.S.C. § 430 (1994) and the JTR provisions are based on section 285.1 of the State Department's Standardized Regulations (Government Civilians, Foreign Areas), which, in turn, is authorized by 5 U.S.C. § 5924(4)(B) (1994).

You point out that under the above provisions, which are based upon 64 Comp. Gen. 319 (1985), a student dependent may transport unaccompanied baggage containing the items the student needs at college. This is to insure that students with parents at overseas locations are not disadvantaged in comparison with students whose parents live in the United States and who can move the necessary items to and from school in vehicles and store the items at home during school breaks. However, it has been determined that occasionally by the time the items

shipped overseas arrive there, it is time for the student dependent to return to school. Also, the student dependent may not have a need for the items to be shipped back overseas because they duplicate items already available in the family's home. As a result, the government often incurs transportation expenses merely to satisfy the college requirement that the student vacate his dormitory room during the summer recess or other school break. You point out, however, that neither our decision nor the cited regulations provide for the temporary storage of these goods in lieu of shipping them to and from the overseas residence.

Section 430 of title 37, United States Code (1994), provides that a member of the uniformed services, who is accompanied by dependents while assigned to a permanent duty station outside the United States and who has an unmarried dependent under age 23 pursuing a secondary or undergraduate college education in the United States, may be paid a transportation allowance for each such dependent for one annual round trip, either as transportation in kind or reimbursement therefor. Similar language is contained in 5 U.S.C. § 5924(4)(B) (1994) governing civilian employees.

In decision 64 Comp. Gen. 319, supra, we held that Congress intended that service members are to have benefits similar to those granted to civilian employees in like circumstances. Since the focus of each statute is on reimbursement for "travel expenses" and since a significant amount of personal belongings over and above those normally contained in accompanied luggage would be required for an extensive period such as is involved in a student dependent's trip from overseas to the United States to attend college, it was our view that the transportation allowance concept should be construed so as to permit the adoption of regulations that would include the cost of transporting unaccompanied baggage in conjunction with that trip.

We note that section 285.1 of the Standardized Regulations (Government Civilians, Foreign Areas), issued by the Department of State for civilian employees, authorizes reimbursement for the transportation of unaccompanied baggage of the student dependent but specifically provides that "[n]o effects may be stored at Government expense." We have been advised by State Department officials that they do not consider the statute authorizing an educational travel allowance for student dependents of civilian employees as sufficiently broad to permit either storage of unaccompanied baggage in the United States or shipment of it to an alternate location in the United States, in lieu of return shipment to the overseas location.

In 64 Comp. Gen. 319, supra, we stated that Congress intended that the legislation (37 U.S.C. § 430) be applied to provide service members with benefits similar to those previously granted to civilian employees. Accordingly, since the two statutes are related and are to be construed consistently, it is our opinion that the DOD regulations may not be changed to authorize storage of a student dependent's

unaccompanied baggage or permit shipment of it to an alternate location in the United States, in the absence of specific legislative authority.

Sincerely yours,

Robert P. Murphy
General Counsel