



## UNITED STATES GENERAL ACCOUNTING OFFICE

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WASHINGTON, D.C. 20548

OFFICE OF GENERAL COUNSEL

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B-127474 (DEW)

FEB 14 1978

Mr. John Horan  
NO. CA Program Officer  
Region IX  
ACTION  
760 Market Street  
San Francisco, California 94102

Dear Mr. Horan:

This is in reply to your letter of November 28, 1977, requesting information as to when a Federal employee may be allowed per diem at the city in which his official duty station is located.

The following is not an official decision regarding per diem allowances, but our comments based on the information you provided. If, in a particular circumstance, you desire a decision of this Office, a request for decision should be submitted by the proper authority pursuant to 31 U.S.C. 74 and 82d (1970).

The Federal Travel Regulations (FTR) (FPMR 101-7, May 1973) provide in pertinent part:

"1-7.6. Per diem computation rules.

"a. No allowance at permanent duty station. Per diem in lieu of subsistence may not be allowed an employee either at his permanent duty station or at his place of abode from which he commutes daily to his official station. If a temporary assignment at a particular place is prolonged beyond a period of 30 days, travel vouchers submitted before return shall state the approximate period to be covered by the duty assignment at such place, or the approximate date of return to official headquarters, or both, as well as any other pertinent facts which will tend to show that duty at such place is of a temporary nature."

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"1-1.3 General rules.

"c. Definitions.

"(1) Official station and post of duty. Designated post of duty and official station mean the same. The limits of the official station will be the corporate limits of the city or town in which the officer or employee is stationed. If the employee is not stationed in an incorporated city or town, the official station is the reservation, station, or established area, or, in the case of large reservations, the established subdivision thereof having definite boundaries within which the designated post of duty is located."

We have ruled that in the absence of specific statutory authority neither per diem nor subsistence expenses may be allowed an employee within the corporate limits of the city or town in which he is officially stationed regardless of any unusual working conditions involved. See 53 Comp. Gen. 457 (1974), copy enclosed, and cases cited therein. The rule is the same regardless of the special demands of a temporary assignment. See Matter of \_\_\_\_\_, B-126090, November 8, 1976; Matter of \_\_\_\_\_, B-125923, November 8, 1976; Matter of \_\_\_\_\_, B-125885, November 8, 1976; Matter of National Credit Union Administration, B-120206, August 21, 1974, copies enclosed. This is also true despite the existence of temporary and severe working or commuting conditions during an employee's regular duties. See 42 Comp. Gen. 149 (1962); Matter of Department of Commerce, B-122985, August 23, 1977; Matter of Office of Education, B-164031(1).158, July 8, 1977, copies enclosed. It should also be noted that the advice or direction of a Federal official does not provide a basis for payment of per diem in cases where payment is unauthorized otherwise. See Department of Commerce, supra. Matter of General Services Administration, B-122586, December 17, 1974, copies enclosed.

An exception to the general rule prohibiting per diem at the city in which the employee's official duty station is located arises under exceptional circumstances when an individual, for whom a permanent

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change of station has been authorized, significantly changes his position, e.g., by shipping his household goods, to establish residence at his new official duty station, and then is ordered to temporary duty at the place of previous residence. See 54 Comp. Gen. 679<sup>v</sup> (1975), copy enclosed,, and cases cited therein.

A seeming exception exists when an employee departs for official travel outside of the corporate limits of his official duty station, but his travel beyond the limits of the official station is delayed because of unavoidable and extraordinary conditions, and return to his residence or place of departure is impossible. See 52 Comp. Gen. 135<sup>v</sup> (1972), copy enclosed, and cases cited therein. Payment for per diem for such periods of delay is based on the fact that the employee is in a travel status enroute to a temporary duty station with respect to which per diem is payable. In this regard, para. 1-7.6e of the FTR. provides for computing per diem allowances as follows:

"Beginning and ending of entitlement. For computing per diem allowances official travel begins at the time the traveler leaves his home, office, or other point of departure and ends when the traveler returns to his home, office, or other point at the conclusion of his trip. \* \* \*

Similarly, an employee in travel status may be paid the costs of lodging within the corporate limits of the city of his official duty station upon returning from temporary duty travel if due to the lateness of the hour and the nonavailability of suitable transportation he stays overnight in commercial lodgings and uses less expensive transportation to his residence or office the following morning. In such cases reimbursement for lodging may not exceed the expense of available and reasonable mode of travel which would be incurred otherwise. See Matter of B-182277<sup>v</sup> August 14, 1975, copy enclosed. However, reimbursement is for travel, and not for per diem per se.

We have also recognized that room and meal expenses incurred at the employee's permanent duty station may be paid where the agency determines that those costs are necessary training expenses incident to a program under the Government Employees Training Act, 5 U.S.C. 4101. Under the training authority, reimbursement is allowed for costs actually

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and necessarily incurred, and payment of per diem and subsistence expenses as such is not authorized. See B-146417, June 20, 1972, and, 39 Comp. Gen. 119 (1959), copies enclosed.

While your letter requested information about payment of per diem at the city in which an employee is officially stationed, you should be aware of a line of cases concerning payment of per diem within short distances of the corporate limits of the official station. We have held that whether or not performance beyond the corporate limits of the official station constitutes travel status depends on the facts of the case under consideration. The determination of per diem in such cases is within the discretionary authority of the employing agency, guided by the caution and direction contained in FTR para. 1-7.3(a), which requires each agency "to authorize only such per diem allowances as are justified by the circumstances affecting travel." See 53 Comp. Gen. 457 (1974); Matter of \_\_\_\_\_, B-189731, January 3, 1976, copies enclosed. The agency also should be mindful of its authority and responsibility to restrict payment of per diem upon a reasonable basis. Where an agency has exercised its discretion in a reasonable manner, this Office will not override the agency's determination. See \_\_\_\_\_, supra.

You also might be interested in our cases dealing with the related question of whether an agency may provide meals at its own expense or reimburse employees for meals taken at the official station. As a general rule, the Government may not furnish free food to civilian employees at the official station in addition to their regular compensation without specific statutory authority. See 42 Comp. Gen. 149 (1962). However, we have allowed payment of the cost of providing meals to Federal Protective Services Officers who were kept in readiness during an emergency situation which involved danger to human life and the destruction of Federal property, notwithstanding the lack of express statutory authority for such payment. See 53 Comp. Gen. 71 (1973), copy enclosed. We also permitted reimbursement of food expenditures authorized by the special agent in charge of a Federal Bureau of Investigation office during a severe blizzard which stranded employees at their office. Payment was based on emergency conditions which presented a danger to human life, and the necessity to maintain essential functions of the office during the emergency, towards which end the employees assisted. See Matter of \_\_\_\_\_, B-189003, July 5, 1977, copy enclosed. The

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determination of whether payment of such expenses would be proper in future cases depends on the facts and circumstances present in each case. See 42 Comp. Gen. 149 (1962); \_\_\_\_\_, supra.

We hope this information proves to be satisfactory.

Sincerely yours,

Robert L. Higgins

Robert L. Higgins  
Assistant General Counsel

Enclosures

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subordinate agencies

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