

DOCUMENT RESUME

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[Rental of Parking Space]. B-162021. July 6, 1977. 5 pp.

Decision re: Department of Housing and Urban Development; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Personnel Management and Compensation (300).
Contact: Office of the General Counsel: General Government Matters.

Budget Function: General Government: Central Personnel Management (805).

Organization Concerned: General Services Administration.

Authority: Federal Property and Administrative Services Act, as amended (40 U.S.C. 471 et seq.). Public Buildings Act, as amended (40 U.S.C. 601 et seq.). Independent Agencies Appropriation Act, 1977, title IV (P.L. 94-363; 90 Stat. 968; 90 Stat. 971). 40 U.S.C. 490; Executive Order 11512. 5 U.S.C. 5704 (Supp. V). 31 U.S.C. 74. 40 U.S.C. 486. 43 Comp. Gen. 131, 132. 47 Comp. Gen. 219. 51 Comp. Gen. 79. 55 Comp. Gen. 1278. 55 Comp. Gen. 1197. 49 Comp. Gen. 476. 41 C.F.R. 101-17. 101.6. 41 C.F.R. 101-20. 111.2. GSA Order PBS 7030.2C.

The Accounting Director, Office of Administration, Region IX, Department of Housing and Urban Development (HUD), requested an advance decision on the legality of HUD's paying a commercial vendor directly for monthly parking for staff-owned vehicles used for both personal and official business. HUD lacks specific statutory authorization to procure parking accommodations for vehicles of its employees independently of the General Services Administration (GSA). GSA may lease space on HUD's behalf, and HUD's appropriations can be used to reimburse GSA. An employee may be reimbursed by an agency for parking fees only on those days on which the vehicle is used for official travel. (Author/SC)

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DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

02886

FILE: B-162021

DATE: JUL 6 1977

MATTER OF: HUD—rental of parking space

- DIGEST:
1. Since HUD lacks specific statutory authorization, HUD may not itself procure parking accommodations for vehicles of its employees independently of GSA. However, if the Secretary determines and certifies in writing to the Administrator of General Services that parking space for HUD's employees is required in order to avoid significant impairment of HUD's operating efficiency, pursuant to GSA Order FBS 7030.2C, GSA may lease the space on HUD's behalf and HUD's appropriations can be used to reimburse GSA, as long as GSA has not exceeded the dollar limitation for rental of space set forth in the Independent Agencies Appropriation Act, 1977.
 2. 5 U.S.C. § 5704 (1970, Supp. V) authorizes an employee to be reimbursed by his agency for fees for the parking of his own vehicle in a commercial lot near his headquarters for those specific days on which the employee uses his vehicle for official travel if it is administratively determined that the use of the rented parking space by the employee is necessary because of official business and a factual determination of advantage to the Government is made. It does not provide independent authority for an agency to lease parking space for its employees or to reimburse employees for parking fees on days when no official travel took place.

The Accounting Director, Office of Administration, Region IX, Department of Housing and Urban Development (HUD), has requested an advance decision on the legality of HUD's paying a commercial vendor directly for monthly parking over an extended period of time for privately-owned vehicles of certain staff used for both personal and official business in lieu of the staff renting the parking space and being reimbursed by HUD on a pro rata basis for days in which the vehicles are used on official business. We have construed the request as having been made on behalf of the Secretary of HUD. See 31 U.S.C. § 74 (1970).

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The basic facts giving rise to the request, as disclosed in the documents accompanying the submission and in the report of the Acting Administrator, General Services Administration (GSA), are as follows: In August 1976, HUD submitted to GSA two Standard Form 81's (Request for Space) requesting parking space to accommodate two additional official vehicles for the HUD San Francisco Regional Office and six official vehicles for the HUD San Francisco Area Office. HUD had previously been assigned four official parking spaces for the regional office at 450 Golden Gate and none at its area office at One Embarcadero. GSA denied HUD's requests for additional parking space, because it had no GSA-controlled spaces available at either location, and could not lease additional space for HUD at the time of the request because of fiscal restraints. The direct procurement of space from a commercial vendor for selected employees was proposed in the submission as a possible alternative if we feel it is permissible.

The basic policy of the Government with respect to employee parking is that "ordinarily, it is the responsibility of the employee to furnish his own transportation to and from his place of employment or duty, and if he chooses to use his private automobile for such purpose, the Government is under no obligation to provide a parking space therefor." 43 Comp. Gen. 131, 132 (1963). Thus, unless provided for by law or regulation, the Government may not be required to provide parking facilities for its employees.

For the civilian agencies of the Government, Congress has generally placed the authority to purchase or lease space, including parking space, for housing those agencies and their employees in GSA. See generally, the Federal Property and Administrative Services Act, as amended, 40 U.S.C. § 471 et seq. (1970 and 1970, Supp. V) and the Public Buildings Act, as amended, 40 U.S.C. § 601 et seq. (1970 and 1970, Supp. V). Civilian agencies, such as HUD, are controlled by those Acts unless they have specific legislative approval to lease space or a delegation of authority from GSA to lease space. We are not aware of any statutory authority that HUD has to procure work space, including commercial parking space, directly for its employees. Nor has GSA delegated authority to HUD to lease commercial parking space for the privately-owned vehicles of HUD's employees. For Government-owned vehicles only, GSA has delegated certain leasing authority to the head of each agency, 41 C.F.R. § 101-17.101.6; however, as noted in HUD's submission to us, this authority may not be used to obtain space for privately-owned vehicles. Consequently, HUD may not itself rent parking spaces from a commercial vendor for the privately-owned vehicles of its employees, whether the vehicles are frequently used for official business or not.

The authority under which an employee may, in certain circumstances, be reimbursed by his agency for fees incurred for the parking of his own

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vehicle in a commercial lot near his headquarters is independent of the agency's authority to procure parking space. See 5 U.S.C. § 5704 (1970, Supp. V). The purpose of such reimbursement is to compensate the employee, as part of the mileage and related allowances, for an expense already incurred for a specific instance of travel on official business. It is limited to those days on which the employee uses his automobile for official travel and only then if it is administratively determined that the use of the rented parking space by the employee is necessary because of official business and a factual determination of advantage to the Government is made. 47 Comp. Gen. 211 (1967). See also, 51 Comp. Gen. 79 (1971). It is not applicable to circumstances unrelated to any specific instance of official travel. We might point out that when it makes payments under 5 U.S.C. § 5704, an agency is not leasing the parking spaces but rather is reimbursing its employees for expenses incurred in the course of their employment. See 55 Comp. Gen. 1278 (1976).

As noted above, the providing of space, including parking facilities, for Federal establishments is, in general, the responsibility of GSA, unless an agency has specific authority to procure such space independently or has received an appropriate delegation of authority from GSA. GSA can provide parking accommodations in the effective and efficient acquisition and utilization of federally-owned and leased space, giving material consideration to the efficient performance of the missions and programs of the executive agencies and with due regard for the maintenance and improvement of safe and healthful working conditions for employees. 40 U.S.C. §§ 486(a) and 490 (1970 and 1970, Supp. V); subsection 2(a)(1) of Ex. Order No. 11512, 40 U.S.C. § 490, note (1970). The order of priorities for allocating parking space among agencies for each facility under GSA control is set forth in 41 C.F.R. § 101-20.111.2 (July 1976) and paragraph 5 of GSA Order PBS 7030.2C (April 10, 1970). These sections give relatively high priority in the assignment of space to official parking which includes space for Government-owned, Government-leased, or privately-owned vehicles regularly used (on at least 12 workdays a month) on official business. GSA is directed to charge agencies for the space and services provided at rates approximating commercial rates. 40 U.S.C. § 490(j) (1970, Supp. V).

If an agency requires parking space for vehicles of its employees which GSA cannot satisfy from property under its control, GSA may lease the necessary parking facilities on behalf of the agency as long as GSA does not exceed the total dollar limitation established for rental of space set forth in the Independent Agencies Appropriation Act, 1977, Title IV, Pub. L. No. 94-363, approved July 14, 1976, 90 Stat. 968, 971.

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However, in the absence of circumstances not present in the instant situation, subparagraph 10(c) of GSA Order PBS 7030.2C provides that before GSA will exercise its authority to lease parking facilities, the head of the agency must determine and certify in writing to the Administrator of General Services that—

"* * * parking facilities for vehicles of employees used to provide transportation to and from their place of work is required in order to avoid significant impairment of the operating efficiency of that agency."

On the basis of that certification, GSA may lease the space specially and the agency can use its appropriated funds to reimburse GSA for the cost of the leased parking accommodations. 49 Comp. Gen. 476 (1970). See also, 55 Comp. Gen. 1197 (1976). Factors which may be considered by the head of the agency in making the requisite determination and certification are set forth in subparagraph 10(c) of GSA Order PBS 7030.2C.

In the instant case, the Acting Administrator of GSA has reported to us that:

"Since there were no General Services Administration-controlled spaces available at either location at the time of HUD's requests, leasing additional parking was the only possibility. However, this alternative was also precluded because of current fiscal constraints on GSA's rental of space which have forced us to establish priorities of actions to be completed during Fiscal Year 1977. These priorities were established on a nationwide basis in coordination with the agencies. The subject requests for parking were not within those priority projects designated by the HUD Washington office and, thus, were denied by our regional office."

In view of GSA's reasons for denying the parking space requests, a change in HUD priorities may be necessary to obtain these parking spaces. The certification of need "to avoid significant impairment of the operating efficiency" of HUD in accordance with subparagraph 10(c) of GSA Order PBS 7030.2C, supra, is apparently a necessary part of this reordering of priorities.

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However, we might further note that the Acting Administrator of GSA has also reported the following to us:

"* * * in March 1971, the Office of Management and Budget (OMB) asked GSA to withhold further action to lease parking for employees pending the issuance of a Government-wide policy by OMB. Agency requests for exemption from this restriction were handled by OMB in a case-by-case basis.

"In April 1972, OMB circulated for agency comments a draft circular calling for establishment of commercial rates for all employee parking. Because of strong agency opposition, this policy was never adopted.

"In August 1973, OMB gave GSA authority to administer the moratorium on leased parking, pending issuance of a Government-wide policy, and to take appropriate action on requests for waiver. Waivers may be requested by the head of an agency on the certification that denial of the parking would impair the agency's mission. Responsibility for decisions on waiver requests currently rests with the Commissioner of the Public Buildings Service. To date, only a limited number of waivers have been granted."

As we understand it, then, GSA would be quite reluctant to approve a reordering of priorities which involve leasing space for privately-owned vehicles.

In conclusion, it is our view that HUD does not have specific statutory authority which would allow it to lease spaces independently for the privately-owned vehicles of its employees, including those employees who use their automobiles frequently in the course of business. Nor does HUD have an appropriate delegation of authority from GSA to lease space for such vehicles. Therefore, any spaces HUD desires would have to be leased by GSA. Since in the instant case it appears that, due to budgetary and other constraints, GSA is unable or unwilling to provide more such space for HUD's San Francisco Regional and Area Offices, we are unaware of any basis by which those HUD offices can obtain the parking spaces they desire.

R.F. KELLER

Deputy Comptroller General
of the United States