

DECISION

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

61395

FILE: B-185496

DATE: AUG 26 1976 98630

MATTER OF: Arnold Belkin - Detail to executive agency
under Intergovernmental Personnel Act

- DIGEST:
1. State employee detailed to U.S. Department of Labor under Intergovernmental Personnel Act was authorized per diem by Assignment Agreement for duration of detail. In prior decisions this Office has ruled that travel expenses for State or local government employees detailed to an executive agency under 5 U.S.C. § 3375 must be paid in accordance with usual rules which apply to Federal employees traveling on training assignments or on official business. Since the employee's duty station prior to and during detail was in Boston, Massachusetts, he may not be allowed per diem while stationed at his headquarters.
 2. State employee detailed under Intergovernmental Personnel Act to executive agency was paid per diem authorized by Assignment Agreement while not traveling, purportedly to bring his salary to level comparable with Federal employees. 5 U.S.C. § 3374(c)(1), states that State or local government employee detailed to executive agency "is not entitled to pay from the agency." Thus, that portion of Assignment Agreement purporting to grant per diem for purpose of supplemental salary was without legal effect.

This action is in response to a letter dated December 1, 1975, from Alfred M. Zuck, Comptroller of the U.S. Department of Labor, requesting our decision concerning the propriety of certain per diem payments made to Mr. Arnold Belkin, an employee of the Commonwealth of Massachusetts detailed to the Department of Labor under an agreement entered into pursuant to the Intergovernmental Personnel Act (IPA), (5 U.S.C. § 3371, et seq.).

Mr. Belkin was an employee of the Division of Employment Security, Commonwealth of Massachusetts, with a duty station in Boston, Massachusetts. On August 28, 1972, the Division of Employment Security entered into an agreement with the Manpower Administration of the U.S. Department of Labor providing for the assignment of Mr. Belkin to the Boston office of the Manpower Administration by means of a detail from August 30, 1972, to August 29, 1974. The agreement provided that the Manpower Administration would pay Mr. Belkin \$9.67 per diem, or \$2,514 annually, during the period of his detail. It further provided for a per diem allowance of \$25 while in travel status. The State agency agreed to continue to pay the employee's full base salary plus fringe benefits during the assignment. Apparently the provision for \$9.67 per diem while in a work status and not traveling was authorized to bring Mr. Belkin's salary up to a level comparable with that of Federal employees.

Mr. Zuck questions the authorization of per diem as follows:

"We see no basis for granting the allowance inasmuch as Mr. Belkin did not change his place of residence after employment with the Department. Also, we are unaware of any amendments to the regulatory directives whereby supplemental salary payments could be sanctioned from an agency's appropriation."

Authority for an executive agency to pay the travel expenses for a Federal, State, or local government employee assigned under the IPA is provided by 5 U.S.C. § 3375. Section 3375(a)(1) provides:

"(a) Appropriations of an executive agency are available to pay, or reimburse, a Federal or State or local government employee in accordance with--

"(1) subchapter I of chapter 57 of this title, for the expenses of--

"(A) travel, including a per diem allowance, to and from the assignment location;

"(B) a per diem allowance at the assignment location during the period of the assignment; and

"(C) travel, including a per diem allowance, while traveling on official business away from his designated post of duty during the assignment when the head of the executive agency considers the travel in the interest of the United States * * *."

In a previous decision, 53 Comp. Gen. 81 (1973), involving travel incident to IPA assignments, we addressed the legislative history of section 3375, as follows:

"The legislative history to the IPA indicates that Congress intended the language in section 3375 to be broad enough to provide for the needs of Federal, State, and local employees en route to, from, and during their assignments in either the Federal Government or State and local governments. H. Rept. No. 91-1733, 91st Cong., 2d Sess. 20. However, it would appear that these needs can be met without the necessity of applying a different rule for employees traveling on IPA assignments from that which applies to employees traveling on training assignments or on official business generally. Supportive of this position is the fact that under section 3375 various allowances are authorized to be paid under the provisions of chapter 57 of title 5, U.S. Code. In general under those provisions an employee is entitled to per diem only when in a travel status and when the employee arrives at his new permanent duty station the travel status ends as does his entitlement to per diem." (Emphasis added.)

In our decision B-178759, March 12, 1975, this Office applied the provisions of chapter 57, title 5, United States Code, and the implementing regulations, the Federal Travel Regulations (FPMR 101-7, May 1973), in permitting travel expenses including a per diem allowance and mileage, for a State employee stationed in Baltimore, Maryland, who was assigned under the IPA to an executive agency in Bethesda, Maryland, a distance from Baltimore of approximately 50 miles. The employee's IPA detail from his state position in Baltimore to the executive agency position in Bethesda was likened to a temporary duty assignment for the purpose of determining his entitlement to travel expenses.

In the instant case, however, Mr. Belkin's permanent duty station while employed by the State agency prior to his IPA assignment was at the Charles F. Hurley Building in Boston and he was detailed to a position with the Federal agency at the John F. Kennedy Building in Boston, only a few blocks away. Thus, Mr. Belkin's IPA assignment cannot be likened to a temporary duty assignment away from his permanent duty station. Payment of per diem at an employee's permanent duty station is expressly prohibited by FTR paragraph 1-7.6a (May 1973). Pursuant to that provision, this Office has consistently held that subsistence of civilian employees at their permanent duty station is a personal expense which, in the absence of specific statutory authority, may not be provided at Government expense.

Thus, that portion of the Assignment Agreement entered into between the Department of Labor and the Commonwealth of Massachusetts which purports to grant Mr. Belkin a per diem of \$9.67 while detailed in Boston and not traveling is without legal effect to bind the Federal Government to make such per diem payments in contravention of the Federal Travel Regulations.

Finally, we are unaware of any authority under the IPA or any other law which would permit an executive agency to make supplemental salary payments to a state or local government employee detailed to an executive agency. Section 3374(c)(1) states that:

"(c) During the period of assignment, a State or local government employee on detail to an executive agency--

"(1) is not entitled to pay from the agency * * *."

We view that section as prohibiting an executive agency from supplementing the salary of a State or local government employee by making direct salary payments to him.

Therefore, since Mr. Belkin was not entitled to \$9.67 per diem while not traveling under the travel expense provisions contained in section 3375, and since supplemental salary payments may not be made to State or local government employees detailed

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to an executive agency, such per diem paid Mr. Belkin pursuant to the Assignment Agreement was not proper.

Acting

R.F.KELLER
Comptroller General
of the United States