

MICHAEL VOLPE  
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**DECISION**



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

**FILE:** D-186090

**DATE:** November 8, 1976

**MATTER OF:** Thomas R. Smith -- Claim for per diem  
near official duty station

**DIGEST:** Employee stationed at JFK Airport, New York, is detailed for 10 days temporary duty with free lodging, but he incurs subsistence expenses in Manhattan, New York City, while serving on protective mission. However, absent specific statutory authority, employee is not entitled to subsistence or per diem at official duty station regardless of any unusual working conditions.

This action is in response to the request for an advance decision from Mr. Duncan Calcote, an authorized certifying officer of the United States Secret Service, Department of the Treasury, reference 300.0, regarding payment of the travel voucher of Mr. Thomas R. Smith, an employee of the U.S. Customs Service, for a reduced per diem for a period of temporary duty performed near his official duty station.

The record indicates that Mr. Smith, a Special Agent with the U.S. Customs Service assigned to John F. Kennedy Airport in New York, was detailed to the U.S. Secret Service from October 5 through October 15, 1975, on a protective mission. The submission from the authorized certifying officer states that while on such a mission, an agent is required to remain in close proximity of the protectee, even during his off-duty hours. Mr. Smith has claimed per diem for subsistence expenses incurred in Manhattan, New York City, where he was granted free lodging, even though his official duty station is JFK Airport and his residence is located on Long Island, New York. The employee states that all Special Agents from Long Island were requested to remain in New York City during the mission. The authorized certifying officer questions whether the employee is entitled to per diem under such circumstances.

Our Office has consistently held that absent specific statutory authority, an employee may not be paid per diem or actual subsistence at his headquarters or place of abode from which he commutes daily to his official duty station regardless of any unusual working conditions involved. See Federal Travel Regulations (FPMR 101-7) para. 1-7.6, (May 1973); and B-182586, December 17, 1974 and cases cited therein.

B-186090

In the present case, the record indicates that in February 1974, the U.S. Customs Office separated JFK Airport from the New York City office and established a separate duty post including Long Island and the extreme eastern section of Queens, New York, which includes JFK Airport. However, the provisions of para. 1-1.3c(1) of the Federal Travel Regulations clearly state that for the purposes of entitlement to travel allowances the corporate limits of a city or town determines an employee's official duty station. Thus, since JFK Airport is within the corporate limits of New York City, Mr. Smith is claiming per diem at his official duty station, and we know of no authority upon which to allow such a claim. We note that under Section 102 of Public Law 91-74, 83 Stat. 118, the Secretary of the Treasury may approve reimbursement of subsistence expenses for agents on protective missions without regard to the rates prescribed in 5 U.S.C. 5702 (Supp. IV, 1974) and established by the Administrator of General Services. This express statutory authority, however, pertains only to the rates of per diem and not to the general entitlement of the agents to travel expenses under 5 U.S.C. 5702 and the Federal Travel Regulations.

Accordingly, the voucher may not be certified for payment.

  
Acting Comptroller General  
of the United States