

DOCUMENT RESUME

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Department of Defense Military Pay and Allowance Committee  
Action No. 529. B-187229. August 1, 1977. 6 pp.

Decision re: Acting Assistant Secretary (Comptroller),  
Department of Defense; by Robert P. Keller, Deputy Comptroller  
General.

Issue Area: Personnel Management and Compensation: Compensation.  
(305).

Contact: Office of the General Counsel: Military Personnel.

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

Authority: 59 Stat. 316. 37 U.S.C. 403. 37 U.S.C 403(b). 37  
U.S.C. 403(e). Executive Order 11157, part IV, sec. 403. 31  
Comp. Gen. 603. 55 Comp. Gen. 130. 39 Comp. Gen. 369. 25  
Comp. Gen. 798. 25 Comp. Gen. 800. 46 Comp. Gen. 869. 46  
Comp. Gen. 872. 45 Comp. Gen. 347. 48 Comp. Gen. 40. 34  
Comp. Gen. 515. 44 Comp. Gen. 626. 44 Comp. Gen. 632.  
B-182205 (1975).

A decision was requested concerning payment of basic allowance for quarters (BAQ) to armed services members occupying temporary lodging facilities operated by nonappropriated fund activities. A member may occupy such quarters up to 30 days at permanent duty station incident to transfer without loss of BAQ or for a longer period if substantial "rent" is charged to cover operating and mortgage costs, etc. Charge for housekeeping service does not make these "rental" quarters so as to allow occupancy for longer than 30 days without loss of BAQ.  
(Author/DJM)

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**DECISION**



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

J. Lawrence  
MIL. Pers.

**FILE: B-187229**

**DATE: August 1, 1977**

**MATTER OF: DOD Military Pay and Allowance Committee  
Action No. 529**

- DIGEST:**
1. Under 37 U. S. C. 403 (1970) and applicable regulations a member of a uniformed service may occupy Government "public quarters" for not in excess of 30 days at his permanent duty station incident to a permanent change of station without loss of basic allowance for quarters (BAQ). Payment of a service charge for linen and housekeeping services does not make such quarters "rental" quarters within the meaning of 37 U. S. C. 403(e) so as to allow occupancy for longer than 30 days without loss of BAQ.
  2. A member of a uniformed service may occupy temporary lodging facilities in excess of 30 days without loss of basic allowance for quarters if a substantial "rent" for such quarters is charged to cover direct operating costs, loan repayment, repairs, etc., and which quarters are acquired and operated with nonappropriated funds.

This action is in response to a letter dated August 13, 1976, from the Acting Assistant Secretary of Defense (Comptroller) requesting an advance decision concerning payment of basic allowance for quarters to members of the uniformed services occupying temporary lodging facilities operated by nonappropriated fund activities of the Government. The specific question and discussion are presented in Department of Defense Military Pay and Allowance Committee Action No. 529 which was enclosed with the Acting Assistant Secretary's letter.

The question presented is as follows:

"May temporary lodging facilities (TLF's) which are constructed or designated for occupancy with charge and operated by nonappropriated funds on a self-sustaining basis be occupied for periods in excess of 30 days by members who are entitled to Basic Allowance for Quarters (BAQ) and who are in a permanent change of station (PCS) status without termination of their BAQ entitlement?"

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The statutory authority for the payment of BAQ is 37 U.S.C. 403 (1970 and Supp. IV, 1974), subsection (a) of which provides that except as otherwise provided by law, a member of a uniformed service who is entitled to basic pay is entitled to BAQ. However, subsection (b) provides generally that, except as otherwise provided by law, a member who is assigned to quarters of the United States or a housing facility under the jurisdiction of a uniformed service is not entitled to BAQ. Subsection (e) provides in pertinent part as follows concerning occupancy on a rental basis of housing facilities under the jurisdiction of the United States.

"(e) Notwithstanding any other law (including those restricting the occupancy of housing facilities under the jurisdiction of a department or agency of the United States by members, and their dependents, of the armed forces above specified grades, or by members, and their dependents, of the Environmental Science Services Administration and the Public Health Service), a member of a uniformed service, and his dependents, may be accepted as tenants in, and may occupy on a rental basis, any of those housing facilities, other than public quarters constructed or designated for assignment to and occupancy without charge by such a member, and his dependents, if any. Such a member may not, because of his occupancy under this subsection, be deprived of any money allowance to which he is otherwise entitled for the rental of quarters."

Subsection (j) provides that the President may prescribe regulations for the administration of section 403.

The Committee Action discussion indicates that the question presented requires a determination of whether the fee charged by a TLF constructed or designated for occupancy with charge and operated by a nonappropriated fund instrumentality on a self-sustaining basis is a "rental" fee within the meaning of 37 U.S.C. 403(e) or a "service" fee. It is pointed out that section 403 of Part IV of Executive Order 11157, June 22, 1964, which implements 37 U.S.C. 403 provides in pertinent part:

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"Any quarters or housing facilities under the jurisdiction of any of the uniformed services in fact occupied without payment of rental charges \* \* \* shall be deemed to have been assigned to such member as appropriate and adequate quarters, and no basic allowance for quarters shall accrue to such member under such circumstances unless the occupancy \* \* \* occurs while such member is in a duty or leave status incident to a change of permanent station and is of a temporary nature under standards prescribed by regulations issued by the Secretary of Defense \* \* \*"

It is also indicated that Department of Defense (DOD) Directive 4165.55, December 1, 1972, which defines and establishes policy and responsibility for TLF's provides in part in paragraph IV.B, as follows:

"1. TLFs provide short term housing accommodations for members of the Military Services and/or their dependents who are temporarily without permanent housing due to permanent change of station orders (PCS) \* \* \*

\* \* \* \* \*

"3. Occupancy of TLFs does not preclude BAQ payment to a member otherwise eligible provided (a) the occupancy occurs while such member is in a duty status or leave status or leave status incident to a change of permanent station and does not exceed 30 days \* \* \*

"4. A service/rental fee must be paid by occupants of TLFs. \* \* \*" (Emphasis Added).

That directive also states that the normal maximum period of occupation of TLF's is 30 days for personnel affected by PCS orders, except that in cases of personal hardships the local commander may grant an extension beyond 30 days on a case-by-case basis. It indicates that TLF's are leased, constructed or otherwise acquired in some cases with nonappropriated funds and income derived from their operation, and in other cases with appropriated funds. Also, apparently the operation and maintenance of TLF's is funded in varying ways by use of nonappropriated funds, appropriated funds, and income derived from their operations. See also DOD Directive 1330.2, January 19, 1953, concerning funding of such activities.

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The Committee Action notes that subparagraph IV.B.4 of DOD Directive 4155.55 recognizes a distinction between "service" and "rental" fees charged by TLF's, apparently because the term TLF loosely includes various types of facilities, some acquired or funded from appropriated funds and some from nonappropriated funds. It is stated that TLF's supported with appropriated funds charge a service fee designed to cover the cost of direct operations, with other appropriated funds being available for utilities, maintenance and repairs. For this reason the fee is relatively small. TLF's supported by nonappropriated funds charge a rental fee that is structured to cover not only the direct cost of operations but also loan repayment, maintenance, repair and capital replacement.

The Committee Action states that notwithstanding this distinction, the provisions of Directive 4165.55 treat both types of TLF's alike with regard to BAQ entitlement. It is pointed out, however, that the Department of Defense Military Pay and Allowances Entitlements Manual (DODPM) in its Glossary of Terms includes a definition of "Government quarters" which distinguishes, for BAQ purposes, TLF's supported by nonappropriated funds. The DODPM defines Government quarters to include:

"\* \*\* transient facilities such as guest houses, hostess houses, and hotel-type accommodations. (Accommodations built and operated by nonappropriated fund activities are considered to be rental quarters for the purpose of BAQ eligibility.) Payment of service charges for laundering of linens, janitorial services, etc., has no effect on whether the facilities are considered Government quarters or housing facilities; \* \* \*"

The Committee Action indicates that our decisions 31 Comp. Gen. 603 (1952) and B-182205, August 6, 1975 (55 Comp Gen. 130), appear to support the distinction drawn in the DODPM's definition of Government quarters, although apparently some doubt is cast on the matter by the holding in 39 Comp. Gen. 369 (1959).

The provisions of 37 U. S. C. 403(e), supra, are derived from the act of July 2, 1945, ch. 227, 59 Stat. 316. The purpose of that statute was to permit military personnel and their dependents to

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occupy on a rental basis housing facilities, including those under the jurisdiction of the Armed Forces, other than "public quarters" constructed or designated for assignment to or occupancy without charge by such personnel and their dependents, without loss of the otherwise proper money allowance in lieu of quarters (now BAQ). However, aside from such provisions, it has long been the practice to provide quarters for military personnel without charge as an essential part of military life. See 25 Comp. Gen. 798, 800 (1946). As a general rule when such "public quarters" are occupied by a member and his dependents there is no entitlement to BAQ. See 37 U.S.C. 403(b); 25 Comp. Gen. 798, supra; and 46 Comp. Gen. 869, 872 (1967).

However, we have approved the issuance of regulations authorizing members to occupy temporarily transient type Government quarters for not more than 30 days at their permanent duty stations incident to a PCS without loss of BAQ. Apparently, the basis for such approval was that the temporary occupancy of transient quarters could be considered as not an assignment of quarters within the meaning of 37 U.S.C. 403(b). See 45 Comp. Gen. 347 (1965), 48 Comp. Gen. 40 (1968), and compare 34 Comp. Gen. 515 (1955). In accordance with those decisions the applicable provisions of the DODPM now authorize BAQ for members who occupy transient Government quarters for not to exceed 30 days incident to a PCS. See DODPM, Table 3-2-3, Rule 15, and Table 3-2-5, Rule 6. In that regard those provisions are in accord with DOD Directive 4165.55, supra.

We have also held that payment of a nominal service charge to cover linen and housekeeping services does not constitute a rental for the us. and occupancy of free Government quarters since such a charge is not based on the reasonable value of the quarters occupied. 44 Comp. Gen. 626, 632 (1965).

In accordance with the foregoing, in 39 Comp. Gen. 369, to which the Committee Action refers, we held that an Army officer who occupied rooms in the Fort Ritchie, Maryland Open Mess (Officer's Club) for which he paid a small daily charge which was called "rent" was not entitled to BAQ. It was noted that the quarters were located in a building which was located on and a part of Fort Ritchie which had been purchased with appropriated funds and that the charge for such quarters was intended to defray costs incurred by the Officer's Club for maintenance of the quarters. It was also noted that charges

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for Government guest houses, even though designated as rent, have been regarded as service charges, and such quarters are not considered rental quarters. In the circumstances, it was held that the officer had occupied public quarters not rental quarters and that BAQ was therefore not payable.

In 31 Comp. Gen. 603, however, to which the Committee Action also refers, it was held that a member who occupies on a rental basis a motel-type housing unit constructed and operated at Fort Bragg, North Carolina, with nonappropriated funds of the Fort Bragg Officers' Mess would not forfeit his allowance for quarters. It was indicated that such quarters should not be considered public quarters constructed or designated for occupancy without charge. Also, as the Committee Action indicates, a somewhat similar conclusion was reached in 55 Comp. Gen. 130, in which it was held that certain Reserve members who incur lodging expenses at nonappropriated fund activities are entitled to per diem.

Thus, under our decisions and the applicable regulations and definitions contained in the DODPM, a member who occupies transient Government quarters for 30 days or less is entitled to BAQ for such period. If he occupies such quarters in excess of 30 days, BAQ entitlement is lost for the period in excess of 30 days. The payment of a nominal service charge for such things as linen and housekeeping services does not make such Government quarters rental housing within the meaning of 37 U. S. C. 403(b). However, the occupancy of quarters such as those discussed in 31 Comp. Gen. 603, supra, acquired and operated with nonappropriated funds which charge a substantial "rental" fee designed to cover direct costs, loan, repayments, capital replacement, etc., is not considered assignment to public quarters within the meaning of 37 U. S. C. 403(b) for which entitlement to BAQ is lost. The period of occupancy of such quarters would have no bearing on the matter. On that basis, the question is answered in the affirmative. As the Committee Action indicates, the provisions of DOD Directive 4165.55 are not entirely clear in this regard; however, the applicable provisions of the DODPM under which BAQ is paid, appear to be in accord with these views.

*R. F. Kisten*  
Deputy Comptroller General  
of the United States