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DECISION



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

FILE: B-187733

DATE: October 27, 1977

**MATTER OF: United States Immigration and Naturalization
Service - Payment for Police Protective Services**

DIGEST: Immigration and Naturalization Service (INS) may pay for police protective services provided by city for special event sponsored by INS, where use of and payment for police protective service is a condition of rental of building controlled by city. Whether INS may pay for police detail for separate ceremony at privately-controlled building depends on whether charge would have been assessed against private citizen for same services. If INS determines administratively that it would, then charge may be paid.

This is in response to a request for an advance decision from an authorized certifying officer, United States Department of Justice, INS, as to the legality of paying for security services furnished by the Boston Police Department.

On July 5 and September 17, 1976, "Bicentennial Final Hearings" were held at the Old North Church and Faneuil Hall, historic sites in Boston, Massachusetts. These hearings were for the purpose of admitting aliens to citizenship but were evidently also intended to commemorate the Bicentennial. According to a memorandum from the District Director, INS, the Old North Church--

"* * * is located in an ancient, congested area of narrow streets with crowd-control and possible security problems. The Boston Police Department has suggested the use of two patrolmen for security purposes at a rate of \$36.00 per man. * * *"

Also according to the memorandum, the Boston Real Property Department, which controls the use of Faneuil Hall, stated that a Boston Police Detail must be utilized as a condition of renting the premises.

The Boston Police Department has submitted invoices to INS for \$36 and \$108 for these services, characterizing them as "Private Detail Service." The certifying officer questions the propriety of payment because of our decisions in 26 Comp. Gen. 382 (1946) and 30 Comp. Gen. 376 (1951).

This Office has consistently held that a charge against appropriated funds for firefighting services rendered by a municipality is generally precluded where there is no legal obligation upon the United States to pay for such services. This is based upon the premise that a municipality is required by law to render fire protection or firefighting services to property within its limits,

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without cost to the property owners. Such a duty extends to protecting the property of the United States located within such limits and, consequently, since the Government is legally entitled to fire protection or firefighting services there is no authority to charge appropriated funds with the cost thereof. See 24 Comp. Gen. 599 (1945); 26 id. 382 (1946); 53 id. 410 (1973).

The rationale of the decisions cited above concerning firefighting services applies to police protection. See 49 Comp. Gen. 284, 286-87 (1969). The Boston Police Department could not levy direct charges on the INS for ordinary police protective services provided within its area of jurisdiction. Id. at 287. A local Government in providing these services is performing a governmental function, for which payment by a Federal agency, absent statutory authority, is not permissible.

The cases involving police and fire protection refer to ordinary services provided on an everyday basis. It is clear that a direct charge could not be assessed against the Federal Government for services rendered by the city fire department in extinguishing a fire in a Federal facility within the city limits. Similarly if a crime were being committed on Federal property, the city police would not be expected to stand by and observe a crime in progress. These situations involve ordinary protective services, governmental in nature, for which payment by a Federal agency is not permissible. However, where a charge is imposed for municipal services, measured by the value of the service provided, and all users of the service are liable for payment of the charge, there is no objection to payment by the United States on a quantum meruit basis. 29 Comp. Gen. 120 (1949); 34 id. 398 (1955).

In this case, therefore, payment may not lawfully be made if the services provided by the Police Department of the city of Boston are among those normal police services which are financed by tax revenues and which are required to be provided to all residents of the city. If, on the other hand, the services in question are not among those which the city is required to provide, and the charge does not single out the United States but would be imposed on anyone, on a quantum meruit basis, for like services, then the invoices may be paid.

Applying these rules to the case at hand, the invoice for services at Faneuil Hall may be paid. In the case of Faneuil Hall, the District Director's memorandum states that the controlling local agency, the Boston Real Property Department, made it a condition of rental of Faneuil Hall "* * * that a Boston Police Detail must be utilized * * *."

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Assuming that the same condition would be required of any renter, and that rental of the building was an authorized activity of INS, payment for the police detail may be considered to be authorized as, in effect, a part of the necessary expense of the rental.

With respect to the Old North Church, the use of a security detail was not a condition for use of the building. Because of possible crowd-control and security problems at that location, INS evidently decided to retain two patrolmen for security purposes. The invoice, as noted above, is captioned "Private Detail Service of the Boston Police Department," suggesting at least that the service provided may be different in character from the ordinary police services which the city has a duty to provide. However, we are unable to determine from the record before us whether or not that is the case. Based on the principles set forth above, the voucher for services at the Old North Church may be paid if INS determines administratively that the same charge would have been imposed on any citizen in like circumstances.

Acting Comptroller General
of the United States