DECISION

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

FILE: B-190935 DATE: January 25, 1979

MATTER OF: Dr. Ralph E. Gaskins, Jr. - Armed Forces Health Professions Scholarship Program

DIGEST: ~~Doctor~~ Phys participating in Armed Forces Health Profession Scholarship Program received medical school assistance, including cost of tuition and books, and ~~$400 in~~ monthly stipends in return for active service obligation upon graduation. ~~He~~ applied for and was granted conscientious objector discharge ~~after graduation before~~ fulfilling any of service obligation. ~~Doctor~~ Phys must reimburse Navy for full amount of financial assistance he received, ~~including monthly stipend~~. Monthly stipend payments are included in ~~term "other educational~~ costs" that he agreed to repay when he was accepted into the program, if he did not fulfill his service commitment.

This decision is in response to a request from counsel for Ralph E. Gaskins, Jr., M.D., that our Office review the legal basis of the claim which the Department of the Navy has made against Dr. Gaskins for $17,137.08, arising out of Dr. Gaskins' participation in the Armed Forces Health Professions Scholarship Program, 10 U.S.C. §§ 2120-2127 (1976). We were also requested by Dr. Gaskins' attorney to accept a formal offer to compromise the Navy's claim against Dr. Gaskins for $3,797.08.

Based on the information provided to us in the claimant's submission, which included copies of several pieces of correspondence between the Department of the Navy and Dr. Gaskins' attorney, together with the information provided to us by the Department of the Navy, consisting primarily of a copy of a letter from the Office of the Judge Advocate General of the Navy to the Department of Justice, the facts concerning this matter appear to be as follows.

In 1972, Dr. Gaskins applied for admission into the Armed Forces Health Professions Scholarship Program (AFHPSP) and was accepted. Pursuant to Pub. L. No. 92-426, approved September 21, 1972, which established the AFHPSP, the Department of the Navy (as well as other military departments) was authorized to provide "scholarship" assistance to participants in the program, including the cost of tuition, books, and other

miscellaneous fees, in addition to a $400 monthly stipend. After Dr. Gaskins graduated from medical school, having received 4 years of scholarship assistance totaling $17,137.08, including payments of $3,797.08 for tuition and books and $13,340 in monthly stipend payments, he applied, on June 19, 1976, for classification and discharge as a conscientious objector. By letter dated September 15, 1977, the Secretary of the Navy granted Dr. Gaskins' request for a conscientious objector discharge, and asserted a claim against Dr. Gaskins for $17,137.08.

In response to the Navy's claim, Dr. Gaskins, through his attorney, maintained that the only amount which was recoverable under the agreement that he had signed was $3,797.08, representing "tuition, books, and miscellaneous." It was further stated on behalf of Dr. Gaskins that:

> "The 'stipend' which was paid Dr. Gaskins was considered to be 'salary' by the Internal Revenue Service and was taxed as such until a later act of Congress specifically exempted it from Federal taxes for the years of his involvement."

By letter dated November 17, 1977, from the Office of its Judge Advocate General, the Navy once again asserted its claim against Dr. Gaskins for the full amount of the scholarship assistance he received, including the $13,340 in monthly stipend payments. The Navy based its claim for the full amount primarily on paragraph 4 of the scholarship program application that Dr. Gaskins had signed and submitted to the Navy, which states as follows:

> "I understand and agree to reimburse the Government for all tuition and other educational costs which it incurred, or any portion thereof, as determined by the Secretary of the Navy if I fail to complete my obligation under the contract as a result of action not initiated by the Government. The Secretary of the Navy may waive this requirement when he determines that such waiver is in the best interest of the Government."

In support of its position that the stipend came within the meaning of the term "other educational costs which it [the Government] incurred," the Navy relied on section 4(a) of Pub. L. No. 93-483, 88 Stat. 1458, approved October 26, 1974, which provides:

> "Any amount received from appropriated funds as a scholarship, including the value of

> contributed services and accommodations, by a member of the uniformed service who is receiving training under the Armed Forced Health Professions Scholarship Program * * * from an educational institution (as defined in Section 151(e)(4) of the Internal Revenue Code of 1954) shall be treated as a scholarship under section 117 of such Code, whether that member is receiving training while on active duty or in an off-duty or inactive status, and without regard to whether a period of active duty is required of the member as a condition of receiving those payments."

This provision, as originally enacted, only applied to amounts received during 1973, 1974, and 1975. It was amended by section 2130 of the Tax Reform Act of 1976 (Pub. L. No. 94-455, approved October 4, 1976), to apply to amounts received during 1976 through 1979 as well. It remains the position of the Navy that:

> "Since the stipend received by Dr. Gaskins was considered a scholarship under the Internal Revenue Code and, therefore, was not taxable, it cannot be considered a salary, and clearly comes within the meaning of 'other educational costs' under the scholarship agreement."

By letter dated November 28, 1977, Dr. Gaskins' attorney once again disputed the determination by the Navy that the monthly stipend payments received by Dr. Gaskins as a participant in the scholarship program constituted "educational costs" which Dr. Gaskins was obligated to repay to the Government upon his discharge as a conscientious objector. In addition to presenting legal arguments, which will be discussed below, Dr. Gaskins' attorney also requested the Navy in this letter to submit the matter to the Comptroller General, pursuant to 31 U.S.C. § 71 (1976) for a determination "as to the propriety of the $13,340.00 'stipend' assessment." Notwithstanding this request, the Navy, by letter dated June 11, 1978, submitted the claim against Dr. Gaskins to the Department of Justice "for the purpose of pursuing collection efforts."

In light of the authority vested in the General Accounting Office, pursuant to 31 U.S.C. § 71 (1976), to settle and adjust all claims by or against the United States Government, we have both the authority and responsibility to review the merits of

the Government's claim against Dr. Gaskins and determine whether or not the compromise offer should be accepted. Moreover, we have been informally advised by the Department of Justice that its decision about whether to sue to collect the full amount that has been claimed by the Navy will not be made, until we have decided this question.

For the reasons set forth hereafter, it is our opinion that Dr. Gaskins is obligated to repay the United States Government the full amount claimed, including monthly stipend payments he received.

First, we agree with the Navy and Dr. Gaskins that the resolution of this matter rests largely on principles of contract law and interpretation. Consideration of the basic legislative purpose of the program is useful in reaching a proper interpretation of the contract.

The purpose of establishing the AFHPSP was to provide an incentive for qualified health care professionals to enter the armed forces. The legislative history of the statute that established the program, as well as the statutory language, clearly demonstrate that all of the benefits to be paid to or on behalf of the participants in the program were in return for their commitment to fulfill an active duty obligation, upon their graduation from professional school, of at least 1 year for every year of participation in the program. For example, in its report on this legislation, the Senate Committee on Armed Services said:

> "The committee proposal is still quite generous, however, in that a scholarship student will receive over $5,200 per year as a base amount (resulting from a $400 monthly stipend and pay and allowances of grade 0-1 while on active duty for 45 days) in addition to full payment of medical school tuition and fees. * * *
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> "Of course, once a scholarship student completes his medical school education, in some cases under present policies, he is then eligible for promotion to 0-3 (captain) with the full pay and allowances of that grade. Although they vary, present military medical scholarships usually provide the pay and allowances of a 0-2 (1st lieutenant) from which a student must pay his tuition and medical school fees. Private medical school scholarships usually provide partial or

> total payment of tuition and fees and in some cases a small stipend. By any standard, the committee proposal is more generous than any public or privately sponsored medical scholorship program. The committee felt this generous program was fully justified, however, because of the military obligation that the scholarship participant incurs (year of service for each year of medical school training) as a result of the program." S. Rep. No. 92-827, 6 (1972).

Since it is clear that the only reason these scholarship benefits, including the monthly stipend payments, were paid to participants in the program was in exchange for their commitment to serve on active duty, a strong argument could be made, even in the absence of any pertinent contractual provision, that participants who voluntarily request and are granted a discharge from the Armed Forces, and do not fulfill their active service commitment, should be required to reimburse the Government for the full amount of the scholarship benefits they received. In our view, such a legislative intent is implicit in the establishment of the AFHPSP. Otherwise, there could be no assurance that the legislative purpose of this program would be achieved.

In this connection, participants in the program are considered to be commissioned Reserve officers who, until graduation, are only required to serve on active duty 45 days a year for which service they receive full pay. Thus, being in the Reserves, participants in the AFHPSP would not be entitled to compensation either in the form of basic pay or a subsistence allowance to meet living expenses. They would not be receiving a monthly stipend, which they can use to pay such expenses, or other forms of financial assistance as well, were it not for their participation in the program and promise to serve on active duty upon graduation. See 31 U.S.C. §§ 204 and 206 (1976).

Thus, since a contract does exist, it should be interpreted, if possible, in a manner that is consistent with the legislative purpose. Thus, turning our attention to the contract between the parties, the primary argument made on Dr. Gaskins' behalf is that, since he is only required, pursuant to paragraph 4 of the scholarship application form he signed, to reimburse the Government for "all tuition and other educational costs which it incurred," he is not obligated to repay the monthly stipend payments which,

it is alleged, constitute a salary for future services to be rendered.1/ In our view, this argument is fallacious for several reasons.

Even if the stipend payments received by Dr. Gaskins were treated by the Internal Revenue Service (IRS) as taxable income, our Office would not be bound by that determination for purposes of the question before us. Whether or not the stipend payments constituted taxable income is not the issue involved here, i.e., whether the stipend payments are included in the phrase "other educational costs," as that term is used in the agreement Dr. Gaskins signed.

The answer to the former question (before the law was changed to exempt these payments from taxation) depends on whether the stipend was a scholarship, within the meaning of section 117 of the Internal Revenue Code, or whether it represented a quid pro quo for the recipient's promise to render future services, in which case IRS treated it as income under section 61. The resolution of the latter question depends on the expectations and understandings of the parties and what they reasonably appear to have intended when Dr. Gaskins was admitted to the program.

In light of the purpose of this program and the clear establishment of a requirement that participants reimburse the Government if they fail to fulfill their obligation, it is only reasonable to interpret the provision in question to include the stipend payments which represent the single largest category of benefits received by program participants. Moreover, there is no inconsistency in our view, between treating the stipend payments as an inducement or payment for future services,

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1/ We should also point out that in his initial correspondence with the Navy concerning this matter, Dr. Gaskins' attorney also argued that the stipend payments constituted a salary for present services. However, in his subsequent correspondence with the Navy as well as his submission to our Office, this argument apparently was dropped. Accordingly, this decision does not address that issue beyond agreeing with the Navy's view that the facts do not support such a contention, since Dr. Gaskins had no military duties to perform for the Navy during the period he was receiving the monthly stipend (as Dr. Gaskins acknowledged in correspondence with the IRS in 1973).

for tax purposes and, at the same time, requiring the recipient of those payments to repay the Government if he never performs the services as agreed.

There appears to be a lack of consistency in the position adopted by Dr. Gaskins regarding the tax issue. He apparently is willing to concede his liability to the Navy for "tuition and other educational costs," except for the stipend. But the IRS rulings relied upon by Dr. Gaskins did not distinguish among the benefits received by participants in the program. Rather, those rulings (which, as will be explained below, are no longer applicable because of subsequent amendments to the law) held that all scholarship benefits received by program participants, including the monthly stipend, should be treated as taxable income because of the substantial quid pro quo required of the recipients. Presumably, Dr. Gaskins takes the position that the stipend is salary for future services, and hence distinguishable from the other benefits, in order to avoid the more indefensible position that he was not legally obligated to reimburse the Government for any of the financial assistance he received.

There is an even more compelling reason to reject the argument set forth on Dr. Gaskins' behalf. As explained above, legislation was enacted in 1974, Pub. L. No. 93-483, which provided that all benefits received by participants in the AFHPSP during calendar years 1973, 1974 and 1975 were to be treated as a non-taxable scholarship under section 117 of the Internal Revenue Code of 1954, as amended. The purpose of this provision was explained as follows in S. Rep. No. 93-1063, as contained in U.S. Code Congressional and Administrative News, 93d Cong., 2d Sess. 1974, at 5990:

> "The exclusion from gross income for certain amounts received as a scholarship at an educational institution or as a fellowship grant generally does not apply if the amounts received represent compensation for past, present, or future employment services. The Internal Revenue Service has notified the Department of Defense in response to its request for a ruling that certain amounts received by students toward their educational expenses while participating in the recently instituted Armed Forces Health Professions Scholarship Program are not excludable from their gross income because of the individual's commitment to future service with the Armed Forces. Thus, under

> this position the individuals are subject to tax on the amounts received. The Senate amendment provides that the exclusion for scholarship and fellowship grants is to apply to payments made by the Government for the tuition and certain other educational expenses of a member of the uniformed services attending an educational institution under the Armed Forces Health Professions Scholarship Program (or substantially similar programs) until January 1, 1976, pending a review by the staff of the effect of application of this provision."

In his letter of November 28, 1977, to the Office of the Navy Judge Advocate General, Dr. Gaskins' attorney maintained that, notwithstanding this legislation, the stipend payments received by program participants still constituted a salary and thus were not reimbursable as an educational "cost":

> "I must respectfully disagree with the Judge Advocate General's interpretation and effect of Pub. L. No. 93-483, § 4. That law provided that even though monies paid as 'stipend' under the Armed Forces Health Profession Scholarship Program were salary (since they were current payments for future services to be rendered), the tax law specifically removed taxable consequences from their receipt by the recipient. The law to which you refer did not re-define or re-characterize the stipend as 'scholarship'--which would be in the nature of a nontaxable gift--but merely changed the tax consequences of the receipt of the stipend." (Emphasis in original.)

Insofar as Dr. Gaskins' legal position is based on IRS rulings concerning the tax consequences of receiving stipend payments when a quid pro quo is required (which, as stated above, would not necessarily have been controlling with respect to the question before us) we fail to see how the argument can reasonably be made that the only thing this legislation accomplished was to change "the tax consequences of the receipt of the stipend." If, as urged by Dr. Gaskins' attorney, the stipend payments must for all purposes be considered as either "salary" or an "educational cost," the enactment of Public Laws 93-483 and 94-455 would have conclusively resolved this question by requiring that such payments be treated as a nontaxable scholarship, and hence an educational cost, rather than a salary.

Two additional issues merit discussion, even though neither was raised by Dr. Gaskins' attorney. The term "educational costs" as used in the AFHPSP agreement is not defined in either the statute, Department of Defense (DOD) Directives, or in the agreement itself. The term "educational expenses" is contained in both the statute and DOD Directives. Thus, 10 U.S.C. § 2127 (1976) reads, in pertinent part, as follows:

> "(a) The Secretary of Defense may provide for the payment of all educational expenses incurred by a member of the program, including tuition, fees, books, and laboratory expenses. Such payments, however, shall be limited to those educational expenses normally incurred by students at the institution and in the health profession concerned who are not members of the program.
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> "(b) The Secretary of Defense may contract with an accredited civilian educational institution for the payment of tuition and other educational expenses of members of the program authorized by this chapter. * * *" (Emphasis added.)

(As discussed above, the stipend is provided for in a separate provision, 10 U.S.C. § 2121(d).)

Part IV, Para. L. 1 of DOD Directive 1215.14, dated February 4, 1975, reads in pertinent part as follows:

> "Payment of all educational expenses incurred by a member of the Program is authorized, including tuition, fees, books, laboratory expenses, microscope rental, laboratory and clinical coats, precious and semiprecious metals, and payments for educational services but excluding room and board and non-academic expenses * * *." (Emphasis added.)

If the two terms were synonymous, there might be some basis for the position that, because the stipend is arguably not included in "educational expenses," as used in the statute, it is not included in "educational costs" as used in the agreement and therefore is not reimbursable to the Government. However, in context the terms are clearly not synonymous and the use of "educational costs" in the agreement is consistent with inclusion of the stipend within its meaning.

"Educational expenses," as used in the statute and the regulations, and "educational costs," contained in the AFHPSP agreement, are used in different contexts for different purposes. The reimbursable "educational expenses" referred to in both 10 U.S.C. § 2127 and the DOD Directives are those incurred by "a member of the program."

Since the AFHPSP participant is receiving the monthly stipend pursuant to a different provision, 10 U.S.C. § 2127(d), the "educational expenses incurred by a member of the program," which he is being reimbursed, do not and should not include those stipend payments. This is consistent with the language in the DOD Directive which specifically excludes "room and board" as an item of educational expense, because the participant in the AFHPSP is presumably using the $400 monthly stipend he is receiving to pay his living expenses. Otherwise, a participant in the program might, in essence, be paid twice for living expenses.

However the "educational costs" that program participants agree to repay to the Government, in the event they do not fulfill their commitment, are expressly those incurred by the Government. The Government is paying tuition and other educational expenses (as that term is used in the statute) that are incurred by the member, in addition to the $400 monthly stipend. The term "educational costs which it [the Government] incurred" may reasonably be read, for purposes of interpreting the contract, to include both amounts--the educational expenses incurred by the participant and the stipend paid by the Government. Thus, the contract's use of "educational costs" incurred by the Government, instead of "educational expenses" incurred by the program member to describe amounts repayable by participants is entirely consistent with our conclusion that the contract requires repayment of the stipend.

See also in this connection the legislative history of Pub. L. No. 93-483. That statute, which exempts from income taxation "Any amount received from appropriated funds as a scholarship * * *" was intended, and has been interpreted by all interested parties, including the Navy, IRS, and Dr. Gaskins' attorney (as well as our Office), to apply to the monthly stipend payments in addition to the other types of financial assistance provided to program participants. In explaining the intended purpose of this provision, S. Rep. No. 93-1063, supra, states that the tax exclusion granted for scholarship and fellowship grants was to apply to payments made by the Government "for the tuition and certain other educational expenses" received by participants

in the AFHPSP. Thus, in this context, the monthly stipend was included in the term "other educational expenses." Similarly, as stated above, the context in which the term "other educational costs" in the agreement signed by Dr. Gaskins demonstrates that it was intended to include the monthly stipend.

Finally, although the submission from Dr. Gaskins does not raise this issue, the decision in the case of McCullough v. Seamans, 348 F. Supp. 511 (E.D. Cal. 1972) merits discussion. In that case, the Court held that two graduates from the Air Force Academy who were discharged from the Air Force as conscientious objectors could not be required to reimburse the Air Force for the cost of their undergraduate educations. However, we do not think that the Court's holding in McCullough is applicable here.

In addition to the differences in the structure and purpose of the Air Force Academy program compared to the AFHPSP, cadets at the Academy are considered to be on active duty, whereas participants in the AFHPSP are in reserve components and only serve on active duty for 45 days each year. See 37 U.S.C. § 101 (18) (1976) and 10 U.S.C. § 2121(c) (1976). Moreover, in addition to being trained in the duties of members of the Air Force, cadets at the Academy are required "to perform duties at such places and of such type as the President may direct." 10 U.S.C. § 9349 (1976). Thus, it is more reasonable to view the benefits received by cadets at the Air Force Academy as compensation for present services, and hence not reimbursable, than is the case with respect to the benefits received by participants in the AFHPSP.

Second, in concluding in McCullough that common law principles of contract were not applicable in the absence of any guidance from the legislature as to the Government's right to recover the educational costs of the cadets, the Court relied largely on two Supreme Court decisions--United States v. Standard Oil Co. of California, 332 U.S. 301 (1946) and United States v. Gilman, 347 U.S. 507 (1954)--in both of which the Supreme Court refused to recognize novel theories of recovery by the Federal Government based on common law tort principles without the legislature having spoken. Where, as in this case, the Government's right of recovery is grounded in express contractual language, we do not believe that the Supreme Court cases preclude recovery.

In accordance with the foregoing, we find that Dr. Gaskins is indebted to the United States for the total amount of $17,137.08 he received in scholarship benefits. Accordingly, his compromise offer of $3,797.08 is rejected.

R.F. Keller

Deputy Comptroller General
of the United States