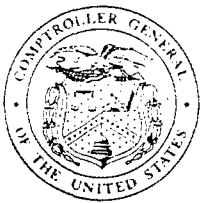


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DECISION



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

12092

FILE: B-195073

DATE: November 21, 1979

MATTER OF: Federal Bureau of Investigation - [authority of employees to accompany driver authorized to commute in Government vehicle]

PLK
03408

DIGEST: 31 U.S.C. § 638a(c)(2) would not be violated if employees of the Federal Bureau of Investigation accompanied driver between his home and place of employment in Government vehicle which he is authorized to take home so FBI can maintain an emergency response capability, provided agency makes determination that interest of Government would be furthered.

Our opinion was requested by the Assistant Director, Administrative Services Division, Federal Bureau of Investigation (FBI) on whether the FBI could permit employees to accompany the driver of a Government vehicle, authorized to be driven between the driver's home and place of employment, in view of the statutory prohibitions in 31 U.S.C. § 638a(c)(2). We hold that this practice, appropriately restricted, would not contravene the cited section.

The submission states that under present FBI policy, a limited number of FBI vehicles are driven between an employee's home and work place on a routine basis to enable the FBI to maintain an emergency response capability necessitated by the nature of its work. The Assistant Director feels that this use of Government vehicles is permitted by the exception in 31 U.S.C. § 638a(c)(2), which reads in pertinent part:

"[(c) Unless otherwise specifically provided, no appropriation available for any department shall be expended--]

"[(2) for the maintenance, operation, and repair of any Government-owned passenger motor vehicle or aircraft not used exclusively for official purposes; and 'official purposes' shall not include the transportation of officers and employees between their domiciles and places of employment, except in cases of medical officers on out-patient medical service and except in cases of officers and employees engaged in field work the character of whose duties makes such transportation necessary and then only as to such latter cases when the same is approved by the head of the department concerned.]" Emphasis added.

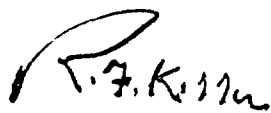
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The control over the use of Government vehicles is primarily a matter of administrative discretion to be exercised by the agency concerned within the framework of applicable laws. Use of Government vehicles, 54 Comp. Gen. 855 (1975); 25 id. 844 (1946). The FBI policy which allows some of its employees to drive Government vehicles to and from work would appear to be authorized if the agency has decided that the employees in question are engaged in field work, the nature of which requires such transportation. The question is whether other employees, not engaged in such field work and therefore not engaged on official business may use any empty seats in the driver's vehicle to travel between the driver's home and place of business.

In construing the relevant statutory section, we have recognized that its main purpose is to prevent a Government vehicle from being used for the personal convenience of an employee. However, in the instant case, the vehicle is being driven primarily for the benefit of the Government. Any use by other employees on a space available basis is only incidental to the Government purpose, provided, of course, that there is no additional expenditure of time or money by the Government in order to accommodate these riders.

Thus, an employee authorized to drive a Government car between home and the office in order to maintain the FBI's emergency response capability may be allowed to transport other FBI employees between those destinations, provided the FBI makes a determination that the arrangement is in the national interest and will in no event result in additional costs or inconvenience to the Government. In making this determination, the FBI should consider any possible liability of the Government under the Federal Tort Claims Act and the Federal Employees Compensation Act in the event of injury to the passenger employees. For purposes of the latter Act, it should be made clear that the passengers are not on official business when they are riding to and from work with the driver and are therefore not eligible for benefits. It is less clear whether the passengers are free to bring an action against the Government for injuries sustained by reason of the driver's negligence. Before adopting the proposed passenger policy we suggest that the FBI consult with other officials in the Department of Justice about the extent of its increased Tort Claims Act liability, if any, and the desirability of requiring passengers to execute a waiver of Government responsibility or some other document stating that they are travelling at their own risk.


Deputy Comptroller General
of the United States