

119555

DECISION



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

FILE: B-203553

DATE: September 24, 1987

MATTER OF: Internal Revenue Service-Purchase of Air Purifier with Imprest Funds

- DIGEST:**
1. The purchase of an air purifier for the individual office of an IRS employee who suffers from allergies may not be made with public funds. Although he may not be able to perform his official duties satisfactorily in the usual office environment because of his handicap, the purchase of a corrective device is his personal responsibility.
 2. Fact that previous purchases of air purifiers had been approved by IRS officials without question is not, by itself, sufficient to justify the purchase of an air purifier from imprest funds in the instant case. It may be relevant, however, in determining whether the imprest fund cashier acted in good faith and exercised due care for the purpose of relieving her from personal responsibility for the improper payment pursuant to 31 U.S.C. § 82a-2. This Office has insufficient information to make relief determination on its own motion and requests findings and recommendations from IRS.

The Chief, Resources Management Division, Atlanta District, Internal Revenue Service (IRS), requests a determination on whether it is permissible to purchase an ecologizer with appropriated funds. An ecologizer, also known popularly as a "smoke eater", is a device which purifies the air by removing cigar and cigarette smoke, dust, and other objectional odors. He has forwarded a voucher for \$36 for an ecologizer purchased last May through the Small Purchase Imprest Fund, to purify the air in the office of an IRS employee who suffers from allergies. The IRS certifying officer has refused to certify the request for reimbursement on the ground that the expenditure was personal in nature, and he therefore requested the imprest fund cashier to replenish the fund herself.

We agree with the certifying officer that the instant expenditure for an ecologizer was not authorized, based on the justification presented. However, we would not necessarily agree that the imprest fund cashier must restore the account from her personal funds if a request for relief is presented to us pursuant to 31 U.S.C. § 82a-2.

The established rule is that, in the absence of specific statutory authority, the cost of special equipment and furnishings to enable an employee to perform his or her official duties constitutes a personal expense of the employee and is not payable from appropriated funds. We turned down a request to approve the costs of laboratory coats to protect the clothing of employees working on the Washington Aqueduct (3 Comp. Gen. 433 (1924)); the cost of a "Sacro-ease" office chair for an employee with a bad back (B-187246, June 15, 1977); and the cost of a bed board for an employee who was traveling on official business and also had a bad back. (B-166411, September 3, 1975). It should be noted that in the 1975 case, agency officials had previously authorized similar expenditures which were paid without question. We understand that this is also the situation in the instant case.

On the other hand, in 23 Comp. Gen. 831 (1944), we approved the rental of an amplifying device for the official telephone of an employee with a hearing handicap. Similarly, we approved the purchase of special prescription filter spectacles for Geological Survey employees operating stereoscopic map platting instruments. (45 Comp. Gen. 215 (1965)). Even more recently, we permitted the Navy to purchase luggage for members of a recruiting team who were required to travel on official business for 26 weeks a year. (B-200154, February 12, 1981).

The rationale of these decisions, which superficially seem inconsistent, may be useful in providing guidance for future agency procurements of this nature. We recognize that there is room for differences of opinion about the result reached in specific cases. The factual situations in the cited cases are described to illustrate some prior applications of the principle, but the particular circumstances involved should not themselves be read as providing definitive guidelines for applying the principle in the future.

In all three decisions where the purchase was disapproved, the item procured was essential or highly desirable for the particular employee to perform his duties but it was not essential to the transaction of official business from the Government's standpoint. The item, in other words, primarily served the needs of an individual or specific group of individuals, who had requirements not shared by the majority of other employees. We did not accept the argument that since the employee's services could not be performed without the equipment and his services were valuable to the Government, the expense was therefore primarily for the benefit of the Government. We also found (in the two "bad back" cases) that the equipment required could reasonably be expected to be furnished by the employee himself in order to overcome a personal problem which hampered the accomplishment of his official duties.

The telephone amplifying device we approved in 23 Comp. Gen. 831 would also appear to be a piece of equipment necessary to overcome a personal handicap. However, the agency involved convinced us at that time that it had a severe problem hiring qualified employees because of the wartime draft. It was absolutely essential to make the best use possible of the limited staff it had, which included a deaf

employee. We found, therefore, that the primary need for the amplifying device was not the employee's but the agency's. This was also the rationale for the filter spectacles in 45 Comp. Gen. 215. Employees who did not use the special glasses to operate the equipment would lose the required visual skills before reaching the normal retirement age. As for the luggage in the 1981 Navy case, described earlier, we simply find that it was unreasonable to expect employees to subject their personal equipment to the kind of wear and tear that Navy's frequent travel requirements engendered.

Returning now to the ecologizer device, we are told, by way of justification, that (1) "the item is needed to purify the air in an area occupied by an IRS employee who suffers from allergies"; (2) "the item is essential for the employee to accomplish his job and is, therefore, properly purchased by the Government", and (3) that a number of these devices were previously obtained via purchase orders, and paid without objection after "two independent contracting officers judged that this type item was not a 'personal convenience' item and purchase was appropriate."

We have no problem with the factual statements in one and two, above. We disagree, however, with the conclusion that "therefore", the items may be properly purchased by the Government. We have been told only that a particular employee cannot function in his assigned work space because he suffers from a particular handicap--an allergy--not shared by his fellow employees. The corrective device is to be installed in his own office, and unlike the agency's previous purchases of ecologizers which, according to copies of purchase vouchers included in the submission, were for a conference room and for a grand jury hearing room, it benefits no one but the allergic employee. It appears to us, based on the sparse record before us, that this situation is closely analogous to B-167246, June 15, 1977, discussed above, in which we disapproved the purchase of a special chair for an employee with a bad back.

From the information provided to us, we find that the expenditure for the ecologizer was made primarily for the benefit of a single employee who suffers from a disability that makes his work environment uninhabitable. It amounts to a personal benefit which may not be conferred with public funds.

The fact that the agency has previously approved similar purchases, while not itself sufficient justification to approve the

voucher in question, may nevertheless be relevant in determining whether the imprest fund cashier should be relieved of liability for the improper expenditure under 31 U.S.C. § 82a-2. This Office is authorized to relieve accountable officers of personal responsibility for an illegal, improper, or incorrect payment on our own motion or upon written findings and recommendations made by the head of the department, agency, or independent establishment concerned, or his designees, if we are able to find that such payment was not the result of bad faith or lack of due care on the part of the accountable officer.

The record is too sparse to enable us to relieve the accountable officer on our own motion. We do not know, for example, whether the findings of the two contracting officers that ecologizers were not pieces of personal equipment related to previous purchases for a conference room and a grand jury hearing room rather than for an individual office. If this was the case, did the imprest fund cashier stretch their findings to cover the instant purchase without checking with higher authority? There are a number of similar questions relating to good faith and exercise of due care that we would prefer to have the agency address, before we can concur with the chief's suggestion that the imprest fund should not be held responsible for repayment of the fund.

William V. ...
Comptroller General
of the United States