

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

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FILE: B-209132**DATE:** October 3, 1983**MATTER OF:** Reimbursement by Forest Service of
expenses under Intergovernmental
Personnel Act**DIGEST:**

GAO may not authorize quantum meruit recovery where University of California claims reimbursement for costs of supplies, aircraft rental, and support personnel relating to work of University employee on temporary detail to Forest Service, because authority to reimburse such expenses is not included in substantive provisions of Intergovernmental Personnel Act. However, ratification by contracting officer under general procurement authority of Forest Service is possible alternative.

A certifying officer at the Pacific Northwest Forest and Range Experiment Station, Forest Service, U.S. Department of Agriculture (Forest Service) requests an advance decision on whether a voucher for \$23,339.92 may be certified for payment to the University of California at Davis (University). The University's claim for payment is for expenses related to the work of a University employee while on temporary assignment to the Forest Service under title IV of the Intergovernmental Personnel Act of 1970 (84 Stat. 1909), codified at 5 U.S.C. § 3371 et seq. The Intergovernmental Personnel Act (IPA) makes no provision for Federal reimbursements for office supplies, aircraft rentals, or the salaries and expenses of support personnel and, for the reasons discussed below, we may not authorize a quantum meruit recovery from funds appropriated for IPA purposes.

Background

Title IV of the IPA provides for the temporary assignment of personnel between Federal agencies and State and local governments and other organizations, including institutions of higher education. The general purpose of these assignments is to facilitate work of mutual concern, which is determined to be of benefit to both parties. 5 U.S.C. § 3374(a) provides for two types of temporary assignment to a Federal agency--"appointment" and "detail."

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Where the assignment is by appointment, 5 U.S.C. § 3374(b) provides that the employee is entitled to be paid by the Government, and is considered a Federal employee for all purposes except entitlement to retirement, life insurance, and certain health benefits.

Where the assignment is by detail, 5 U.S.C. § 3374(c) provides that the employee is not entitled to be paid by the Government except to the extent that the employee's State or local government pay is less than the duties would warrant under direct Federal employment, and is only considered a Federal employee for a limited number of specifically enumerated purposes (including those relating to conflict of interest, political activity, disclosure of confidential information, and tort liability). Under § 3374(c) a detail "may be made with or without reimbursement by the Federal agency for the pay, or a part thereof, of the employee during the period of assignment * * *." Supervision of the duties of a detailed employee may be governed by agreement between the parties. 5 U.S.C. § 3375 provides for reimbursement for certain travel expenses of the assigned employee.

Pursuant to 5 U.S.C. § 3376, regulations governing assignments under the IPA have been issued by the Office of Personnel Management (OPM). 5 C.F.R. § 334.106(a) requires that before an assignment is made, the Federal agency, the State or local government, institution of higher education, or other eligible organization, and the assigned employee enter into a written agreement recording the obligations and responsibilities of the parties.

Facts

In this case Bruce Hartsough, a University employee, was detailed to the Pacific Northwest Forest and Range Experiment Station from May 1, 1981, to December 31, 1981, to do work in connection with the field evaluation trials of the Heli-Stat (an experimental heavy-lift airship designed to transport large diameter timber). As required by the regulation cited above, the parties signed a written Assignment Agreement which provided that Mr. Hartsough would remain at the University during the period of assignment. The stated reason was that the work could best be accomplished if he had access to University computer facilities and personnel.

Under the heading "Position Description," the Agreement outlines the responsibilities of Mr. Hartsough while on assignment, and incorporates an attached "Position Statement of Work" prepared by a Forest Service employee. This document includes a budget outline specifying amounts for "salary and fringe benefits" (\$24,700), "advisors to incumbent" (\$10,700), "travel" (\$3,400), and "services and supplies" (\$1,200). However, in the space provided for recording the fiscal obligations of the Forest Service, the Agreement states only the following:

"Agency will reimburse the University of California for salary expenses to include contribution to the retirement system, FICA, authorized Health, Dental and Life Insurance, annual leave, and for authorized travel expenses including support personnel or advisors to incumbent. Employee will have a major portion of his time directed to University activities during final 3 months of this agreement. (i.e., only 33% (1/3) of time in these three months will be on this agreement. Employee benefits (not including travel) add \$649.16 per month onto base pay. Benefits may be increased in-line with salary increases."

The above statement includes as a fiscal obligation of the Forest Service reimbursement to the University for the authorized travel of support personnel or advisors to Mr. Hartsough. The information in the section of the Assignment Agreement entitled "Travel and Transportation Expenses and Allowances," however, refers only to the travel costs of the assigned employee. The latter section indicates that the University will pay Mr. Hartsough for his allowable travel expenses and submit charges for reimbursement to the Forest Service.

In the original Assignment Agreement nothing was written in the space provided for recording the University's fiscal obligations. This was, however, the sole purpose of a written modification to the Assignment Agreement, finalized in July 1981. The modification provides a statement of the University's fiscal obligations as follows:

"University of California will make all payments for salary and travel to the employee and will submit charges for reimbursement to the Pacific Northwest Forest and Range Experiment Station. The University will maintain time and attendance records."

The record indicates that the University has been reimbursed for Mr. Hartsough's salary, benefits, and travel expenses. According to the certifying officer's statement, the University's voucher for \$23,339.92 covers expenses incurred by the University "which cannot be reimbursed pursuant to the IPA."

The voucher itself identifies these expenses as \$12,123.77 for the direct labor of three persons (other than Mr. Hartsough); \$1,852.44 for employee benefits for these same individuals; \$3,743.69 for supplies and expenses (primarily office supplies and computer software); \$1,048.72 for travel (specifically the travel expenses of a fourth person and the rental of an aircraft); and, under the heading "Other Direct Costs," \$4,571.30 for 170 hours of labor by a fifth person.

Discussion

Noting that the Government cannot be bound by the unauthorized acts of its agents, the certifying officer requests that we authorize payment on a quantum meruit basis. To support his recommendation, the certifying officer states that, by the terms of the Assignment Agreement, the Forest Service agreed to pay for the claimed expenses. In the certifying officer's view the University acted in good faith, the Government received a benefit, and the amount claimed represents a reasonable price for the benefit received.

There is a well-established rule that the Government is not bound by the unauthorized acts of "those who purport to act for it." (Federal Crop Insurance Corp. v. Merrill, 322 U.S. 380 (1947).) The Government, therefore, has no legal obligation to pay contractors or others who have provided goods and services in the absence of a valid contract, or where the agency involved is unable to legally ratify an informal agreement retroactively. However, under GAO's claims settlement authority (31 U.S.C. § 3702), the Comptroller General may authorize payment on a quantum meruit basis.

In this case the existence of a commitment by a Government employee or agent to pay for all of the goods and services claimed by the University is, in our view, questionable. We note that while on temporary detail Mr. Hartsough was neither a Government employee, nor, in relation to the University, did he have actual, apparent or implied authority to act as its agent. Despite its inconsistencies, however, the Assignment Agreement did include "authorized travel expenses" of advisors and support personnel as a fiscal obligation of the Forest Service, and it is at least arguable that the simple budget included in the work statement (prepared by a Forest Service employee) attached to the Agreement might imply a promise by the Forest Service to pay \$10,700 for advisors and \$1,200 for supplies. In any event, the agency has taken the position that it did agree to pay these unauthorized costs.

Before GAO will authorize a quantum meruit or quantum valebat payment, we must make a threshold determination that payment for the goods or services in question would have been permissible had proper procedures been followed. Next we must find that (1) the Government received and accepted a benefit, (2) the contractor or providing party acted in good faith, and (3) the amount claimed represents the reasonable value of the benefit received. (B-207557, July 11, 1983.)

Title IV of the Intergovernmental Personnel Act makes no provision for the types of expenses claimed by the University. In the case of a detailed employee such as Mr. Hartsough, the IPA specifically authorizes reimbursement only for (1) salary expenses for the detailed employee, and (2) certain types of travel expenses of the detailed employee. Also, while title V authorizes OPM to reimburse local governments and other institutions for the use of their services and facilities for the general administration of the IPA, title IV is specifically excluded from the coverage of title V. It is apparent from title V that the authors of the IPA did consider when and under what conditions Federal reimbursement for the services and facilities of participating organizations would be authorized. In our view, the omissions in both title IV and title V are significant.

Under a general rule of statutory interpretation, where specific items are designated by statute there is an inference that all omissions were intended, unless a legislative intent to the contrary is apparent.^{1/} In this case the governing statutory and regulatory provisions contain no authority for a Federal agency to pay for office supplies, aircraft rentals, or the salary expenses of support personnel in connection with the work of an employee on temporary assignment. Nor does 5 U.S.C. § 3375 include the travel expenses of advisors among the types of travel costs which are specifically reimbursable under the Act. (See B-170589, September 18, 1974.) The legislative history of the Intergovernmental Personnel Act contains no indication that these omissions were unintentional. (H. Rept. No. 91-1733, 91st Cong. 2d Sess.) As a result, we are unable to make the threshold determination that the claimed expenses could have been reimbursed from funds appropriated for IPA expenditures had the Agreement been more carefully written, or had other procedures been followed.


However, although neither direct payment nor quantum meruit recovery of the claimed expenditures may be authorized under the IPA, there is nothing to prevent the Forest Service from contracting for the use of University services and facilities under a cooperative agreement, using funds appropriated for its general procurement activities. In cases such as this, where the Government has already received goods or services without a valid contract, the contracting officer has authority to retroactively ratify the unauthorized commitments under 41 C.F.R. § 1-1.405. Dependent upon the availability of funds, this Office would not question the contracting officer's determination to ratify some or all of the claimed expenditures.

Conclusion

The University and the Forest Service elected to enter into an agreement to do work of mutual benefit under the provisions of the Intergovernmental Personnel Act. As the statute which governs the assignment of employees by detail, we must look to the IPA to identify permissible expenditures. Because the types of expenses claimed are not authorized under the substantive provisions of the governing

^{1/} 2A C.D. Sands, Sutherland' Statutory Construction
 §§ 47.23 - 47.25 (4th ed. 1973).

statute, we are unable to make the necessary threshold determination that the expenditures "would have been permissible." As a result, GAO has no authority to approve a quantum meruit recovery from funds available for IPA expenditures. The Forest Service, however, is not prevented from using its authority under 41 C.F.R. § 1-1.405 to ratify the claimed unauthorized expenditures as otherwise proper procurements, dependent upon the availability of procurement funds.

for 
Comptroller General
of the United States