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

FILE: B-210657 **DATE:** May 25, 1984

MATTER OF: Edgar T. Callahan - Payment of Relocation Expenses - Reconsideration

DIGEST:

The Chairman of the National Credit Union Administration (NCUA) was reimbursed for relocation expenses he incurred following his appointment to that position in 1981. Prior decision that Chairman was not entitled to such expenses is affirmed because: (1) at the time of the Chairman's appointment, there was no authority in 5 U.S.C. Chapter 57, Subchapter II, for payment of relocation expenses to Presidential appointees; (2) the NCUA's operating fund constitutes an appropriated fund, subject to statutory restrictions on the use of such funds; (3) it is not material that the NCUA's Central Liquidity Facility (CLF) reimbursed NCUA for the Chairman's relocation expenses, since the Chairman is an employee of NCUA, not CLF; and (4) the Government cannot be bound by erroneous advice provided to the Chairman by NCUA officials.

The General Counsel of the National Credit Union Administration (NCUA), on behalf of the Honorable Edgar T. Callahan, Chairman of the NCUA Board, requests reconsideration of our decision in Edgar T. Callahan, B-210657, November 15, 1983 (63 Comp. Gen. 31). In that decision, we held that Mr. Callahan was not entitled to be reimbursed for the travel and relocation expenses he incurred in reporting to his first duty station. For the reasons stated below, we affirm our prior decision.

BACKGROUND

In 1981, Mr. Callahan, who was not then a Federal employee, was appointed to the position of Chairman, NCUA Board. The three-member NCUA Board is appointed by the President, by and with the advice and consent of the

Senate. 12 U.S.C. § 1752a (1982). The Chairman's position is at Level III of the Executive Schedule. 5 U.S.C. § 5314 (1982).

In anticipation of his confirmation, Mr. Callahan moved from Springfield, Illinois, to Washington, D.C., during the months of October, November, and December 1981. On October 23, 1981, NCUA's Board voted to approve payment of relocation expenses incurred by Mr. Callahan and his family on the basis that such payment was not specifically precluded by Chapter 57 of title 5, United States Code, or the Federal Travel Regulations, FPMR 101-7, and that it was within the scope of section 120(i)(2) of the Federal Credit Union Act, 12 U.S.C. § 1766(i)(2). Consequently, NCUA paid Mr. Callahan $21,250.37 to reimburse him for the subsistence expenses, costs of shipping household goods, and real estate expenses he incurred in moving to Washington, D.C.

In our decision in Callahan, we held that Mr. Callahan was not entitled to be reimbursed for relocation expenses since, as a general rule, an employee must bear the expenses of travel to his first duty station in the absence of a specific statute to the contrary. See 58 Comp. Gen. 744, 746 (1979); and 53 Comp. Gen. 313, 315 (1973). One statutory exception to the general rule is contained in 5 U.S.C. § 5722, which provides for reimbursement of travel and transportation expenses incurred by new appointees assigned to overseas posts of duty. Another exception is provided by 5 U.S.C. § 5723, which, at the time of Mr. Callahan's appointment, authorized reimbursement for certain relocation expenses incurred by new appointees serving in Senior Executive Service (SES) and manpower shortage positions.[1/]

Since Mr. Callahan was not assigned overseas or appointed to an SES or manpower shortage position, we

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[1/] Effective November 14, 1983, the provisions of 5 U.S.C. § 5723 were amended to additionally permit reimbursement for certain relocation expenses incurred by Presidential appointees. Public Law 98-151, 97 Stat. 964, 977, November 14, 1983.

concluded that NCUA had no authority to reimburse him for the moving expenses he incurred in connection with his appointment.

As part of our determination in Callahan, we responded to several arguments presented by the General Counsel of NCUA on behalf of Mr. Callahan. Specifically, the General Counsel argued that NCUA is not an appropriated fund activity subject to 5 U.S.C. Chapter 57, Subchapter II, and, therefore, that it had independent authority under section 120(i)(2) of the Federal Credit Union Act, 12 U.S.C. § 1766(i)(2), to reimburse Mr. Callahan for moving expenses. The relevant part of 12 U.S.C. § 1766(i)(2) authorizes NCUA to expend its operating fund "as it may be necessary and appropriate" to carry out the provisions of the Federal Credit Union Act. Additionally, the General Counsel stated that the initial charge to NCUA's operating fund for Mr. Callahan's moving expenses had been transferred to the accounts of NCUA's Central Liquidity Facility (CLF), a Government-controlled corporation not subject to the provisions of 5 U.S.C. Chapter 57, Subchapter II.

In our prior decision we determined that Mr. Callahan's entitlement to relocation expenses was governed by the provisions of 5 U.S.C. Chapter 57, Subchapter II, since NCUA is an "Executive agency" for purposes of 5 U.S.C. § 5721(1). Furthermore, we found that NCUA's spending authority under 12 U.S.C. § 1766 is circumscribed by 5 U.S.C. Chapter 57, Subchapter II, because the operating fund constitutes an appropriated fund which is subject to statutory restrictions on the use of appropriated monies. Finally, we stated that CLF's assumption of the charge for Mr. Callahan's relocation expenses had no bearing on his entitlement to such expenses since Mr. Callahan must be regarded as an employee of NCUA, not CLF. Accordingly, we concluded that Mr. Callahan was indebted for the relocation expenses paid to him.

DISCUSSION

Appropriated Funds

The General Counsel renews his contention that NCUA has independent authority under 12 U.S.C. § 1766 to reimburse Mr. Callahan's moving expenses because the NCUA is not an appropriated fund activity subject to 5 U.S.C. §§ 5722,

5723, and other provisions in 5 U.S.C. Chapter 57, Subchapter II, which apply only to payments from appropriated funds. In support of this position, he states that NCUA does not receive annual appropriations from Congress, but is financed exclusively through annual operating fees which NCUA collects from Federal credit unions under the authority of 12 U.S.C. § 1755. The General Counsel states that, under 12 U.S.C. § 1755, the fees which are collected by NCUA and deposited into a special fund in the Treasury are available for expenditure only by the NCUA Board. Since the Treasury has little control over the expenditure or investment of NCUA's operating fund, the General Counsel argues that the fund must be regarded as a nonappropriated fund.

It is true that NCUA's operating fund is separate from the general fund of the Treasury, and enables NCUA to operate on a self-sufficient basis without annual appropriations. Nevertheless, as we explained in our prior decision, it is clear from the language of 12 U.S.C. § 1755 that the operating fund constitutes an appropriated fund for purposes of statutory restrictions and limitations on the use of appropriated monies. Section 1755, which authorizes the collection of annual operating fees from Federal credit unions, provides for the disposition of those fees as follows:

> "(d) Payment into Treasury of United States
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> "All operating fees shall be deposited with the Treasurer of the United States for the account of the Administration and may be expended by the Board to defray the expenses incurred in carrying out the provisions of this chapter including the examination and supervision of Federal credit unions."

It is well settled that statutes which authorize the collection and credit of fees to a particular fund, and which make the fund available for a specific purpose, constitute continuing or permanent appropriations. 60 Comp. Gen. 323 (1981); 57 Comp. Gen. 311 (1978); 50 Comp. Gen.

323 (1970); 35 Comp. Gen. 615 (1956); and 35 Comp. Gen. 436 (1956). See also United Biscuit Company of America v. Wirtz, 359 F.2d 206 (D.C. Cir. 1965). The basis for this principle is that, absent specific statutory authority to use monies collected for the benefit of the United States, a Government agency must deposit collections into the general fund of the Treasury as miscellaneous receipts. 31 U.S.C. § 3302(b) (formerly 31 U.S.C. § 484 (1976)). See 50 Comp. Gen. 323; and 36 Comp. Gen. 436. Consequently, legislation which directs an agency to collect monies and use them for specific purposes is in effect a continuous appropriation of funds for those purposes, eliminating the need for a new appropriation each fiscal year. United Biscuit Company of America v. Wirtz, 359 F.2d at 212.

Furthermore, as we explained in 60 Comp. Gen. 323, a narrower definition of the term "appropriations" as including only monies appropriated from the general fund of the Treasury would be inconsistent with the Budget and Accounting Act of 1921, 31 U.S.C. § 1101(2) (formerly 31 U.S.C. § 2 (1976)). That act broadly defines the term "appropriations" to include funds, authority to make obligations by contract in advance of appropriations, and any other authority making amounts available for obligation or expenditure.

In our prior decision in Callahan, we noted the particular relevance of our decision in 35 Comp. Gen. 615. That latter decision involved provisions of section 5 of the Federal Credit Union Act, Ch. 750, 48 Stat. 1216, 1217, June 26, 1934, which were substantially similar to those now contained in 12 U.S.C. § 1755. Under the former provisions of section 5, the Bureau of Federal Credit Unions, the predecessor to NCUA, operated exclusively from income derived from charter, examination, and supervision fees which were collected from Federal credit unions and deposited into the Treasury for the account of the Bureau. After analyzing section 5, we stated in 35 Comp. Gen. 615 that the fees collected by the Bureau represented monies received for the use of the United States. We held that the statutory authorization in section 5 for crediting the fees to a special fund and the making of such fund available

to defray administrative and supervisory expenses of the Bureau constituted a continuing appropriation of funds from the Treasury without further action by Congress. Further, we specifically decided that such funds represent appropriated funds which, in the absence of statutory authorization to the contrary, would be subject to the various restrictions and limitations on the use of appropriated monies. 35 Comp. Gen. 615, 618.

The General Counsel maintains that our decision in 35 Comp. Gen. 615 is inapposite to the present case because it concerned the Bureau of Federal Credit Unions and was rendered 14 years before NCUA was established by Public Law 91-206, 84 Stat. 49, March 10, 1970. He states that the legislative history of Public Law 91-206 evidences Congressional intent to establish NCUA as a nonappropriated fund activity, citing the following comments contained in H. Rep. No. 91-331, 91st Cong., 2d Sess. 2, and quoted in our decision in 50 Comp. Gen. 545, at 546 (1971):

> "One of the most important aspects of this legislation is that the establishment of the Administration will not cost the taxpayers a single penny nor result in any appropriations by Congress, * * *."

In view of the established law as to what constitutes appropriated funds, the above-quoted statement can only refer to the fact that NCUA's operating monies do not come from the general fund of the Treasury. As discussed previously, funds which are derived from sources other than the Treasury may nevertheless be regarded as appropriated funds for purposes of statutory restrictions and limitations on the use of such funds.

Furthermore, if Congress had intended that NCUA's operating fund be treated as a nonappropriated fund, free from statutory restrictions on the use of appropriated monies, it could have expressly said so in 12 U.S.C. § 1755. In this regard, we note that provisions of the Federal Reserve Act, as amended, 12 U.S.C. § 244, authorize the Federal Reserve Board to leave on deposit in Federal Reserve

banks the proceeds of assessments levied upon them to defray its administrative expenses. Section 244 expressly provides that the funds derived from such assessments, "shall not be construed to be Government funds or appropriated moneys." See Lieutenant Colonel Robert E. Frazier, USA (Retired), B-212226, December 16, 1983, 63 Comp. Gen. _____, for a discussion of 12 U.S.C. § 244.

Although the General Counsel suggests that our decision in 35 Comp. Gen. 615 does not apply to NCUA because its financial structure is different from that of its predecessor, the Bureau of Federal Credit Unions, there does not appear to be any basis for this contention. In 1953, the Bureau of Federal Credit Unions stopped receiving public funds through annual appropriations and began to operate exclusively from income derived from charter, examination, and supervision fees collected from Federal credit unions and deposited into the Treasury for the account of the Bureau. See 50 Comp. Gen. 545, at 546. Thus, when we issued our decision in 35 Comp. Gen. 615 in 1956, the Bureau of Federal Credit Unions was operating under the same type of financial arrangement which 12 U.S.C. § 1755 now authorizes for NCUA.

Moreover, in B-170938, October 30, 1972, we specifically held that the NCUA is an appropriated fund activity and is therefore subject to the general prohibition against payment of entertainment expenses from appropriated funds absent specific statutory authority. In so holding, we relied on our decision in 35 Comp. Gen. 615.

The General Counsel next contends that we recognized NCUA as a nonappropriated fund activity in our decision 50 Comp. Gen. 545 (1971). However, as we explained in our decision in Callahan, our decision in 50 Comp. Gen. 545 referred to 35 Comp. Gen. 615 and distinguished it only for the limited purpose of the miscellaneous receipts rule regarding the disposition of monies received for lost or damaged goods. We indicated in 50 Comp. Gen. 545 that, for other purposes, we would regard NCUA's operating fund as a continuing appropriation, subject to the various restrictions on the use of appropriated monies.

[redacted] this basis, we conclude that the operating monies made available to NCUA under 12 U.S.C. § 1755 constitute appropriated funds. Accordingly, we affirm our prior determination that NCUA's authority under 12 U.S.C. § 1766 to expend its operating fund "as it may be necessary and appropriate" to carry out the provisions of the Federal Credit Union Act is circumscribed by the provisions of 5 U.S.C. Chapter 57, Subchapter II.

Statutes Governing Relocation Expenses

The General Counsel next questions the basis for our general rule prohibiting payment of relocation expenses to new appointees absent specific statutory authorization to the contrary. He states that the rule is not contained in any of the relocation expense statutes contained in 5 U.S.C. Chapter 57, Subchapter II, but appears to rest on an unreliable principle of statutory construction--that is, the enumeration in 5 U.S.C. §§ 5722 and 5723 of certain categories of new appointees entitled to relocation expenses implies the exclusion of others.

We explained the basis for our general rule in earlier decisions involving the payment of relocation expenses to new appointees. Specifically, we stated that the salaries of Federal employees are fixed by statute, and, therefore, it is improper to pay additional compensation in the form of relocation expenses for which no statutory or regulatory authority exists. 22 Comp. Gen. 869, 871 (1943); and 7 Comp. Gen. 114 (1927).

Furthermore, the rule prohibiting payment of relocation expenses to new appointees is consistent with principles which apply to the payment of relocation expenses in general. In this regard, it is clear that a Government employee is not entitled to relocation expenses unless there is specific statutory authority for payment of such expenses. See Finn v. United States, 428 F.2d 828, 832 (Ct. Cl. 1970). Thus, prior to the enactment of Public Law 89-516, 80 Stat. 323, July 21, 1966, amending the Administrative Expenses Act of 1946, a Government employee was not entitled to subsistence expenses for his family

while en route to the new duty station, house-hunting expenses, temporary quarters subsistence expenses, residence sale and purchase expenses, or miscellaneous expenses. See S. Rep. No. 1357, 89th Cong., 2d Sess., reprinted in 1966 U.S. Code Cong. & Ad. News 2564.

Accordingly, we find no basis for overturning our long-standing rule which prohibits the payment of relocation expenses to new appointees in the absence of specific statutory authority to the contrary. Applying the rule to the present case, Mr. Callahan is not entitled to retain the amount reimbursed to him for moving expenses since, at the time of his appointment, there was no statutory authorization for payment of relocation expenses to Presidential appointees.

The General Counsel next contends that NCUA's determination to pay Mr. Callahan's moving expenses was reasonable in view of the fact that 5 U.S.C. § 5723 recently was amended to permit payment of certain relocation expenses incurred by Presidential appointees. Specifically, section 5723, as amended by Public Law 98-151, 97 Stat. 964, 977, November 14, 1983, authorizes reimbursement for the travel expenses of a Presidential appointee, transportation expenses of his immediate family, and costs of shipping household goods and personal effects.

We find that the amended provisions of 5 U.S.C. § 5723 have no bearing on Mr. Callahan's entitlement to the relocation expenses he incurred in 1981, since those provisions did not become effective until November 14, 1983. See section 118(c)(1) of Public Law 98-151, 97 Stat. 964, 979, and Supp. 10 to the Federal Travel Regulations (GSA Bulletin FPMR A-40), 49 Fed. Reg. 13920 (1984). Although the General Counsel suggests that the amendment provides after-the-fact support for NCUA's determination to pay Mr. Callahan's moving expenses, the reasonableness of NCUA's determination is not material. The NCUA had no authority to reimburse Mr. Callahan for moving expenses under the law then in effect, and it is well settled that the Government cannot go beyond the actual authority conferred by statutes and regulations. Kenneth Becker, B-203502, October 8, 1981.

Furthermore, we note that 5 U.S.C. § 5723, as amended, does not authorize a new appointee reimbursement for residence sale and purchase expenses. Of the $21,250.37 paid to Mr. Callahan as reimbursement for his moving expenses, $15,272.50 represented expenses associated with the sale of his residence in Springfield, Illinois, and the purchase of a new residence in the Washington, D.C., area.

Payment by Central Liquidity Facility

The General Counsel next contends that Mr. Callahan may be regarded as an employee of NCUA's Central Liquidity Facility (CLF) since, as Chairman of NCUA's Board, he is responsible for managing the CLF.[2/] The General Counsel further argues that CLF is a Government-controlled corporation, and, under 5 U.S.C. § 5721, its employees are not subject to the relocation expense provisions of 5 U.S.C. Chapter 57, Subchapter II. On this basis, he argues that CLF properly assumed the charge for Mr. Callahan's relocation expenses, and was free to implement its own policy with respect to reimbursement of those expenses.

In our prior determination, we concluded that CLF's assumption of the charge for Mr. Callahan's relocation expenses had no bearing on his entitlement to such expenses because Mr. Callahan must be regarded as an employee of NCUA, not CLF. Although the General Counsel disagrees with our conclusion, he does not dispute that management of the CLF constitutes only one of Mr. Callahan's responsibilities as Chairman of NCUA's Board of Directors, and that Mr. Callahan's salary is paid entirely from NCUA's operating fund without reimbursement from funds allocated to CLF. Accordingly, we find no basis for reaching a different determination on this issue.

[2/] The CLF, created by Public Law 95-630, 92 Stat. 3680, November 10, 1978, 12 U.S.C. § 1795, was established as a mixed-ownership Government corporation under 31 U.S.C. § 856 (now 31 U.S.C. § 9101(2)(G)), that would "exist within the National Credit Union Administration and be managed by the Board." 12 U.S.C. § 1795b.

Erroneous Advice

Finally, the General Counsel argues that Mr. Callahan accepted his appointment and incurred relocation expenses in reliance on the NCUA Board's advice that he would be reimbursed for such expenses. However, it is not material that Mr. Callahan may have relied on erroneous advice provided by the NCUA Board, since it is well settled that the Government cannot be bound beyond the actual authority conferred upon its agents by statute or by regulations. See Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 384 (1947); Utah Power & Light Co. v. United States, 243 U.S. 389, 409 (1917); and Kenneth P. Lindsley, Jr., B-194341, May 22, 1979.

CONCLUSION

For the reasons stated above, we affirm our prior determination that Mr. Callahan was not entitled to be reimbursed for the travel and transportation expenses he incurred in reporting to his first duty station. Accordingly, Mr. Callahan must reimburse NCUA for those expenses.

Milton J. Socolar

for Comptroller General
of the United States