Comptroller General
of the United States

Washington, D.C. 20548

Decision

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Matter of: Reimbursement of Selective Service Employee for Payment of Fine

File: B-239511

Date: December 31, 1990

DIGESTS

1. Absent a clear and unambiguous law to the contrary, United States and its activities are free from state regulation including payment of fines. Therefore, parking tickets are personal liability of employee responsible for their being issued. See court cases cited.

2. A Selective Service System (SSS) employee paid a $50 parking ticket written on a vehicle leased by SSS to prevent the ticket from doubling. SSS determined that the paying employee was not the party responsible for receipt of the ticket and did not identify another employee as responsible for receipt of ticket. Whether SSS may reimburse paying employee depends upon whether employee paid a valid obligation of the United States arising by virtue of the language in motor vehicle lease agreement whereby SSS as lessee agreed to not permit leased "vehicle to be used in violation of" District of Columbia law and regulations and that SSS would "indemnify and hold lessor harmless from any and all . . . penalties resulting from violation of such laws."

3. Although the operator of vehicle is liable for payment of parking ticket, District of Columbia law makes owner of vehicle ultimately liable for payment of parking ticket. District law also provides that lessor of vehicle may eliminate liability for parking tickets incurred by lessee. Therefore, whether employee who paid $50 ticket on assumption that agency was liable for such as damages to lessor under a hold-harmless clause in lease agreement paid an obligation of the government for which employee may be reimbursed, depends upon whether lessor would have had to pay the ticket. Request is returned to agency with instruction to make determination regarding lessor's liability since submission lacks requisite finding.

DECISION

This responds to a request from G. Huntington Banister, Comptroller, Selective Service System, (SSS) for a decision on whether SSS may reimburse an employee for paying to the District of Columbia Government a parking ticket written on a

vehicle leased by SSS. For the reasons stated below, we are returning the request to SSS with instruction to make requisite determination regarding lessor's liability for paying ticket and to take appropriate action based upon such determination.

BACKGROUND

SSS entered into an agreement on October 15, 1987, with a commercial vendor doing business in the District of Columbia to lease a new automobile for use by the Director, SSS. The automobile received a $50 ticket for failure to have a current safety inspection sticker while parked in the "Government Vehicles Only" space on the public street in front of SSS headquarters building. None of the several drivers who had access to the automobile were present at the time.

SSS states that the failure to obtain a safety inspection resulted from administrative oversight on the part of SSS and not from any negligent or intentional act by a particular employee. It notes that prior to the citation, agency employees believed that the lessor of the automobile was responsible for obtaining the safety inspection.1/ However, subsequent to the receipt of the citation, SSS officials reviewed the lease and determined that SSS was responsible for obtaining the safety inspection and for any fines imposed on the lessor as a result of SSS's failure to obtain such inspection.

Within SSS, the Division of Support Services is responsible for maintaining the vehicle and providing drivers as needed. Within the Division, the Support Services Supervisor was responsible for ensuring that the vehicle was properly inspected. However, the Supervisor was on extended leave and subsequently detailed from the Division around the time that the automobile should have been inspected. SSS claims that it is unable to determine who else, if anyone, was responsible for ensuring that the automobile receive a safety inspection. Regardless, the Division Manager paid the ticket to prevent the fine from doubling2/ and has requested reimbursement from SSS.

1/ This was apparently the first time the automobile had to be inspected while under the lessee's control since the original inspection sticker had been issued for a 2-year period. See D.C. Code § 40-201(1981).

2/ Fines for tickets double if not contested or paid within 15 calendar days. D.C. Code §§ 40-625(d), 40-605(a)(2).

Voluntary Creditor Rule

Consideration of the Manager's claim for reimbursement begins with what has become known as the "voluntary creditor" rule. This rule holds that using personal funds to pay what a payer perceives to be an obligation of the government generally does not create a valid claim against the government that may be reimbursed. See 62 Comp. Gen. 419 (1983) for an extensive discussion of the voluntary creditor rule. We have permitted reimbursements as an exception to the voluntary creditor rule when the payment is made to meet a public necessity; that is, when there is a real need to act without delay to protect a legitimate government interest. 62 Comp. Gen. at 422-424.3/

If the employee's claim is for payment of goods or services, the amount allowed as reimbursement may be determined by application of the doctrine of ratification or quantum meruit. 62 Comp. Gen. at 424-425. In other situations, reimbursement may be determined in accordance with agency regulations. 61 Comp. Gen. 575 (1982). However, reimbursement may not be authorized to a voluntary creditor when the underlying expenditure itself is improper. Thus, if the agency would not be authorized to make a given expenditure directly, then the intervention of an employee as a voluntary creditor can have no effect. 60 Comp. Gen. 379 (1981).

Payment of Fines

It is a fundamental principle of constitutional law that the government of the United States and its activities are free from state regulation in the absence of a clear and unambiguous congressional mandate subjecting the government to state regulation. Hancock v. Train, 426 U.S. 167, 178-181 (1976). The freedom from state regulation includes immunity from state taxes, McCulloch v. Maryland, 4 Wheat 316 (1819); immunity from state permit requirements, Train, 426 U.S. 198 and Environmental Protection Agency v. California, ex rel. State Water Resources Control Board, 426 U.S. 200 (1976); immunity from state inspection fees, Mayo v. United States, 319 U.S. 441 (1943); immunity from state licensing of government motor vehicle operators, Johnson v. State of Maryland, 254 U.S. 51 (1920); and immunity from state or local fines and penalties for failure to comply with laws or ordinance, Missouri Pacific Railroad Company v. Ault, 256 U.S. 554, 563-564 (1921); People v. State of California, Etc. v. Department of Navy, 431 F. Supp. 1271, 1293-1294 (N.D. Cal. 1977), aff'd People of State of California v. Department of

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3/ But see, 63 Comp. Gen. 296, 298 (1983) (authorizing reimbursement absent exigencies demanding immediate action).

the Navy, 624 F.2d 805 (9th Cir. 1980); 65 Comp. Gen. 62 (1985).

However, the government's immunity does not necessarily extend to government employees or shield them from civil fines imposed by state or local government for violations of statute, regulations, or ordinances relating to the safe operation of motor vehicles since such violations are not ordinarily considered within the scope of their official duties.4/ Thus, a fine imposed by a court upon an employee for a parking or moving violation committed while using a government vehicle is a personal responsibility of the employee and there is no authority for an agency to use appropriated funds to pay the fine or to reimburse the employee for payment of the fine. 57 Comp. Gen. 270 (1978); 31 Comp. Gen. 246 (1952). Furthermore, the agency's inability to identify the employee responsible for a vehicle receiving a parking citation does not serve to authorize the agency's payment of the fine. B-147420, July 27, 1977; B-173753.188, Mar. 24, 1976. However, when a fine is imposed against an employee personally for actions by the government over which the employee has no control (rather than because of the employee's intentional or negligent action), reimbursement to the employee for payment of the fine is authorized. 57 Comp. Gen. 476 (1978).

Applying these rules, had SSS identified some employee (other than the Division Manager) as being personally responsible for the receipt of the ticket (i.e., having failed to obtain the required safety inspection), it would have been that person's responsibility to pay the fine, not the government's. Thus, the Division Manager's claim would be denied since he would not have paid an obligation of the government. Further, assuming that the Division Manager paid a parking fine that was levied directly on the government, the claim for reimbursement also would be denied since the government is immune from state or local fines, unless such immunity is waived.

4/ Commonwealth of Virginia v. Stiff, 144 F. Supp. 169 (W.D. Va. 1956); State of Oklahoma v. Willingham, 143 F. Supp. 445 (E.D. Okla. 1956). Compare State of Florida v. Huston, 283 F. 687 (S.D. Fla. 1922) (holding violations of motor vehicle safety laws by employees to be outside the course of performance of official duties) with City of Norfolk v. McFarland, 145 F. Supp. 258 (E.D. Va. 1956) and Lilly v. State of West Virginia, 29 F.2d 61 (4th Cir. 1928) (holding violations of speed limits by employees engaged in law enforcement activities where speed is a necessity to be within the performance of official duties).

Finally, although SSS argues that the receipt of the ticket was the result of administrative oversight on the part of SSS and not the result of any individual's negligence or intentional act, the fine was not levied directly on the Division Manager. He was not compelled personally by a court to pay a fine resulting from actions beyond his control and the result of the actions taken by the government. Consequently, the rationale in 57 Comp. Gen. 476 (1978) does not provide a basis for reimbursing the Division Manager under the facts of this case.

However, SSS argues that the Division Manager did not pay a fine that was levied directly on the government. Instead, SSS points out that under the paragraph of the lease agreement entitled "Use of Vehicles," SSS agreed that it would not permit the "vehicle to be used in violation of any federal, state or municipal statutes, laws, ordinances, rule or regulations" and that SSS would "indemnify and hold lessor harmless from any and all forfeitures, damages or penalties resulting from violation of such laws, ordinances, rules or regulations." SSS determined that based on this language in the lease, it was responsible for obtaining the motor vehicle safety inspection. Thus, the fine levied on the vehicle because of SSS's failure to obtain the safety inspection on the vehicle and for which the owner (lessor) was ultimately pecuniarily responsible was, by virtue of the lease agreement, a contractual liability of SSS. Therefore, since the fine would have doubled if not paid when it was, the prompt action by the Division Manager served to protect a legitimate government interest by preventing the government's financial liability under the lease from increasing.

There is legal merit to SSS's assertion that the government's immunity from state or municipal fines is inapplicable when the legal incidence of the fine is not imposed directly on the government but, instead, is imposed on the lessor, and the fine is merely a measure of damages for the government's failure to comply with the terms of its agreement and against which the government has agreed to indemnify the lessor.5/ However, for the reasons discussed below, we cannot authorize reimbursement based on the present record and instead return the matter to SSS to make certain determinations affecting SSS

5/ Compare 49 Comp. Gen. 205 (1969) (government liable as lessee of car for payment of tax imposed on lessor which lessor passed on as separate charge to lessee). See also 61 Comp. Gen. 257 (1982). Also, compare 51 Comp. Gen. 251 (1971) (legal principle that government is immune from payment of interest on claims unless authorized by statute may be waived by contract authorizing interest payment).

contractual liability to the lessor and by extension its authority to reimburse the Division Manager.

When a vehicle is cited for a non-moving violation, the ticket is written against the license plate number, not the operator of the vehicle. While the operator of the vehicle (should he be identified) is primarily liable for the fine, the owner of the vehicle is also liable. D.C. Code § 40-624(a). Regardless of who receives the ticket, the fine ultimately is the responsibility of the vehicle's owner since under District of Columbia law, an owner may not register a vehicle (vehicles must be registered annually) against which there are any outstanding unpaid fines. D.C. Code § 40-102(c)(2). However, pursuant to D.C. Code § 40-624, a lessor of a vehicle is not liable for fines or penalties imposed for non-moving infractions incurred by a leased vehicle if the lessor meets certain conditions.6/ Assuming that these conditions are met by the lessor, the lessor is relieved of liability for payment of the fine regardless of whether the District ultimately collects the fine from the lessee. Thus, it is unclear to us that the lessor would have been required to pay the fine incurred as a result of SSS's failure to have the leased vehicle timely inspected. In the absence of required payment by the lessor, there would not have been any financial liability to the government under the hold harmless language of the lease.

The record before us does not indicate whether SSS determined that the lessor had eliminated its liability for the fine. Accordingly, we are unable to resolve whether the Division Manager paid a valid government obligation under the lease,

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6/ D.C. Code § 40-624, regarding civil liability, provides:

"b) The lessor of a vehicle shall not be liable for fines or penalties imposed for an infraction pursuant to this subchapter if:

(1) Prior to the infraction, the lessor has filed with the Bureau the license plate number and state of registration of the vehicle to which the notice of infraction was issued; and

(2) Within 30 days after receiving notice from the Bureau of the date and time of an infraction, as well as other information contained in the original notice of infraction, the lessor submits to the Bureau the correct name and address of the person to whom the vehicle identified in the notice of infraction was rented or leased at the time of the infraction and the lessor notifies such person by mail of the notice of infraction."

and can neither authorize or deny reimbursing the Division Manager for payment of the fine.

In view of the foregoing, we are returning the request to SSS so that it might make the requisite determination. If SSS determines that the lessor availed itself of the procedure to avoid liability for the fine, then SSS may not reimburse the Division Manager. On the other hand, if SSS determines that the lessor remained liable for the fine, then SSS may reimburse the Division Manager.

Milton J. Socolar

Acting Comptroller General
of the United States