



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Use of Appropriated Funds to Finance Sale of Discounted Transit Passes to Federal Employees

File: B-243677; B-243674

Date: May 13, 1991

DIGEST

Under section 629 of Public Law 101-509, 104 Stat. 1478 (1990), agencies are authorized to use appropriated funds to participate in state and local programs that encourage the use of public transportation, including programs that involve the sale of discounted transit passes.

DECISION

This responds to inquiries from the General Counsel, General Services Administration, and the Comptroller, Drug Enforcement Administration (DEA), as to whether federal agencies may use appropriated funds to participate in state and local programs that encourage the use of public transportation. DEA is interested, specifically, in participating in a program adopted by the City of Los Angeles in which the agency would pay a \$15 monthly transit subsidy to employees who use public transportation for commuting to and/or from work. See Los Angeles Transit Subsidy Ordinance No. 164,483, codified at Los Angeles Municipal Code Section 85.05. Under this program, DEA would purchase transit passes and either (1) resell them to DEA employees at a \$15 per month discount, or (2) give them to employees free of charge, up to a maximum of \$15 per employee per month. We conclude that section 629 of Public Law 101-509, 104 Stat. 1478 (1990), authorizes federal agencies to use their appropriated funds to participate in state and local public transportation programs, including programs such as the one in Los Angeles that involve the sale of discounted transit passes that reduce employees' commuting costs.^{1/}

As a general rule, agencies do not have authority to subsidize employees' costs of commuting to and from work. See generally 43 Comp. Gen. 131 (1963); 27 Comp. Gen. 1 (1947). Commuting is a personal expense, the payment of which would

^{1/} We express no opinion with regard to the assertion of the City of Los Angeles that 42 U.S.C. § 7418 requires federal agencies to comply with the City's Transit Subsidy Ordinance.

constitute an increase in the employee's regular salary. 16 Comp. Gen. 64 (1936); 3 Comp. Gen. 433 (1924); B-216602, Jan. 4, 1985. Federal law prohibits such increases absent specific statutory authority:

"An employee or a member of a uniformed service whose pay or allowance is fixed by statute or regulation may not receive additional pay or allowance for the disbursement of public money or for any other service or duty, unless specifically authorized by law and the appropriation therefor specifically states that it is for the additional pay or allowance."

5 U.S.C. § 5536 (1988) (emphasis added).

Section 629 provides the statutory authority necessary to overcome the general rule. Subsection (a) specifically authorizes federal agencies to "participate in any program established by a State and local government that encourages employees to use public transportation," including programs that "involve the sale of discounted transit passes or other incentives that reduce the cost to the employee of using public transportation." Subsection (b) also exempts such programs from 5 U.S.C. § 5536: "Notwithstanding the provisions of section 5536 of title 5, United States Code, or any other provision of law, an employee may participate in a program described under subsection (a)."

Based on this statutory authority, it is clear that federal agencies may use appropriated funds, if otherwise available,^{2/} to participate in state and local public transportation programs. Section 629, however, expires December 31, 1993, and absent its extension or the enactment of other statutory authority, agencies will have to discontinue their participation in such programs at that time.



~~Acting~~ Comptroller General
of the United States

^{2/} In discussing section 629, Senator DeConcini stated that "there is no cost associated with [this program]. The cost to the agency would be absorbed within existing funds." 123 Cong. Rec. 12707 (1990).