



## Decision

**Matter of:** Air Force Reserve Command—Disposable Plates and Utensils

**File:** B-329316

**Date:** November 29, 2017

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### DIGEST

Air Force Reserve Command may not use appropriated funds to purchase disposable plates and utensils where potable water was not available in the building but was provided via bottled water. Disposable plates and utensils, like food, are personal expenses of individual employees. An agency may not use appropriated funds to purchase items considered personal expenses without specific statutory authority to do so, unless the agency can demonstrate that the provision of items that would otherwise constitute a personal expense directly advances the agency's statutory mission and the benefit accruing to the agency clearly outweighs the ancillary benefit to the employee.

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### DECISION

A Comptroller, together with a Certifying Officer, of the Air Force Reserve Command (AFRC) requests an advance decision under 31 U.S.C. § 3529 regarding the propriety of purchasing disposable plates and utensils using appropriated funds for use by personnel who work in a facility where potable water is provided via bottled water. Letter from Comptroller, Grissom Air Reserve Base, to the Comptroller General (July 17, 2017) (Request Letter); Telephone Conversation between Comptroller, Grissom Air Reserve Base, and Assistant General Counsel and Senior Attorney, GAO (Aug. 11, 2017). As explained below, disposable plates and utensils are a personal expense to be borne by individual employees. Absent statutory authority permitting the expenditure or agency demonstration that the purchase furthers a statutory mission and the benefit accruing to the government clearly outweighs the ancillary benefit to individual employees, AFRC may not use appropriated funds for such purpose.

Our practice when rendering decisions is to obtain the legal views of the relevant agency and to establish a factual record on the subject of the request. GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), available at [www.gao.gov/products/GAO-06-1064SP](http://www.gao.gov/products/GAO-06-1064SP). AFRC provided the relevant facts and the agency's legal views in its request letter.

## BACKGROUND

On November 17, 2016, the Bioenvironmental Engineering Services office at Grissom Air Reserve Base issued a memorandum presenting the results of water sampling conducted at the Command Post. Request Letter, Attachment 1. The Bioenvironmental Engineering Services office noted that lead and copper levels in the drinking water exceeded maximum allowable concentration limits, and, as a result, it ordered that “[w]ater [in that building] may not be used for consumption, cleaning of dishes, or making coffee.” *Id.* It also authorized the purchase of bottled water for drinking water use until the water supply was safe for consumption. *Id.* Air Force policy permits the purchase of drinking water with appropriated funds when the public supply is unsafe for human consumption. Air Force Instruction 65-601V1, *Special Drinking Water*, § 4.58.1 (Aug. 16, 2012).

The Command Post operates 24 hours a day, 365 days a year. Civilian and military personnel working 12-hour shifts may not leave the work area. Request Letter, at 2. Employees prepare their meals in a designated break room, which is equipped with a sink, a microwave, and a toaster oven.<sup>1</sup> *Id.* While potable water was unavailable at the Command Post, employees brought dirty dishes and utensils home to clean. *Id.* Subsequently, the base Comptroller issued a memorandum for the record authorizing the temporary purchase of bottled water. Request Letter, Attachment 2. Additionally, the Comptroller’s memorandum authorized the temporary purchase of disposable plates and utensils “to protect the building’s occupants from health related issues associated with unsafe lead and copper concentrations.” *Id.*

Following the Comptroller’s determination, the Staff Judge Advocate, the command-level Judge Advocate, and the command-level Financial Management office collectively concluded that appropriated funds were not available to purchase disposable plates and utensils. Request Letter, at 1. They stated that Command Post personnel may use AFRC appropriations to purchase bottled water. Request Letter, at 1, 2–3; Attachment 3. The Comptroller and Certifying Officer sought clarification from our Office. Request Letter.

## DISCUSSION

We have previously considered whether an agency may purchase disposable plates and utensils in a 2014 decision concerning the Department of Commerce’s (Commerce) provision of disposable cups, plates, and utensils to National Weather Service (NWS)

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<sup>1</sup> The facility has preexisting dishes and utensils, though no records exist confirming whether appropriated funds were used to purchase them. Request Letter, at 2. The purchase of the preexisting dishes and utensils is not at issue in this decision.

employees. B-326021, Dec. 23, 2014.<sup>2</sup> There we held that such items are a personal expense for which appropriations are not available. Commerce and the NWS Employees Organization (NWSEO) had entered into a memorandum of understanding whereby Commerce agreed to provide disposable cups, plates, and utensils as part of an attempt to combat the spread of the H1N1 influenza virus. *Id.* Commerce subsequently discontinued the practice when it determined that the items were personal expenses for which appropriated funds were not available. *Id.* We agreed with Commerce that NWS may not use its appropriation to purchase those items. *Id.* Neither Commerce nor NWSEO demonstrated that the purchase of disposable cups, plates, and utensils would “directly advance [Commerce’s] statutory mission or that the benefit accruing to the government through the provision of such items outweighs the personal nature of the expense.” *Id.* at 5. Moreover, we found unconvincing the assertion that the primary beneficiary of the disposable items was the government. The agency presented no empirical evidence to substantiate the claim that disposable cups, plates, and cutlery would help prevent the spread of the flu virus. *Id.*

The question presented here is whether agency provision of potable water by means other than the public supply permits the use of taxpayer dollars for the purchase of disposable plates and cutlery in light of the Comptroller’s and Certifying Officer’s concern about the availability of potable water for cleaning dishes. The answer is no. AFRC’s relevant offices made a legal and practical determination on how best to provide potable water to employees. Once the Bioenvironmental Engineering Services office assessed the contaminant concentrations, it authorized, and the Comptroller’s office concurred in, the purchase of bottled water. Request Letter, Attachment 1. GAO’s case law on bottled water is clear and consistent: agencies may use their appropriations to provide bottled water to employees where no potable water is available. B-324781, Dec. 17, 2013; B-247871, Apr. 10, 1992.

Once the agency fulfills its legal obligation to provide potable water, the remaining flexibility lies with individual employees to make choices that suit their preferences. For example, employees may choose to 1) purchase and use their own disposable plates and utensils; 2) wash plates and utensils at home and transport them back to the office; or 3) wash plates and utensils using the water provided. We commented on this type of flexibility in our 2014 Commerce decision where we noted that “employees could easily bring their own disposable cups, plates, or cutlery when they bring their own meals to work.” B-326021, at 6. Put simply, the agency has a duty to provide potable water. Whether employees use that water or find other methods to prepare and consume meals is left to personal choice. Consequently, we agree with the Judge Advocate’s office that agency appropriations are not available to purchase disposable plates and utensils.

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<sup>2</sup> See also B-327146, Aug. 6, 2015 (National Weather Service Employees Organization’s request for reconsideration on matters of jurisdiction and agency policy denied for failure to present any material errors of fact or law).

The requester asks whether the facts presented here—AFRC employees at issue are “confined to their workstations for 12-hour shifts” and there are “no means for Command Post personnel to obtain meals other than to bring in their own food,”—compel a different result than B-326021. Request Letter, at 3. Relying on a 1971 GAO decision involving the purchase of cooking utensils, the requester asserts that the purchase of plates and utensils is essential for the proper operation of the facility; therefore, the requester maintains, the benefits accruing to the agency of purchasing disposable plates and utensils outweigh the benefits to employees. *Id.*

In the 1971 case, GAO did not question the Federal Aviation Administration’s (FAA) assertion that the purchase of cooking utensils was “essential for the proper performance” of an air traffic control facility. B-173149, Aug. 10, 1971. There, FAA explained that a facility in Memphis, Tennessee, had no cafeteria or snack bar where employees could purchase food. *Id.* Additionally, employees were required to remain at their posts during their working shifts. *Id.* FAA purchased cooking utensils so that the employees in question could prepare their food. *Id.* As we noted in 2014 to Commerce, critical in the analysis is the fact that the utensils were meant to be used by employees collectively. B-326021.

Our reasoning in the 1971 decision aligns with later decisions from this Office on the purchase of communal kitchen appliances. For example, we did not object to the Navy’s purchase of a microwave oven in light of employee work hours and the lack of available eating facilities. B-210433, Apr. 15, 1983. Importantly, we noted that the provision of kitchen appliances is “readily distinguishable from the long line of decisions prohibiting the use of appropriated funds to provide free food for [g]overnment employees working at their normal duty station even under difficult or unusual circumstances.” *Id.* at 2. See also B-302993, June 25, 2004 (U.S. Pacific Command may purchase kitchen refrigerators, microwaves, and coffee makers); B-276601, June 26, 1997 (CIA may purchase refrigerators).

Those cases do not lead us to reach the same conclusion here. Each of our cases concerning the outfitting of kitchen areas involved shared equipment for food preparation or preservation to be used by groups of employees, as opposed to individually consumable items like disposable plates and cutlery. Here, AFRC employees may choose how to store and transport their food to meet their personal preferences; AFRC does not demonstrate a legal necessity to provide these items. Because the purchase of disposable items is for the personal benefit of AFRC employees, appropriated funds are unavailable.

## CONCLUSION

Absent specific statutory authority, an agency may purchase items otherwise considered personal expenses upon a demonstration that the expense directly advances the agency’s statutory mission and the benefit accruing to the agency clearly outweighs the ancillary benefit to the employee. The purchase of disposable plates and cutlery when potable water is provided by means of bottled water does not meet that

test. Once the agency fulfills its legal obligation to provide potable water, the remaining flexibility lies with individual employees to make choices that suit their preferences. The purchase of disposable plates and utensils thus constitutes a personal expense for which AFRC may not use appropriated funds.

A handwritten signature in black ink, appearing to read "S. Poling". The signature is fluid and cursive, with a prominent loop at the end.

Susan A. Poling  
General Counsel