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Douglas Faulkner
Civ. Pers.

DECISION



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

FILE: B-186238

DATE: FEB 8 1977

MATTER OF: Daniel Goe - Waiver - Housing Allowance

DIGEST: Locally hired Liberian employee was provided with a residence when he was appointed Associate Peace Corps Director for Liberia. There was no authority for payment of such an allowance from appropriated funds, but it was permissible for host country to pay for home directly. Instead payments were made by Peace Corps from host country contributions. GAO finds no fault on the part of the employee and waiver of erroneous payments is hereby granted.

We have been asked, by letter of March 25, 1976, from the General Counsel of ACTION, an independent agency of the executive branch to waive erroneous payments, in the form of a housing allowance, made to Mr. Daniel Goe, a locally hired Liberian employee of the Peace Corps in Liberia.

Prior to November 1971, Mr. Goe was a "Foreign Service Local" (FSL) employee of the Peace Corps in Gbarnga, Liberia. Effective November 15, 1971, Mr. Goe was appointed to the position of Associate Peace Corps Director, with a duty station at Monrovia, Liberia. The distance between his old duty station and Monrovia prevented Mr. Goe from continuing to reside in the home he owned in Gbarnga and commuting. The Peace Corps Director in Liberia felt that Mr. Goe should be provided with housing in Monrovia because the transfer had been made at the Peace Corps' request.

The personnel officer at the American Embassy in Monrovia advised the Peace Corps that there was:

"* * * no legal authority available to Peace Corps for providing quarters for Foreign Service Local employees. Specifically, she noted that 3 FAM 900 and the Interagency Local Employees Handbook prohibited Peace Corps from 'providing housing or granting a local employee a quarters allowance'."

Assistance and advice was requested from ACTION in Washington. By letter of October 28, 1971, from the Office of General Counsel

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to the Peace Corps Director in Liberia, the following solution was proposed:

"* * * It should be possible to suggest to the Government of Liberia that it earmark part of its host country contribution to be used first for the rent and utilities of a house to be provided to a Liberian employee of the Peace Corps who is required to change his place of residence because of his Peace Corps responsibilities."

By letter of December 8, 1971, the Department of Education of the Liberian government stated it had no objection to a portion of its contribution to the Peace Corps being used to pay the rent and cost of utilities for a residence to be used by a Liberian employee of the Peace Corps provided, this would not entail any additional cost to the Liberian government or any increase in its counterpart contribution to the Peace Corps.

The Peace Corps had apparently commenced paying Mr. Goe's rent and utility costs prior to the receipt of the letter as the record shows they were paid from November 15, 1971, through April 15, 1976, in the total amount of \$27,116. This payment has been questioned because the payments were made directly by the Peace Corps. Under the provisions of the Peace Corps Manual, section 715(III)(A)(1), host country contributions may only be used for purposes for which appropriated funds could also be used. Here, there was no authority available authorizing the use of appropriated funds to provide quarters for Mr. Goe. According to the submission, it would have been permissible for the Liberian government to pay Mr. Goe's housing costs directly, and simply reduce their contribution by an equivalent amount. But once host country contributions are received into Peace Corps accounts, those funds become, for all intents and purposes, appropriated funds. When the error was discovered, Mr. Goe was advised that he would have to pay for his house himself, or prevail upon the Liberian government to pay the cost directly. Shortly thereafter Mr. Goe left the Peace Corps.

The authority for waiver of erroneous payments is contained in 5 U.S.C. § 5584 (Supp. IV, 1974), which provides, in pertinent part, that:

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"(a) A claim of the United States against a person arising out of an erroneous payment of pay or allowances, other than travel and transportation expenses and allowances and relocation expenses payable under section 5724a of this title, on or after July 1, 1960, to an employee of an agency, the collection of which would be against equity and good conscience and not in the best interests of the United States, may be waived in whole or in part by--

"(1) The Comptroller General of the United States * * *."

In cases where the amount to be waived exceeds \$500, only the Comptroller General has waiver authority. The regulations governing the exercise of waiver authority are found in 4 C. F. R. Subchapter G (1976). Section 91.5(c) of that subchapter, states that waiver is appropriate, when:

"Collection action under the claim would be against equity and good conscience and not in the best interests of the United States. Generally these criteria will be met by a finding that the erroneous payment of pay or allowances occurred through administrative error and that there is no indication of fraud, misrepresentation, fault or lack of good faith on the part of the employee or member or any other person having an interest in obtaining a waiver of the claim. * * *"

In the instant case, the providing of housing for Mr. Goe would have been proper, if the Liberian government had made the payments directly. We have been advised that the letter from the Office of General Counsel of ACTION dated October 28, 1971, was intended to describe that procedure, but was not understood that way by the Peace Corps officials in Liberia. It is also clear that an erroneous payment of a housing allowance may be waived. There is no evidence that Mr. Goe did anything but rely on the expertise of the agency officials.

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We find no evidence in the record to indicate that Mr. Goe was guilty of fraud, bad faith, or any other fault. It is clear that, but for the misunderstanding, the allowance to Mr. Goe could have been paid directly by the Liberian government, and there is nothing to indicate that the Liberian government would have objected to that procedure.

Therefore, we conclude that collection of the funds expended to provide housing for Mr. Goe would be against equity and good conscience and not in the best interest of the United States. Accordingly, the erroneous payments in the amount of \$27,116 are hereby waived under the authority of 5 U.S.C. § 5584 (Supp. IV, 1974).

H. F. KELLER
Comptroller General
of the United States