

CGM  
Selden

13116



**DECISION**

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

FILE: B-196690  
DATE: March 14, 1980  
[Payment of] MATTER OF: Expenditures incurred by the Government of American Samoa for the American Samoan Judiciary  
AGC 00238  
DL 902535  
DL 04098

DIGEST: Department of the Interior (DOI) may reimburse Government of American Samoa for payments made for the American Samoan Judiciary for salaries, motor vehicles and entertainment expenses. The appropriation to DOI for salaries and expenses of American Samoan Judiciary establishes, in effect, a grant to a non-Federal entity unlike the appropriation for salaries and expenses of the United States Government Comptroller. Restrictions on use of funds appropriated to Federal entities are not applicable. So long as expenditures incurred are in furtherance of the grant object and do not contravene statutory, regulatory, or other restrictions imposed on use of money, they are permissible.

DLC 104097

DOI - Office of U.S. Gov. Con. for American Samoa

The Department of the Interior (DOI) has asked about the propriety of certifying for payment certain expenditures from funds appropriated to the Office of Territorial Affairs. The expenditures were made by the Government of American Samoa in 1978 and 1979 on behalf of the American Samoan Judiciary for salaries, motor vehicles, and entertainment of visiting dignitaries. In this regard, DOI asks that we apply our decision, Reimbursement of the Government of American Samoa, B-194321, August 7, 1979, involving procedures for financing the office of the United States Government Comptroller for American Samoa (Government Comptroller) to this case.

We think the relationship between DOI and the American Samoan Judiciary is entirely different from that between DOI and the Government Comptroller and ~~our~~ previous decision is therefore not applicable. However, for the reasons explained below, we have no objection to the use of the DOI appropriation for expenses of the American Samoan Judiciary to reimburse the Government of American Samoa for the expenditures described so long as DOI determines they were incurred for allowable expenses of the American Samoan Judiciary.

~~009002~~

111795

The Secretary of the Interior has been responsible for the administration of American Samoa since July 1, 1951/ Executive Order 10264, June 29, 1951. Unlike other United States territories, American Samoa has never been the subject of organic legislation. In 1967, however, an American Samoan Constitution took effect, as approved by the Secretary of the Interior. The Constitution establishes three independent branches of Government--legislative, executive and judicial--and provides that the judicial power be vested in a High Court and district courts. The Chief Justice and the Associate Justice of the High Court are appointed by the Secretary of the Interior. American Samoan Const., Art. III, § 3. Five additional associate judges are appointed by the Governor of American Samoa (5 A.S.C. § 204) who in 1977 was made an elected official. Sec. of the Interior Order No. 3009, 42 Fed. Reg. 48398 (September 23, 1977).

The American Samoan Judiciary is financed, in part, by moneys appropriated to DOI/ (A portion of the Samoan judicial system, consisting of local judges with limited jurisdiction, is funded by a separate local--i. e., Samoan--appropriation.) For example, for fiscal year 1979 the DOI and Related Agencies Appropriations Act provided:

"For expenses necessary for the administration of Territories under the jurisdiction of the Department of the Interior, \$52,023,000, of which (1) not to exceed \$48,302,000 shall be available for compensation and expenses of the judiciary in American Samoa, as authorized by law (48 U.S.C. § 1661(c); grants to American Samoa, in addition to current local revenues, for support of governmental functions; \* \* \*'" Pub. L. No. 95-465, October 17, 1978, 92 Stat. 1288.

Almost identical provisions for funding the Samoan judiciary had been incorporated in DOI appropriation acts since fiscal year 1952. The monies appropriated to the judiciary were not specifically identified as grants, as were part of those same monies for "grants to American Samoa, in addition to current local revenues, for support of Government functions," 92 Stat. 1288. However, in terms of the purpose of the appropriation and the nature of the relationship between DOI and the American Samoan Judiciary, we do not believe this distinction is significant; the money for the Judiciary is also in effect a grant/

(For fiscal year 1980, the language has been changed. Instead of referring to funds "for compensation and expenses of the judiciary" in American Samoa, the current Act appropriates funds "for grants to the judiciary in American Samoa for compensation and expenses," thus conforming to the language used to provide funds by grant for support of other Samoan Government functions. Pub. L. No. 96-126, 93 Stat. 965. There is no longer any doubt that the Samoan judiciary is the recipient of a grant.)

There is useful guidance in identifying a grant relationship to be found in the legislative history of the Federal Grant and Cooperative Agreement Act of 1977, (41 U.S.C. §§ 501-509) although that statute became effective after the 1978 DOI appropriation act. The Senate Committee on Governmental Affairs described three basic relationships found in transactions between Federal agencies and recipients of contract and federal assistance awards:

"(1) The principal purpose of the relationship is the acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government. This is Federal purchase for Federal use.

"(2)(a) The principal purpose of the relationship established is the transfer of money, property, services, or anything of value to the recipient to accomplish a public purpose of support or stimulation and (b) no substantial involvement occurs between the Federal agency and the recipient during performance of the activity.

"(3)(a) The principal purpose of the relationship established is the transfer of money, property, services, or anything of value to the recipient to accomplish a public purpose of support or stimulation and (b) substantial involvement occurs between the Federal agency and the recipient during performance of the activity."

The Grant and Cooperative Agreement Act essentially identified the first type of relationship as a contract; the second as a grant agreement and the third as a cooperative agreement. 41 U.S.C. §§ 503-05.

Following those guidelines, we note that the American Samoan Judiciary is an independent branch of the American Samoan Government (ASG) deriving its authority from the American Samoan Constitution, as approved by the Secretary of the Interior. Its activities primarily benefit American Samoa. Although the Secretary of the Interior appoints the Chief Justice and Associate Justice of the High Court, those officers function within the Samoan system of Government, their work essentially benefiting that system rather than the Federal Government. We have recognized in this connection that, despite United States sovereignty over American Samoa, the Government of American Samoa is not, at least for most purposes, a Federal instrumentality. 46 Comp. Gen. 586 (1966).

Historically, it is true, the appropriation for the Samoan judiciary (as well as for the Governor's office and the legislature) has been cast in language consistent with a direct appropriation and in contrast to an explicit grant for support of other governmental functions. However, we have found no indication in the legislative history that this distinction in form was intended to reflect a distinction in substance.

Indeed, while the ASG is not independent of the United States, the ultimate goal of Federal policy is eventual organic legislation and self-government for Samoa. The establishment of the ASG, with its own constitution, with an elected executive and a territorial legislature, demonstrates the Federal commitment to allowing Samoa to govern itself to the maximum feasible extent. It would be anomalous to single out one branch of the ASG--the Judiciary--and subject it to a greater degree of Federal control than the other coordinate branches without some unequivocal expression of congressional intent.

To the extent there is any expression of congressional intent, it is (admittedly after the fact) that the Judiciary be financed in effect as a grantee, *i. e.*, without substantial involvement by DOI in the expenditure of the funds. Pub. L. No. 96-126, *supra*. (The same intent was manifested in a change in form, beginning with the fiscal year 1978 appropriation, in the appropriation for the Governor and the legislature; formerly cast as direct appropriations, these are now apparently included in the grant to Samoa for support of governmental functions. Cf. Pub. L. No. 95-74, 91 Stat. 294, with Pub. L. No. 95-465, 92 Stat. 1288.) As we said in another context:

"\* \* \*it would be inconsistent with the philosophy underlying the transfers of property already made and the grants of Federal funds for the benefit of the Samoan community to conclude that after such transfers and grants the property and funds involved nevertheless remain those of the United States."  
46 Comp. Gen. 586, supra, at 589.

Our decision concerning the Government Comptroller for American Samoa (B-194321, August 7, 1979), is inapposite. There, we permitted certification of a voucher for reimbursement of the Government of American Samoa where that Government had both procured goods and services for and expended its monies in support of the Office of the Government Comptroller. The latter is clearly a Federal office. The Office of the Government Comptroller was established (by Secretary of the Interior Order No. 3009, 42 Fed. Reg. 48398 (September 23, 1977)) to "perform specific and comprehensive audits of all activities, entities and branches of the Government of American Samoa." Moreover, the Government Comptroller is required to undertake additional audits at the request of the Secretary and to submit to the Governor of American Samoa and the Secretary of the Interior an annual report of the fiscal conditions of the Government. In addition to other responsibilities, the Government Comptroller also is authorized to provide advice and assistance to the American Samoan Governor upon request. Although the Government Comptroller's work may benefit American Samoa as well as the United States, the Government Comptroller is both a creature of and is primarily responsible to DOI. Accordingly, the direct appropriation to DOI for salaries and expenses of the Office of Government Comptroller should not be regarded as free of the restrictions applicable to direct appropriations to any other Federal entity.

In the case of grants to a non-Federal entity, however, once awarded the grant funds belong to the grantee subject only to statutory, regulatory, or restrictions in the grant instrument itself which may be imposed by the Federal Government. 54 Comp. Gen. 6, 9 (1974). In the absence of a grant condition specifying the contrary, when funds are granted to and accepted by the grantee, their expenditure for the purposes and objects for which the grant is made is not subject to the various restrictions and limitations imposed by Federal statute or our decisions concerning expenditure by Federal departments and establishments of appropriated moneys. 43 Comp. Gen. 697, 699 (1964).

In answer to the questions raised in the submission about specific expenditures, so long as the purchase of the automobiles and entertainment expenses were incurred as expenses of the American Samoan Judiciary, and nothing in the appropriation, DOI regulations, or other restrictions imposed on the ASG as conditions for receiving the money prohibited such expenditures, there is no reason to withhold reimbursement. Although 31 U.S.C. § 638a prohibits appropriated monies from being spent on motor vehicles for any branch of the Government unless specifically authorized by law, that prohibition does not apply when the purchase is made with funds which in the hands of the recipient have lost their character as Federal funds. 55 Comp. Gen. 348, 351 (1975); 43 Comp. Gen. 697, 699-700 (1964).

The principle that funds appropriated for Government departments and agencies may not be used for entertaining individuals except as specifically authorized by law (58 Comp. Gen. 202, 205 (1979)) is likewise not applicable here since American Samoa is not a Government department or agency and the entertainment expenses were incurred with monies appropriated for the use of the Samoan judiciary. So long as the entertainment expenses were incurred in furtherance of the official purposes of the American Samoan Judiciary, they are permissible, unless, of course, DOI has specifically forbidden the use of the funds for such purposes by regulations or otherwise. We have been informally advised that DOI has not promulgated formal regulations, grant restrictions, or other written guidance pertaining to permissible expenditures by the American Samoa Judiciary, since the grant nature of the funds was not made clear until the current appropriation was enacted. Under these circumstances, it may be difficult to refuse reimbursement to the ASG, as a legal matter, since it will be hard to establish that the ASG violated any restrictions placed on its use of the funds.



For the Comptroller General  
of the United States