

DECISION

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

FILE: B-214615

DATE: February 4, 1985

MATTER OF: Panama Canal Commission expenditures for
Mortuary and Burial Services

DIGEST:

Section 1321 of the Panama Canal Act of 1979 (codified at 22 U.S.C. § 3731) (Act) authorizes the Panama Canal Commission to reimburse the Department of Defense (DOD) for expenses incurred in providing mortuary and burial services to persons who were eligible to receive such services under the health care program formerly conducted by the Canal Zone Government. Subparagraph 1321(c) of the Act provides that funds appropriated to DOD shall be available for conducting health care activities carried out by the Canal Zone Government before the effective date of the Act and the Act's legislative history indicates that mortuary and burial expenses were intended to be included. Subparagraph 1321(d) specifically makes Commission funds available to reimburse DOD for expenses incurred in conducting such activities.

This responds to the request of the Administrator of the Panama Canal Commission for our opinion on whether Commission funds are available to reimburse the Department of Defense (DOD) for the mortuary and burial expenses of disability relief recipients, widows receiving disability relief benefits, agricultural land licensees, former holders of Canal Zone noncommercial land licenses, and their dependents.

We conclude that section 1321 of the Panama Canal Act (codified at 22 U.S.C. § 3731) authorizes the Commission to make such expenditures. As explained more fully below, section 1321 authorizes Commission expenditures for health care services and activities but does not expressly mention burial and mortuary services. However, the section's language suggests generally that Congress intended to authorize the continuation of health care activities as the Canal Zone Government had conducted them before the Act became effective. Since, as discussed below, the Canal Zone Government had provided mortuary and burial services to the categories of persons in question here as part of its health activities before enactment of the Panama Canal Act, we conclude that Commission expenditures for the same purpose would be proper.

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BACKGROUND

In 1977, the United States entered into a treaty with the Republic of Panama which transferred the control of the Canal Zone from the United States to the Republic of Panama. Panama Canal Treaty, September 7, 1977, United States-Panama, T.I.A.S. No. 10030. The Canal Zone Government, which had been the agency of the United States responsible for governing the Canal Zone since 1950, was disestablished at that time. A new United States agency, the Panama Canal Commission, was created to manage the Canal until its transfer to Panama in 1999.

The Canal Zone Government, prior to its demise, conducted a public health and sanitation program which included mortuary and burial services for certain low-income persons in addition to customary health care. The Commission indicates that the Canal Zone Government made no distinction between services that were strictly medical and those that were mortuary and burial--both were considered to be part of the health and sanitation program.

The Commission notes that the Canal Zone Government's health and sanitation program required the inclusion of mortuary and burial services "because of the tropical location of the Canal Zone, the prior history of epidemics of tropical diseases in the area, the constant flow of tourists and seamen from many nations through the Canal Zone, and its proximity to a less developed country with lower standards of health and sanitation." According to the Commission, the Canal Zone Government provided such services to the same categories of persons as the Commission is inquiring about in this case (as well as others).

Since passage of the Act implementing the treaty, DOD has been conducting the health care activities which the Canal Zone Government formerly conducted. DOD furnishes the services on a reimbursable basis except when the expenditures for the services are its own responsibility (e.g., for its own employees). 22 U.S.C. § 3731(d). Although the Commission is authorized to reimburse the Defense Department for some of its health care activities, as explained below, the Commission is uncertain as to whether mortuary and burial services qualify for reimbursement.

DISCUSSION

We reach our conclusion that Commission funds are available to reimburse the DOD for expenses incurred in providing mortuary and burial services to those categories of

persons in question by considering section 1321 of the Act together with its legislative history, the treaty and an annex to the treaty discussed below.

Subsection 1321(c) of the Act provides DOD's authority to conduct health care activities. 22 U.S.C. § 3731(c). The subsection's language indicates that Congress intended to authorize the provision of health related services generally as the Canal Zone Government had provided them. Subsection (c) provides:

"Notwithstanding any other provision of law, funds appropriated (for any fiscal year beginning after September 30, 1979) to or for the use of the Department of Defense * * * shall be available for--

"(1) conducting the * * * health care activities * * * carried out by the Canal Zone Government and the Panama Canal Company before the effective date of this Act, and

"(2) providing the services related thereto to the categories of persons to which such services were provided before such effective date." (Emphasis added.)
22 U.S.C. § 3731(c).

The Joint Explanatory Statement of the Committee of Conference set forth in the House of Representatives Conference Report on the Act in describing section 1321 states:

"Section 240 of the House bill and 213 of the Senate amendment contained similar provisions regarding reimbursements by agencies operating in Panama to the agency designated to furnish educational, health and other services, and related matters.

"The conferees agreed on a compromise provision which contains the substance of the House and Senate versions. The new provision makes it clear that agencies operating in Panama may make available health care and educational services to the same categories of persons as had received such services prior to the effective date of this Act * * *." H.R. Rep. No. 473, 96th Cong., 1st Sess. 59, reprinted in 1979 U.S. Code Cong. & Ad. News 1137, 1142.

Thus, as the above-quoted material shows, essentially the Congress intended to authorize the continuation by DOD of the health care activities conducted by the Panama Canal Government for the benefit of the same classes of individuals who had previously benefitted from them.

Moreover, the report of the House of Representatives Committee on Merchant Marine and Fisheries, when read in conjunction with the treaty and annex provisions the report refers to, provides more specific evidence that the Congress intended to authorize the provision of mortuary and burial services. In explaining section 1321, the Committee stated:

"Paragraph (c) makes appropriations of the Department of Defense or of other agencies available for * * * health care activities now carried on by the Canal Zone Government but which may not be provided by the Panama Canal Commission under Article III of the treaty and paragraph 4 (xii) and (xiii) [relating to educational services] of the Annex referred to in paragraph 4 of Article III of the treaty. * * *" H.R. Rep. No. 98, 96th Cong., 1st. Sess. 62, reprinted in 1979 U.S. Code Cong. & Ad. News 1034, 1065.

Stating the Committee's intention another way, section 1321 authorizes DOD to conduct the health care activities which treaty Article III, paragraph 4, and paragraph 4 (xiii) of the treaty annex provide that the Commission may not conduct.

Those activities include mortuary and burial services. Paragraph 4 of Article III of the treaty states:

"An illustrative description of the activities the Panama Canal Commission will perform in carrying out the responsibilities and rights of the United States of America under this Article is set forth at the Annex. Also set forth in the Annex are procedures for the discontinuance or transfer of those activities performed prior to the entry into force of this Treaty by the Panama Canal Company or the Canal Zone Government which are not to be carried out by the Panama Canal Commission."

Paragraph 4 of annex provides:

"The following activities and operations carried out by the * * * Canal Zone Government shall not be carried out by the Panama Canal Commission, effective * * * (a) [u]pon the date of entry into force of this Treaty:

* * * * *

"(xii) Health and medical services provided to individuals, including hospitals, leprosariums, veterinary, mortuary and cemetery services;"

Accordingly, since paragraph 4 (a) (xii) of the annex specifically lists mortuary and burial services as health care activities that the Commission may not conduct, we conclude that DOD may conduct such activities pursuant to the Conference Committee report statement that the Department's appropriations are to be available for the activities so listed in the annex.

Subparagraph 1321(d)(2) authorizes the Commission to reimburse DOD for providing health services to the individuals the Commission is inquiring about. It provides:

"Amounts expended for furnishing services referred to in subsection (c) [including for health care as carried out by the Canal Zone Government before the effective date of the Act] * * * shall be fully reimbursable to the department or agency furnishing the services * * *. The appropriations or funds of the Commission shall be available for such reimbursements on behalf of--(1) employees of the Commission, and (2) other persons authorized to receive such services who are eligible to receive them pursuant to the Panama Canal Treaty of 1977 and related agreements." (Emphasis added).

The individuals the Commission is inquiring about are made eligible for health services pursuant to the treaty and a related agreement as subparagraph (d)(2) requires. The treaty and annex provision discussed earlier, in effect provide for the transfer to a United States agency of the health care activities as they were conducted by the Canal Zone Government. Transferring the activities as previously conducted would mean not only that the same kinds of activities could continue as discussed above, but also that the same beneficiaries continue to be eligible. In this way, such

beneficiaries are made eligible by the treaty and annex provisions. The submission states that all of the persons at issue were eligible for health care benefits under the Canal Zone Government health program. Since the persons in question here qualified as beneficiaries of the activities transferred under the treaty and annex, we consider them to be "persons authorized to receive such services who are eligible to receive them pursuant to the Panama Canal Treaty of 1977 and related agreements" referred to in subsection 1321(d). Commission funds are thus available for reimbursements for services provided on their behalf as that subsection provides.

CONCLUSION

Accordingly, we conclude that under the authority provided by section 1321 of the Panama Canal Act to conduct health care activities, the Department of Defense may supply mortuary and burial services to those classes of persons who were eligible for them before the enactment of the Panama Canal Act. Further, subsection 1321(d) of the Act authorizes the Panama Canal Commission to reimburse the Department for the expenses it incurs in providing the services to such persons.

for Milton J. Fowler
Comptroller General
of the United States