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# DECISION



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

FILE: B-217011

DATE: April 1, 1985

MATTER OF: Department of Housing and Urban  
Development - Excess Subsistence  
Expenses - Subsistence at Official  
DIGEST: Duty Station

1. The Department of Housing and Urban Development (HUD) requests a decision on whether foreign delegations on invitational travel and their official HUD escorts may be paid subsistence expenses exceeding the statutory limitation for Federal travel reimbursement. We find no basis to make an exception to the statutory limitation in this case. United States Information Agency, B-209375, December 7, 1982, distinguished.
2. The Department of Housing and Urban Development (HUD) requests a decision on whether HUD employees escorting foreign delegations may be paid subsistence expenses at their official duty stations. The Federal Travel Regulations provide that an employee may not be paid per diem or actual subsistence expenses at his or her permanent duty station. There are certain exceptions, but we find no exception that would apply in this case. Therefore, employee escorts at their permanent duty stations may not be paid subsistence expenses.

The Director, Office of Finance and Accounting, Department of Housing and Urban Development (HUD), has requested a decision concerning subsistence expenses for foreign delegations on invitational travel and their agency escorts. In essence, the Director asks for our determination that HUD be permitted to rent hotel accommodations via purchase orders for members of foreign delegations and the HUD employees assigned as escort officers at a cost exceeding the allowable subsistence expense limitation under 5 U.S.C. § 5702 (1982). The Director cites as precedent for

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this our decision in United States Information Agency- Excess Cost of Hotel Rooms, B-209375, December 7, 1982. The Director also requests our determination that subsistence expenses may be authorized for the HUD escort officer when a foreign delegation travels to his or her official duty station.

For the reasons stated below, we conclude that HUD's foreign delegations and their official escorts are subject to the applicable statutory limits on daily reimbursement of subsistence expenses. Therefore, HUD may not rent lodgings for the performance of official business on a basis that would cause the subsistence expense limitation to be exceeded for the foreign visitors or escorts. Also, we conclude that the HUD escorts cannot be authorized subsistence expenses at their official duty stations.

I. Applicability of the Subsistence  
Expense Limitation

Under the provisions of 5 U.S.C. § 5702 (1982), and the Federal Travel Regulations, FPMR 101-7 (September 1981), incorp. by ref., 41 C.F.R § 101-7.003 (1983) (FTR), Parts 7 and 8, maximum subsistence expense reimbursements are established for Federal employee travel. Generally, the same travel allowances apply for invitational travel as for travel by Federal employees. See 5 U.S.C. § 5701(2); Category "Z" Travel, B-187402, May 19, 1977. Also, we have held that while agencies may contract for lodgings and meals outside of the District of Columbia,<sup>1/</sup> they cannot thereby avoid the subsistence expense limitations. Bureau of Indian Affairs, 60 Comp. Gen. 181, 182-183 (1981):

"\* \* \* since it is well established  
that officers of the Government may not do  
indirectly that which a statute or regulation  
forbids doing directly, we conclude

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<sup>1/</sup> See 40 U.S.C. § 34 (1982) concerning the rental of space in the District of Columbia.

that the statutory and regulatory limitations on per diem rates or actual expense rates are equally applicable to contracts or purchase orders entered into by agencies for lodgings or meals. Thus, appropriated funds are not available to pay for subsistence expenses in excess of the amounts authorized by statute or the implementing regulations, regardless of whether the employee is reimbursed for such expenses or the agency has procured lodgings or meals by contract. \* \* \*

While apparently recognizing the general applicability of the above rules, HUD submits that an exception is warranted in the case of the foreign delegations sponsored by HUD based on our decision in United States Information Agency, B-209375, supra. This decision held that the United States Information Agency (USIA) could contract for lodgings and meals without regard to the subsistence limitations in certain situations, including the situation when USIA invites foreign dignitaries to the United States and assigns an agency official to act as an escort officer. We stressed that the exception is limited to situations where "(a) use of the particular accommodations is an integral part of the employee's job assignment, and (b) failure to provide such accommodations would frustrate the ability of the Agency to carry out its statutory mandate." Moreover, USIA proposed to authorize exceptions only in response to individual applications setting forth the specific circumstances justifying the request and incorporating further safeguards. The decision also pointed out that this approach was consistent with USIA's past practice.

The HUD letter states that, in many instances, the subsistence requirements of its foreign delegations and their official escorts may be in excess of the current maximum statutory rate of \$75 per day. Further, HUD states that use of the particular accommodations required is an integral part of the Department's mission and that failure to reimburse the excess subsistence expenses of its foreign visitors and their agency escorts would frustrate the ability of HUD to carry out its statutory mandate.

In responding to the HUD request, we note, preliminarily, that our United States Information Agency decision was not intended to have general application. Instead, it recognized a narrow exception to the normal rules based on USIA's particular statutory mission. For the reasons stated hereafter, that decision does not apply here.

First, the HUD letter offers no explanation or information to show how the conditions set forth in the United States Information Agency decision are met. It merely submits a conclusory statement without further support. This is not a sufficient basis upon which we could justify extending the narrow exception stated in our United States Information Agency decision.

Second, the statutory authority that HUD uses for its foreign delegation travel program precludes any exception to the \$75 per day statutory maximum. Section 1701d-4 of Title 12, United States Code (1982) authorizes the Secretary of Housing and Urban Development to exchange data and participate with other nations in carrying out his responsibilities and to pay the travel expenses of foreign delegations engaging in advisory activities. Subsection (a)(1) of that section specifically provides that "\* \* \* such travel expenses shall not exceed those authorized for regular officers and employees traveling in connection with said activities \* \* \*." In view of this provision, we do not believe HUD can reasonably maintain that the conditions present in the United States Information Agency decision apply to it.

## II. Subsistence Expenses at Official Duty Station

With regard to HUD's second question, we observe that the HUD employee escorts may be reimbursed the same rates for hotel accommodations and meals/miscellaneous expenses as members of the foreign delegation. However, HUD employee escorts at their permanent duty stations may not be paid subsistence expenses. In FTR paras. 1-7.6a and 1-8.1a (Supp. 1, September 28, 1981), it is provided that an employee may not be paid per diem or actual subsistence expenses at his permanent duty station.

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Applying this requirement in Richard Washington, B-185885, November 8, 1976, we denied an employee's claim for subsistence expenses at his permanent duty station in the absence of specific statutory authority, even though his continued presence at a local hotel was required as the coordinator of a Federal forum there. Also, in Ronald Erickson, B-213970, April 4, 1984, we denied an employee's claim for subsistence (meal) expenses at his permanent duty station where he was serving as an escort to a tourism official of a foreign government and his duties included being present during meals.

The circumstances presented by HUD appear to be indistinguishable from those in Ronald Erickson, B-213970, supra. We have been advised of no specific statutory authority for HUD to pay employee escort subsistence expenses at their permanent duty stations. Therefore, HUD employee escorts at their permanent duty stations may not be paid subsistence expenses.

*for* *Harry R. Van Cleave*  
Comptroller General  
of the United States