



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Reimbursements for Expenses Incurred by Government
Officials Using Cellular Telephone in Private
Automobiles

File: B-229406

Date: December 9, 1988

DIGESTS

1. The Food and Drug Administration may reimburse an official for charges and fees relating to official government calls made with a cellular phone installed in a private car. 31 U.S.C. § 1348(a) does not apply to cellular phones located in private automobiles; adequate safeguards to prevent abuse should be provided.
2. The Food and Drug Administration may reimburse an official for costs incurred in making long-distance telephone calls from a cellular phone installed in a private car. 31 U.S.C. § 1348(b) authorizes payments for such official long distance calls if such calls are certified as being for official business and necessary in the interest of the government.
3. The Food and Drug Administration may not use appropriated funds to reimburse official for all or part of the purchase price of a cellular phone that official intends to retain as his personal property.

DECISION

This decision responds to a request from the Food and Drug Administration (FDA) that we address the propriety of reimbursing one of its directors for three types of charges associated with the use of a cellular phone installed in his personal automobile: (1) monthly local charges; (2) fees relating to official government calls; (3) all or part of the purchase price of the cellular phone. We conclude that the first two types of costs may be reimbursed under the conditions set forth in this opinion. However, no part of the purchase price of the cellular phone may be paid out of appropriated funds.

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Telephone Service Charges

A director of the FDA purchased a cellular telephone for his private automobile using his personal funds and requested that FDA provide him with reimbursement for any charges and fees associated with his official government calls. In asking that we approve reimbursement, FDA asserts that the cellular phone is deemed an extension of the director's office on his long commutes to and from work, as well as his frequent out-of-town trips.

The specific legal question submitted by FDA is whether 31 U.S.C. § 1348 applies to prohibit reimbursement of cellular phone charges and fees. Under 31 U.S.C. § 1348(a)(1), appropriated funds may not be used to pay for telephone services in a private residence. Specifically, the section states:

"Except as provided in this section, appropriations are not available to install telephones in private residences or for tolls or other charges for telephone service from private residences."

The language of the quoted statute has been uniformly construed in a long line of decisions to prohibit the furnishing at public expense of telephone service to a government officer or employee in a private residence, regardless of the desirability or necessity of such service from an official standpoint, absent some clearly recognized exception. See 65 Comp. Gen. 835, 836 (1986); 33 Comp. Gen. 530, 531 (1954).

Here the question we must address is whether a private automobile constitutes a "private residence" within the meaning of the statute. We conclude that for the purpose of section 1348(a)(1), the cellular phone at issue cannot be said to be located in a "private residence"; therefore, section 1348 does not apply in this context. In this regard, two prior decisions by this Office have stated that automobile phones do not fall within the application of the statute and that we could not find any statutory provision precluding the expenditures. In a recent opinion, we concluded that the Senate Contingent Fund, 2 U.S.C. § 58, was available to pay for the installation of cellular phones in the private automobiles of United States Senators. B-227763, Sept. 17, 1987. In that opinion, we specifically stated "[w]e are unaware of any provision of law expressly precluding expenditures [for cellular phones]" and that we would "not question such expenditures since neither

31 U.S.C. § 1348 nor any other provision of law specifically or expressly prohibits them." Id.

Similarly, in an earlier opinion dealing with Senators' mobile phones, we concluded that there is no specific statutory prohibition against the purchase of mobile radio telephones for installation in private automobiles. B-186877, Aug. 12, 1976. Although in that decision we went on to suggest that section 1348's prohibition should be extended to include private automobile phone service for policy reasons, we merely suggested this result while reiterating that there existed no specific statutory prohibition against the practice. Id. We subsequently clarified this opinion in our September 17, 1987 decision, discussed above.

However, although we conclude that section 1348 does not apply to cellular phones located in private automobiles, the installation of a cellular phone in a private car may indeed offer a potential for abuse. Thus, we believe that agencies should provide adequate safeguards to ensure that telephone charges made with a cellular phone are for official government purposes.

In this case, the record shows that all of the FDA director's cellular phone calls and charges--local, incoming and outgoing--are individually itemized on a monthly basis. Thus, a safeguard mechanism exists for verifying government calls and separating them from purely personal calls.

Long-Distance Call Charges

Reimbursement for long-distance phone calls, as distinct from other telephone service charges, is permitted under 31 U.S.C. § 1348(b) (1982), which reads:

"Appropriations of an agency are available to pay charges for a long-distance call if required for official business and the voucher to pay for the call is sworn to by the head of the agency. Appropriations of an executive agency are available only if the head of the agency also certifies that the call is necessary in the interest of the Government."

Thus, all official long-distance phone calls are subject to the certification requirements established by section 1348(b).

Additionally, the GAO Policy and Procedures Manual advises that under the requirements of section 1348(b), each agency head should be responsible for establishing controls over the use of telephones adequate for ensuring that long-distance telephone calls are made only when they are the most economical and practicable means of communication available for the transaction of government business.

"Such controls should also ensure that commercial telephone facilities are used only when Government-owned or leased facilities are not available or when commercial telephone facilities are more economical"1/

GAO Policy and Procedures Manual for Guidance of Federal Agencies, Title 7, Subsection 21.3.

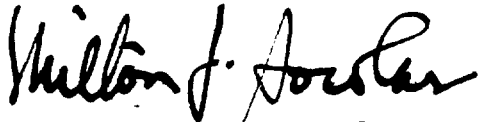
In the case of long-distance automobile telephone calls, it is conceivable that the advantage of convenience may outweigh any cost penalty incurred by the use of the automobile telephone. However, calling from a telephone booth or postponing a call until one has access to a less expensive service may be economical alternatives to making a call from one's car. Consequently, agency heads should strictly scrutinize automobile telephone calls before certifying them for reimbursement.

Cellular Phone Purchase Price

The submission clearly indicates that the FDA director purchased the cellular phone with his own funds to be installed in his own car. We understand that he intends the phone to continue to be his own property. Under these circumstances, FDA may not use appropriated funds to

1/ Similar provisions applicable to the use of long-distance services can be found in the Federal Information Management Regulations (FIMR), 52 Fed. Reg. 42292 (Nov. 4, 1987). The new FIMR outlines federal policy for the utilization of government telephone systems. As a "call over commercial systems which will be paid for by the Government," cellular telephone calls are within the scope of the FIMR.

reimburse any part of the purchase price of the cellular phone. Thus, we cannot authorize payment for all or part of the cost of the cellular telephone.

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