

DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES

WASHINGTON, D.C. 20548

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FILE: B-185853

DATE: SEP 21 1976

MATTER OF:

Colonel

, USAF

DIGEST:

Air Force officer claims reimbursement for using rented commercial aircraft under blanket temporary duty travel order which stated that written justification must be filed for each use of such special conveyance and such conveyance would be authorized only if order issuing/approving official specifically endorsed order for each trip, which endorsements and justifications were not made. Regardless of possible application of DOD Instruction 4500.38 which prohibits use of leased commercial aircraft without proper authorization, under paragraph M4405, Volume 1, Joint Travel Regulations (1 JTR) member is not entitled to reimbursement since he did not have required approval for use of rented aircraft. Thus member is entitled only to mileage allowance for travel at personal expense. 1 JTR, paragraph M4203-3a.

This action is in response to a letter dated September 3, 1975, from Major F. L. Kyle, USAF, Chief, Accounting and Finance Division, Patrick Air Force Base, Florida, requesting an advance decision as to whether Colonel , USAF,

, may be reimbursed for charges he incurred for the rental of a private aircraft incident to temporary duty travel he performed. The request was assigned PDTATAC Control No. 76-3 and forwarded here by Per Diem, Travel and Transportation Allowance Committee endorsement dated February 4, 1976.

The submission indicates that Colonel performed temporary duty during May and June 1974, on five separate occasions using a rented private aircraft for which he was reimbursed the rental cost. On October 1, 1974, the member was charged \$800.36 by the Air Force, which represents overpayment for the difference between the actual rental cost of the aircraft and the constructed mileage for the trips at 5 cents per mile.

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The basis of the determination of the member's indebtedness was that the aircraft in question was a commercial aircraft within the context of the Department of Defense Instruction 4500.38, February 12, 1973. That instruction prohibits the lease, contract, charter, or other procurement of commercial aircraft by Department of Defense components except when a designated authority of the component concerned has determined that the use of such aircraft is essential to the accomplishment of the mission or is the most cost effective method of satisfying the movement requirement, and, in the case of acquisition by lease or contract, when advance approval by the appropriate Chief of Staff has been obtained and notification of intent to procure the aircraft for such purpose has been given to both of the Appropriations Committees of the Congress and the Assistant Secretary of Defense (Installations and Logistics). No such approval or notification was given in this case.

On the other hand, the submission indicates that paragraph M4405, Volume 1, Joint Travel Regulations (1 JTR), which concerns the authorization for the hire of special conveyances, including aircraft, for temporary duty travel, makes no reference to the requirement of DOD Instruction 4500.38 for commercially rented aircraft. Therefore, it is asked whether collection of the erroneous payments should be pursued.

The provisions of the Joint Travel Regulations, issued pursuant to 37 U.S.C. 404 (1970), authorizing the use of special conveyances for travel of members of the uniformed services are found in paragraph M4405. Subparagraph M4405-1 (change 217, February 1, 1971), in effect at the time of Colonel [redacted] travel, provided generally that the official directing travel may authorize or approve the hire by a member of a special conveyance such as an aircraft for travel and temporary duty. Subparagraph M4405-2 (change 239, January 1, 1973) specifically provides as follows concerning the use of such a special conveyance for travel between duty stations:

"The official directing the travel may authorize or approve travel by special conveyance to, from, or between duty stations, either permanent or temporary, under circumstances not permitting travel by the usual means of transportation, or

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when he has determined that the use of special conveyance is advantageous to the Government. Reimbursement will be authorized for the total expense incurred in the use of such conveyance."

The aircraft rented by Colonel _____ was used for travel between Eglin Air Force Base, Wright-Patterson Air Force Base, Columbus, Ohio, and Andrews Air Force Base under a blanket travel order dated February 27, 1974, expiring June 30, 1974, authorizing him to travel from Eglin Air Force Base, Florida, to any point in the continental limits of the United States and return to Eglin Air Force Base, in connection with his duty as Director, Guided Bombs SPO. While that order did not direct travel by any particular mode, it clearly indicated that the hire of a special conveyance was authorized "when this order is indorsed for a specific trip by an orders issuing/approving official, making the specific authorization(s) applicable." The order further stated that each time the order is so endorsed, a separate letter of justification must be prepared and filed in the office of the order issuing/approving official. In this connection the record includes a statement dated July 3, 1975, by Colonel H. L. Delaune, USAF, the order issuing/approving official for Colonel _____ travel order stating that had Colonel _____ requested, and justified as advantageous to the Government, use of special conveyance in accordance with paragraph M4405, 1 JTR, for temporary duty travel, he would have amended (endorsed) Colonel _____ order to authorize use of special conveyance. However, Colonel _____ did not make such a request and the required endorsements were not made and the letters of justification were not filed for his use of the rental aircraft.

Colonel _____ in a statement enclosed with the submission, indicates that he did not request endorsement of his orders by the order issuing/approving official because he was advised by a non-commissioned officer at the Eglin Air Force Base Travel Pay Office that it would not be necessary.

While it may be that Colonel _____ was misinformed by a noncommissioned officer in the Travel Pay Section, his travel order clearly indicated the requirement for the order issuing/approving official to authorize the use of a special conveyance. As is indicated above, under 1 JTR, paragraph M4405, such

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authorization is required to entitle the member to reimbursement for the total expense incurred for the use of such a conveyance. Colonel did not have such authorization. Therefore, regardless of what the effect of the proscription in DOD Instruction 4500.38 may be, Colonel is precluded by paragraph M4405, 1 JTR, from being reimbursed for the full expense incurred for the use of the rental aircraft. He is entitled only to the 5 cents per mile authorized by 1 JTR, paragraph M4203-3a (change 248, October 1, 1973), for travel performed at personal expense. Accordingly, collection of the overpayment should be continued.

While we do not find it necessary to determine whether DOD Instruction 4500.38 restricts the use of rented aircraft as special conveyances under 1 JTR, paragraph M4405 in connection with the disposition of this case, if the Department finds that the restrictions of that instruction should be applied to aircraft rentals under the Joint Travel Regulations, specific reference to those restrictions should be incorporated in the regulations to provide appropriate notification to all parties concerned.

R.F. KELLER

~~Action~~

Comptroller General
of the United States