Dear Senator Mondale:

Your letter of September 12, 1966, forwards for our consideration and report thereon a letter you received from St. Paul, Minnesota, referring to our decision of March 31, 1966, B-147420, 44 Comp. Gen. 578. That decision concerns payment of parking fees incident to the use of Government-owned and privately owned motor vehicles.

Over the years we consistently have held that meter or other fees imposed by municipalities for parking on public streets are not applicable to readily identifiable Government-owned vehicles used in the performance of official Government functions, 41 Comp. Gen. 328. Our decisions were based upon the premise that parking meter fees constitute an unauthorized attempt by States or municipalities to tax or burden the Federal Government in carrying out its functions, and, therefore, are not properly assessable against the United States or for payment by it. Also, we have held that since a parking meter fee legally cannot be imposed against the Federal Government as principal, it likewise cannot be imposed against the employee (an agent of the Government) driving a Government vehicle on official business. See 41 Comp. Gen. 328. Since it was our view that parking meter fees could not legally be imposed against the Government or against the employee driving the Government-owned vehicle, it was also our view that a penalty for failure to pay the parking meter fee may not legally be imposed against such employee. Hence, we held that an employee who pays parking meter fees is not entitled to reimbursement, since the expense is not properly payable by the United States in the first instance.

states that:

"A recent 'news-note' circulated to employees of this Northern Administrative Division, ARS, USDA, of which I am an employee, warns that 'The Department of Justice has advised the office of the General Counsel that the Government may not be constitutionally exempt from paying parking meter fees. Failure of a Government driver to pay a fee would be a violation of the city traffic ordinance for which he is personally responsible."
Informally, the Department of Justice indicated that it will no longer represent Government employees who receive traffic tickets for non-payment of parking fees. The Office of the General Counsel suggests that a Government driver either park in a free zone, use off-the-street parking lots for which he can be reimbursed by his agency, or when necessary make arrangements with city officials for free parking privilege of Government vehicles."

inquires, in effect, as to whether the "opinion" of the Department of Justice supersedes our decision of March 24, 1965, B-147420, and if parking fees charged by municipalities for street meter parking of Government-owned vehicles are in fact legal. He states that if this be the case the Comptroller General should render a decision authorizing the reimbursement of Government employees who pay parking meter fees incident to the use of Government-owned vehicles on official business. He also requests a copy of the "official opinion" of the Department of Justice in the matter.

We have been advised by the Department of Justice that a letter written by the Civil Division, of that Department, dated April 5, 1962, to the Department of the Air Force, sets forth the Department's policy with respect to the defense of Federal employees charged with failure to pay parking meter fees while driving Government vehicles on official business. The Department of Justice advises that the "news-note" referred to in the letter was based on advice furnished by the General Counsel of the Department of Agriculture in reliance on its (Justice's) letter of April 5.

We are further advised that the letter does not purport to override any Comptroller General's decision, nor does it deal with the question of whether Federal employees may be reimbursed for the cost of parking meter fees. Further, the Department informs us that the letter is a statement of policy and does not constitute an Opinion of the Attorney General.

In its letter of November 17, 1966, to us, the Department of Justice advises that while it has never questioned the principle that States and municipalities may not tax or burden the Federal Government in the performance of its functions, it recognizes that the Federal Government is obligated to abide by the normal traffic
regulations of States or municipalities except in emergency situations. In support of this position the Department cites the following court cases:  

- In re Maryland, 254 U.S. 51, (1920);  
- Oklahoma v. progressBar, 143 F. Supp. 443, (1956);  
- Virginia v. progressBar, 144 F. Supp. 169, (1956);  

The Department further states that in Maryland, supra, the State attempted to impose a requirement (that a driver of a United States mail truck must possess a Maryland driver’s license), the effect of which was to prevent Federal employees from performing their official duties until they satisfied State law, and that the Court held this to be an impermissible burden. The Department is of the view, however, that the requirement of payment of a meter fee ordinarily would not impose a comparable burden on actual performance of a Federal function.

In the Department’s letter of November 17, it is stated that:

"** it ** appears doubtful that subjecting government-owned vehicles to conventional on-street parking meter rules—viewed either in practical or theoretical terms—would today represent a constitutionally impermissible imposition of the revenue or police powers of a state or locality on a federal instrumentality. I do not know what may have been the basis for creation of parking meter zones when the first of the Controller General’s decisions on this subject was issued, almost 30 years ago. Today, when serious conditions of traffic and parking congestion have developed in the business districts of almost every city in the United States, it seems to me most realistic to view metering as principally an attempt to assist the flow of traffic by encouraging prompt turn-over in the use of parking spaces. That is the very sort of traffic regulation referred to in Maryland, supra, as applicable to the Federal government.

The Department’s policy, as disclosed in the above referred-to letter of April 1962, is to the effect that it will represent drivers of Government vehicles who are charged with violating city ordinances because they fail to pay meter fees and attempt to work
out the best possible solution which may be a dismissal of the
charges or the payment of a small fine, but that it does not pro-
pose to assert the immunity of the United States in such matters
unless the violation of the city ordinances was required in order
for the employee to perform his Federal functions.

Since our decision of August 11, 1938, 15 Comp. Gen. 151, leg-
islation has been enacted which specifically allows (in addition to
the authorized mileage allowance) the payment of parking fees (in-
cluding meter fees), ferry fares and bridge, road and tunnel tolls
to Government employees on official business operating privately
owned vehicles on a mileage basis in lieu of actual expenses. See
section 1 of the Travel Expense Act of 1942, as amended, now
5 U.S.C. 579k. It was section 3 of Public Law 87-139 which amended
section 1 of the Travel Expense Act of 1949 to authorize reimburse-
ment for the actual cost of parking fees in addition to mileage.
In 14 Comp. Gen. 306, we stated that the enactment of section 3
of Public Law 87-139 was an indication that the Congress felt that
the Government should bear the burden of parking fees necessarily
and properly incurred by Federal employees in connection with
official business.

Also, employees who are authorized to travel on official Gov-
ernment business in privately owned vehicles on an actual expense
basis may be reimbursed parking fees (including meter fees), ferry
fares and bridge, road and tunnel tolls, within the limits fixed
in section 3.5 of the Standardized Government Travel Regulations.
Cf. 32 Comp. Gen. 71 and 35 Comp. Gen. 92. Further, we have held
that employees traveling in Government-owned vehicles on an actual
expense basis may be reimbursed for highway, bridge and tunnel
tolls (35 Comp. Gen. 92); for parking fees in private lots, if
street parking (including meter) or other free parking is not avail-
able (32 Comp. Gen. 469, 41 Comp. Gen. 348); for parking fees
(including meter fees) in a municipally owned lot off-the-street
parking lot, if street parking (including meter) or other free
parking is not available within a reasonable distance from place of
business. (44 Comp. Gen. 578)

Thus, pursuant to either law, regulations or decisions of this
Office, appropriated funds have been made available to pay, or to
reimburse employees for, all parking fees, except meter parking fees
incident to parking Government-owned vehicles on public streets.
Furthermore, the overwhelming majority of State courts have construed parking meter fees established by local ordinances in their respective States to be fees charged incident to traffic regulation and not taxes (i.e. that the meter traffic ordinances involved are not revenue measures). Also, in the case of Oklahoma v. United States District Court, E.D. California, 143 F. Supp. 445 (United States District Court, E.D. California) the Court stated that a Federal employee must obey the traffic laws of a State although driving a Government vehicle on official business. In Virginia v. United States District Court, W.D. Virginia, 144 F. Supp. 169 (United States District Court, W.D. Virginia) the Court stated that Federally owned and operated motor vehicles are not immune from the operation of laws limiting the weight of vehicles on public highways of the State. In City of Norfolk v. United States District Court, E.D. Virginia, 145 F. Supp. 256 (United States District Court, E.D. Virginia) the Court stated, in effect, that traffic ordinances prescribing rights of way and speed limits are ordinarily binding upon officials of the Federal Government except in emergency situations.

We have carefully reconsidered the matter in light of the foregoing and agree that the requirement of payment of a meter fee (where such fee is not a tax) incident to parking a Government-owned vehicle on a public street would not impose an impermissible burden on the Federal Government. Accordingly, and in the absence of a judicial determination contrary to what is stated above, we will no longer object to the use of appropriated funds to reimburse Federal employees who are required to pay street parking meter fees while driving Government-owned vehicles on official business, except where there would be imposed an impermissible burden on the performance of a Federal function such as the carrying of the mail, or in those instances where the parking meter fee has been held by a court to be a tax or a revenue raising measure.

Insofar as the conclusions reached in any of our prior decisions may be inconsistent with the views expressed above, they will no longer be followed.

letter is returned herewith as requested.

Sincerely yours,

Frank H. Welzal
Assistant Comptroller General
of the United States

Enclosure

The Honorable Walter F. Mondale
United States Senate