

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

6-139703

JUL 20 1977

The Honorable Thomas F. Eagleton  
United States Senate

Dear Tom:

This is in response to the views expressed by your constituent, Mr. [REDACTED], in his letter to you of May 20, 1977, which you referred to this Office for comment. Mr. [REDACTED] questions our authority to rule that Federal regulatory agencies may use their appropriations to reimburse such intervenors as "self-designated consumer advocate groups" for the costs of their intervention.

Initially, in response to Mr. [REDACTED] question about the involvement of this Office in this matter, GAO's authority to render decisions concerning the expenditure of appropriated funds is found chiefly in the Budget and Accounting Act, 1921, as amended, 31 U.S.C. §§ 53, 71, 74 and 82 (1970). Pursuant to that authority we have rendered a number of decisions as to the availability of appropriated funds to assist certain parties under certain limited circumstances to participate in regulatory agency rulemaking and adjudicatory proceedings.

We enclose two copies of our most recent decision in this matter, 56 Comp. Gen. 111 (1976), which should be helpful in answering Mr. [REDACTED] questions. In this decision we held that there is inherent statutory authority to reimburse if the Food and Drug Administration (FDA), finds that the party's participation is necessary for a fair determination of the issue being decided and that without financial assistance, such participation could not be secured. We might also note that it is the agency (such as FDA) which holds the proceeding and whose appropriations will be used, that decides to whom and in what amount assistance will be provided. GAO is not involved in that determination.

Mr. [REDACTED] appears to be confusing the matter of agency payments for "expert witnesses" and payments for volunteer advocates of a particular point of view which the agency feels should, in the interests of fairness, be heard—whether or not such advocates are experts. Thus the decisions in question do not relate to the payment of attorney's fees or other expenses of impartial expert witnesses. The agencies generally have other statutory authority for hiring experts and consultants, and indigency is not a prerequisite to reimbursement. Rather,

B-139703

these decisions state that certain agencies may, at their discretion, reimburse certain parties whose participation, they feel, will contribute substantially to a full and fair determination of the issue being decided by enabling advocates of limited means to participate on the same basis as more affluent advocates of a different point of view.

Over the past several years, this Office has ruled that ten specific Federal agencies have inherent statutory authority to reimburse. The first of these decisions, B-139703, July 24, 1972, refers to the Federal Trade Commission (FTC). The Nuclear Regulatory Commission (NRC) is covered in B-92288, February 19, 1976. In a letter to Representative John Moss, B-180224, May 10, 1976, we held that the Federal Communications Commission (FCC), the FTC, the Federal Power Commission (FPC), the Interstate Commerce Commission (ICC), the Consumer Product Safety Commission (CPSC), the Securities and Exchange Commission (SEC), the FDA, the Environmental Protection Agency (EPA), and the National Highway Traffic Safety Administration (NHTSA) have inherent statutory authority to reimburse. The most recent decision, cited above, applies to the FDA. We have, however, noted our disagreement with EPA's position on who is financially qualified to receive financial assistance. Enclosed is a copy of our letter of April 5, 1977, B-180224, to Congressman David C. Treen in which, beginning on page 2, we express our disagreement.

On January 4, 1975, Congress passed the Magnuson-Moss Warranty--Federal Trade Commission Improvement Act, 15 U.S.C. § 57a (Supp. V, 1975). This measure formalized the FTC's authority to reimburse intervenors by providing specific guidelines. GAO has recommended that similar legislation be passed to set forth criteria for assistance to intervenors wishing to appear before other agencies.

We hope that this information will be helpful in responding to your constituent. The correspondence enclosed with your letter is returned as requested.

Sincerely yours,

Paul G. Dembling

For the Comptroller General  
of the United States

Enclosures