

**DECISION**



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

094782

[Propriety of Certifying GSA Invoices <sup>40968</sup> For Payment]

FILE: B-180272

DATE: JUL 23 1974

MATTER OF: Certification of invoices for payment.

DIGEST: Invoices covering cost of one kitchen sink with attached cabinet, one wall cabinet, one refrigerator, and wall covering material may be certified for payment in this instance in view of the comparatively small amounts involved and the administrative determination that the expenditures were necessary to provide a place for employees to eat lunch.

This decision to Jerome D. Fallon, Authorized Certifying Officer, General Services Administration, is in response to his request of February 14, 1974, for an advance decision as to whether vouchers covering invoices for the purchase of one kitchen sink with attached cabinet, and one wall cabinet totaling \$220; one refrigerator in the amount of \$119.99; and wall covering material in the amount of \$78.39 by Occupational Safety and Health Review Commission (OSHRC) may be properly certified for payment.

The certifying officer has doubt as to the validity of payment because of our decision 47 Comp. Gen. 657 (1968), holding that such expenses are not the "necessary expense" contemplated by that term as used in appropriation acts, and, unless specifically made available, appropriations may not be charged with a cost that is considered in the nature of entertainment. That case concerned the purchase of two coffee makers, cups, and holders in the total amount of \$43.89 intended for use in serving coffee at meetings designed to improve management relationship. In view of the small amount involved and the administrative belief that the interests of the Government would be promoted through the use of the equipment we did not feel required to further question the transaction even though we found that the serving of coffee or other refreshments at meetings such as described could not be said to be a "necessary expense" as that term was used in the appropriations available to the agency.

A letter dated May 8, 1974, from the Chairman of OSHRC states that the purchases in question were made in order to afford the employees of the Commission a kitchen-lunchroom facility. Prior thereto—according to the Chairman—it had been a common practice

for employees to eat at their desks during the noon hour which caused many problems and was in violation of Federal Job Safety and Health Regulations. Further, it is understood that there is no Government cafeteria facility which employees of the agency can use and private eating establishments in the area cannot serve employees within the half-hour lunch period allowed. Therefore, the Chairman has determined that the expenditures are necessary.

The appropriation act for the Departments of Labor and Health, Education, and Welfare, and related agencies for the fiscal year ending June 30, 1974, Pub. L. 93-192, 87 Stat. 746, 763, proposed to be charged with the expenditures is available for "expenses necessary" for OSHRC. The appropriation for OSHRC is not specifically available for the expenditures in question. Our examination of the Occupational Safety and Health Act of 1970, Pub. L. 91-596, 84 Stat. 1590 which established the Occupational Safety and Health Review Commission also fails to disclose any specific authority for the expenditures. Compare the provisions of section 303(b)(3) of the National Aeronautics and Space Act of 1958, 72 Stat. 430 as amended, 42 U.S.C. 2472(b)(3), which specifically authorizes the National Aeronautics and Space Administration to "provide by contract or otherwise for cafeterias and other necessary facilities for the welfare of the employees of the Administration at its installations and purchase and maintain equipment therefor."

While, in light of the foregoing the matter is not free from doubt, in view of the comparatively small amounts involved and the administrative determination and justification therefor that the purchases were necessary, we will not object to payment in this instance. Accordingly, the invoices may be certified for payment if otherwise correct.

As to the inability of private eating establishments in the area to serve employees of the Commission within the half-hour lunch period allowed, we would point out that the head of an agency may administratively provide for a lunch period of not to exceed 1 hour, provided, of course, that the employees are required to work 8 hours. See 5 U.S.C. 610(a)(3) and 5 C.F.R. 610.121(f).

R.F.KELLER

Deputy] Comptroller General  
of the United States