

DECISION

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

FILE: B-183506

DATE: SEP 8 1975

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MATTER OF: Reimbursement of long-distance telephone charges incurred during official travel incident to discrimination hearing

DIGEST: Employee incurred long-distance telephone charges incident to Civil Service Commission (CSC) hearing on his discrimination complaint. He claims reimbursement for long-distance telephone calls on basis that he was traveling on official business when requested by CSC to submit list of witnesses, which required calls to attorney. If certification required by 31 U.S.C. § 680a (1970) is made by proper administrative official, we would have no objection to reimbursement on basis that long-distance calls made under above circumstances constitute "transaction of public business which the interests of the Government require to be so transacted."

This action is at the request of Robert M. Lematta, Chief, Financial Services Branch, Region VII, Community Services Administration, and responds to his letter, reference 7/PS/F, of March 18, 1975.

Mr. Robert M. Lematta, an authorized certifying officer of the Community Services Administration, requests an advance decision pertaining to the claim of an unnamed employee for reimbursement of long-distance telephone calls. The long-distance telephone calls were made while the employee was on official travel away from his duty station, and were made to his attorney incident to a hearing on his complaint of discrimination. Mr. Lematta states that the "Civil Service Commission, after the travel was scheduled, notified [the employee] of the date of the hearing (shortly after the scheduled travel was to be completed). The Commission requested a listing of witnesses and specified that this list had to be in the mail prior to the day that travel was to be completed." Apparently, the employee made the telephone calls to advise his attorney to submit the required list of witnesses. Mr. Lematta further states that the disallowance of this portion of the employee's claim was on the basis that it was for private and personal business. The employee contends that the expense would not have been incurred if travel for official business had not been scheduled. The employee also contends that the only way to avoid the expense would have been to cancel the temporary duty assignment.

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Mr. Lematta's letter does not indicate what the basis was for the employee's complaint, other than "discrimination." However, we assume that it is one for which the Civil Service Commission properly has jurisdiction. We have previously rendered decisions on matters involving reimbursement for expenses incurred by employees incident to grievance and discrimination proceedings. For instance, in 52 Comp. Gen. 859 (1973), we stated that we were unaware of any authority whereby the Department of State could reimburse a Foreign Service officer for legal fees incurred by him in prosecuting a grievance. See also B-156482, June 23, 1975. The decision referred to 5 U.S.C. § 3106 (1970), which prohibits Federal departments other than the Justice Department from employing attorneys for the conduct of litigation in which the United States is a party.

In decision B-156482, supra, we allowed travel expenses incurred by an employee incident to attending a Civil Service Commission hearing. The decision allowed travel expenses under 5 U.S.C. §§ 5702 and 5704 (1970), on the grounds that travel to and from such hearings constitutes official business, citing B-180469, February 28, 1974, and 33 Comp. Gen. 582 (1954).

It is apparent that expenses incurred by employees in prosecuting such grievances or discrimination complaints, whether successful or not, are not reimbursable solely on the basis of the grievance or discrimination procedure. Rather, the employee must look to some independent basis for reimbursement. In the case of travel expenses incident to attending a hearing, payment was allowed under specific statutory authority permitting payment of mileage and related expenses and per diem for travel on official business. Likewise, reimbursement of attorneys' fees was disallowed since, not only was specific statutory authority lacking, but there existed a specific statutory prohibition.

Section 680a of title 31, United States Code (1970), provides specific statutory authority for reimbursement of long-distance telephone charges for the transaction of public business. Section 680a provides:

"On and after May 10, 1939, no part of any appropriation for any executive department, establishment, or agency shall be used for the

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payment of long-distance telephone tolls except for the transaction of public business which the interests of the Government require to be so transacted; and all such payments shall be supported by a certificate by the head of the department, establishment, or agency concerned, or such subordinates as he may specially designate, to the effect that the use of the telephone in such instances was necessary in the interest of the Government." (Emphasis supplied.)

We believe that the situation presented here comes within the meaning of the underscored phrase in the above-quoted section, on the basis that the Civil Service Commission hearing and related procedures were established pursuant to Executive Order 11478, August 8, 1969, as amended by Executive Order 11590, April 23, 1971, which together with 42 U.S.C. § 2000e-16, Supplement II, 1972, establish a public policy against discrimination in the Federal service.

Accordingly, if the certification required by section 680a is made by the proper official, we would not object to reimbursement of reasonable long-distance telephone calls under the circumstances described in Mr. Lematta's submission.

R.F. KELLER

Deputy Comptroller General
of the United States