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MATTER OF: Reimbursement of Government Employees for Cost of
Surety Bonds Required of Notaries Public

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- DIGEST:
1. 5 U.S.C. § 5945 (1970), authorizing reimbursement of civilian employees and military personnel for expenses incurred in obtaining notary commission, allows reimbursement for expense of surety bonds required of notaries by State law, notwithstanding 31 U.S.C. § 1201 (Supp. IV, 1974), barring Government from obtaining or requiring surety bonds for employees.
 2. Employees required to obtain notary commissions may be reimbursed, pursuant to 5 U.S.C. § 5945 (1970), for incidental expenses deemed necessary to perform notary services including seals, stamps, embossing devices, and recording and filing fees. Reimbursement may not be made for professional association dues and other expenses not essential to performance of the services.

The Chief, Finance Services Division, Directorate of Finance and Accounting, Department of the Army, has forwarded to this Office a request by the Finance and Accounting Officer, Fort Ord, California, for an advance decision pursuant to 31 U.S.C. § 74 (1970), concerning the legality of expending appropriated funds to reimburse civilian employees of the Department of the Army for the costs of obtaining surety bonds required by the State of California in order to qualify for a commission as a notary public. The Finance and Accounting Officer also seeks an advance decision concerning the propriety of expending appropriated funds to reimburse employees for fees and incidentals deemed necessary in connection with performing notary services.

According to the Staff Judge Advocate at Fort Ord, California, five civil service employees in his Office provide free services as notaries public " * * * for the convenience of military personnel, their dependents, and retired personnel. * * *" as part of their employment. This function is incorporated in the job description of each employee. California law allows civil service employees to be commissioned as notaries, but precludes them from performing their services outside of military reservations, as well as from collecting fees. California Government Code, §§ 8203.1, .2, .6.'

Section 8212 of the California Government Code requires that an official surety bond in the sum of \$5,000 be posted by every person appointed a notary in that State. The United States has in the past reimbursed the employees at Fort Ord for the expense of acquiring the bonds required by State law. This was done under the authority of 5 U.S.C. § 5945 (1970), which authorizes reimbursement to employees required to serve as notaries in connection with the performance of official business of " * * * expense required to obtain the commission * * *" of notary public. 5 U.S.C. § 5945 derives, substantially unchanged, from the Notaries Public Expense Act of 1955, approved July 11, 1956, 70 Stat. 519. The Notaries Public Expense Act was interpreted in 36 Comp. Gen. 465 (1956), where it was held that under the Act an employee could be reimbursed for expenses to obtain a notary commission, including those of acquiring a seal and bond, notwithstanding that the employee intended to use his commission to perform notary services privately, for his own gain.

Section 8212 of the California Government Code authorizes judges of the Superior Court of the county in which the notary maintains his principal place of business to allow a "no-cost paper bond" instead of the official bond described above. Use of this procedure would not involve the use of appropriated funds in connection with obtaining notary commissions. However, the Presiding Judge of the Superior Court for Monterey County, where Fort Ord is located, construes this portion of section 8212 so as apparently to preclude its application to the United States, and hence to require that civil service notaries post regular surety bonds.

The Finance and Accounting Officer questions whether the Act of June 6, 1972, Pub. L. No. 92-310, 86 Stat. 201, 31 U.S.C. §§ 1201 et seq. (Supp. IV, 1974), precludes reimbursement of employees for the cost of the bonds. Section 101(a) of Pub. L. No. 92-310, 31 U.S.C. § 1201(a), provides:

"No agency of the Federal Government may require or obtain surety bonds for its civilian employees or military personnel in connection with the performance of their official duties."

By its terms, section 101(a) of Pub. L. No. 92-310 precludes any agency from either requiring or obtaining surety bonds for its employees. In this case, no agency of the Federal Government has required the bonds: the requirement is imposed by the State of California. Nor does the agency, strictly speaking, "obtain" the bonds. They are obtained by the employees concerned, who then

submit claims for reimbursement. (Pub. L. No. 92-310 repealed 6 U.S.C. § 14. (1970), which provided that whenever a surety bond was required for a Federal employee, the Government was to obtain it and pay the premium.)

Moreover, the legislative history of Pub. L. No. 92-310 makes it clear that the bonds which that statute was intended to eliminate were those in which the risk insured against was a loss of Government funds or property and in which the United States was the insured. See, generally, S. Rep. No. 92-790 (1972). The bonds required of notaries by California, on the other hand, are to insure against the risk of loss for one who avails himself of their services, as a result of their improper performance of their duty. No property or funds of the United States would be directly involved.

The possibility exists that the United States could be liable, under the Federal Tort Claims Act, for damages incurred as the result of the negligence in the performance of his duty of a notary who was an employee of the United States. Certainly, Pub. L. No. 92-310 would prohibit the Department of the Army from requiring or obtaining a bond for a notary in order to protect itself against that risk. But those circumstances are, in our view, materially different from the instant case, where an employee is required, by the terms of his employment, to be a notary public, for the convenience of the United States, and he can only become a notary by posting bond as required by State law.

As noted above, the expense incurred by an employee required to become a notary is specifically authorized by law to be reimbursed. 5 U.S.C. § 5945. Pub. L. No. 92-310 repealed all laws " * * * providing for surety or fidelity bonds for civilian employees and military personnel of the Federal Government for the faithful performance of their duties * * * ." That general repealer does not, by its terms, affect 5 U.S.C. § 5945, which does not require such bonds of employees. We conclude that in the circumstances here presented, the vouchers for reimbursement to employees of expenses of obtaining notary surety bonds as required by State law, may be certified for payment, if otherwise proper.

The second question concerns "the propriety of expending appropriated funds for fees and incidentals deemed necessary in performing" notary services. According to the vouchers submitted with the request for this decision, the fees and incidentals include such items, in

addition to premiums for notary bonds, discussed above, as Monterey County recording and filing fees; a fee to the California Secretary of State; membership in the National Notary Association; a book entitled "Customs and Practices of Notaries Public and Digest of Notary Laws in the United States;" a Record Book and Checklist of Official Notarial Acts; notary seals; notary seal embossers and photo reproduction stamps; affidavit stamps; a notary's Errors and Omissions Policy; and qualifying instructions.

5 U.S.C. § 5945 authorizes an allowance to employees not in excess of " * * * the expense required to obtain * * *" notary commissions. Although the identification of items on the vouchers submitted is not in all cases sufficiently detailed to enable us to determine definitively whether they are reimbursable or not, it appears that the employees may be reimbursed for such items as the State and county recording and filing fees, to the extent required by law, and the seals, embossing devices, and stamps needed to notarize documents. These expenditures may be considered as necessary to obtain the commission. See 36 Comp. Gen. 465, supra, holding that the expense of a seal is reimbursable.

We cannot conclude, on the record before us, that dues to a voluntary professional association, the National Notary Association, or costs for what is apparently an informational booklet on customs and practices of notaries are required for the employee to perform the duties of a notary. Thus, the latter expenses are not reimbursable. As to the remaining items, the Errors and Omissions Policy appears to offer protection to the employee against personal liability for negligent performance of his duties and the Record Book and Checklist of Official Notarial Acts appears to be a convenient recording document and informational booklet, respectively. The record does not disclose whether these items are actually required in order for a notary public to obtain his commission in California. If these items are so required in order to obtain a notary's commission, then reimbursement may be made.

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of the United States