

DECISION

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

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FILE: B-192323

DATE: SEP 20 1978

MATTER OF: Refreshments for Jurors

DIGEST: Funds appropriated to the judiciary for jury expenses are not legally available for expenditure for coffee, soft drinks, or other snacks which the District Court may wish to provide to the jurors during recesses in trial proceedings. Refreshments are in the nature of entertainment and in the absence of specific statutory authority, no appropriation is available to pay such expenses. Since under 28 U.S.C. § 572 (1976) a marshal's accounts may not be reexamined to charge him or her with an erroneous payment of juror costs, we cannot take exception to certification of vouchers for expenses incurred to date. However, we recommend that the Director of the Administrative Office of the United States Courts and the Director of the U.S. Marshals Service take steps to try to prevent the incurring of similar expenses in the future.

At the behest of the Judicial Conference of the United States, Mr. William E. Foley, Director of the Administrative Office of the United States Courts, has requested our determination regarding the legality of the expenditure of funds appropriated to the judiciary for jury expenses for the purpose of providing refreshments for jurors ordered at the direction of a district court judge during recesses in trial proceedings. Mr. Foley's request was supported by a separate letter from a judge in the United States District Court for the Eastern District of Virginia.

The Director points out that pursuant to 28 U.S.C. § 1871, authority exists for the payment of actual subsistence expenses incurred by jurors who are sequestered by the district courts, in which the jurors are kept in virtual isolation for the duration of a trial. Sequestration, usually ordered to protect the safety of the jurors or to insulate them from publicity, is a relatively rare occurrence.

Mr. Foley, however, requests our opinion concerning the more typical situation where jurors remain free, except during the business day when they may be required to be in attendance at the court house, often for several hours at a time. He notes that 28 U.S.C. § 1871 does not provide for the payment of subsistence allowances unless an overnight stay is required of the jurors and they thus are entitled to a \$16 per diem subsistence allowance. Mr. Foley states that many judges believe that providing snacks to jurors at Government expense "is essential to maintain their morale and attention during the trial and is therefore well worth the minimal monetary expenditure involved." He enclosed with his letter vouchers for expenditures to provide jurors with coffee, soft drinks, pastries, and other sorts of light refreshment which were ordered by the district courts and submitted to his office for payment.

The Director calls our attention to a resolution adopted by the Jury Committee of the Judicial Conference of the United States at its most recent meeting in January 1978, which supports the need for this expense and which provides:

"Resolved that it is the sense of the Judicial Conference Committee on the Operation of the Jury System that there is an extraordinary need for coffee and snack services, equipment, and supplies to be used to provide jurors with sustenance during the long hours that they are commonly held in session, and particularly where trials are held over until evening hours or where the sessions are otherwise prolonged.

"The Committee finds that on many occasions jurors, even when they are not formally sequestered, must be held together during the trial day in a virtual condition of civil arrest in order to avoid their mingling with members of the public, the press, and representatives of the parties, as well as for the security of the jurors themselves. For this reason it is frequently difficult or impossible to release them at meal or break times to go to commercial eating facilities. From the court's point of view such a practice would protract the proceedings, unnecessarily tax the time of the judges and other court personnel

who would have to wait upon the return of the last juror before the trial could continue, and increase the costs of a trial and the expenses of the litigants to a substantial extent.

"Furthermore it is the belief of the Committee that a coffee break, particularly between meal periods and in the evening hours, increases the efficiency and improves the morale and concentration of jurors, who must of necessity be held in close confinement for long periods of time. The condition of jurors, the Committee believes, is far different from that of federal employees who work only during normal business hours and who, in any event, have access to commercial facilities.

"The Committee therefore finds that the public interest favors the existence of some discretion in the district judges to direct the provision of beverage or snack services to jurors at appropriate points in the court proceedings. The Administrative Office of the U.S. Courts is authorized to seek an opinion from the Comptroller General of the United States as to whether expenditures for such services would constitute an 'expense' of jury service for the purposes of the appropriation to the federal judiciary for fees of jurors."

The District Court judge who wrote us that after jurors are chosen to try a particular case, they are segregated in the courtroom or jury room and are not free to move about the building or to neighboring coffee shops. He states that he perceives a difference in a jury thus segregated, as opposed to ordinary Government employees or other people in Government buildings on business who can at their own leisure attend building canteens or leave the buildings for a coffee shop. He notes that jurors serve their public duty at little pay and often for long hours and urges that their morale and continued interest demands some extra considerations.

As the Director points out, we have a long established rule that the expenditure of appropriated funds to procure food, beverages, or meals or snacks is in the nature of an entertainment

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expense and is thus prohibited unless funds are specifically provided therefor in the relevant appropriation act. See, for example, 43 Comp. Gen. 305 (1963) and 47 id. 657 (1968). See also B-167820, October 7, 1969; B-185826, May 28, 1976 and B-188708, May 5, 1977 (relating to a conference held under the Speedy Trial Act). The Director notes, however, that we have made limited exceptions to this general rule, particularly in situations involving unique and arduous working conditions or other circumstances where some advantage to the Government would result for the payment of such expenses. See, for example, 39 Comp. Gen. 119 (1959) and 50 id. 610 (1971).

In particular, the Director refers to our decision of August 10, 1971, B-173149, in which we held that appropriated funds could be used to provide cooking facilities for Federal employees at air traffic control facilities. Those facilities were frequently located at remote locations without readily accessible commercial restaurants or snack bars. Also, we were advised that at most of the facilities the employees had to eat their lunches and take their coffee breaks at or near their operating places of duty.

Mr. Foley suggests that there is a relationship between the situations of the controllers and that of the jurors and that a benefit to the Government can be found from the payment of minor food and beverage items for jurors. He states: "Like the controllers, jurors are frequently required to work continuously for longer than the regular business day and to remain during such time in or near the courtroom."

We believe, however, that the jurors' situation is more analogous to that of Government employees who cannot leave their posts because they are needed for guard duty or to maintain surveillance or have other unusual working conditions on a temporary basis. See B-186090, November 8, 1976; B-182586, December 17, 1974; B-185159, December 10, 1975; and B-180806, August 21, 1974. In those situations when employees could not go to cafeterias or snack bars, food and drink were provided to these employees at their expense on a "carry out" basis by other employees. Similarly, if they make themselves available for this purpose, the jurors have access to snack bar facilities via the marshals. If members of the marshals' staffs must take orders from individual jurors, we see no reason why they cannot also collect sufficient money from each juror to cover the cost of the items each may wish to consume.

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Accordingly, it is our view that the funds provided for jurors' fees and expenses in the Judiciary Appropriation Act, 1978, Pub. L. No. 95-86, August 2, 1977, 91 Stat. 419, 434, not being specifically available for the purchase of snacks for jurors, may not be expended for this purpose. In our view, specific statutory authority is necessary.

With regard to payments already made by marshals, we are aware of the provisions of 28 U.S.C. § 572(b)(1976) which provide:

"The marshal's accounts of fees and costs paid to a witness or juror on certificate of attendance issued as provided by sections 1825 and 1871 of this title may not be reexamined to charge him for an erroneous payment of the fees or costs."

On a form entitled "Public Voucher For Meals And Lodgings For Jurors, United States Courts" covering the expenses involved, the clerk of the District Court affirms:

"I Certify that the Court committed the jury in the above-mentioned case to the custody of the Marshal with orders to furnish said jury meals and lodging at the expense of the United States."

In one example enclosed by the Director, a United States District Court judge for the Northern District of Indiana signed an order providing:

"It is the order of the Court that the United States Marshal purchase and pay for coffee for the jurors in the above-entitled cause at the expense of the United States."

In view of these factors, we have no authority to object to the certification and payment of vouchers incurred to date. The Director of the Administrative Office of the United States Courts and the Director of the United States Marshals Service should advise the judges and marshals of the respective courts that incurring expenses to provide jurors with coffee or other refreshments is improper.

Deputy


Comptroller General
of the United States