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DECISION



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

FILE: B-203251

DATE: December 15, 1981

MATTER OF: Limitation on Payments for Job-Related
Training for Military Personnel

DIGEST: Army officers on active duty are authorized, but not required to take job-related courses offered by a civilian institute of higher learning during "non-duty" hours. The tuition and related expense limitation in section 722 of DOD Appropriation Act, 1980, and 1981, for "off-duty training" are for application. Since course attendance is not required as part of ordered military duty and courses are conducted only at times when members are not engaged in scheduled military duties, the term "non-duty" means the same as the term "off-duty" used in the Appropriation Acts' limitation. Therefore, the Government's share of tuition and expenses of these courses may not exceed 75 percent.

This action is in response to a request for decision from the Finance and Accounting Officer, United States Army Armament Research and Development Command (ARRADCOM), Dover, New Jersey, concerning the propriety of making payment on a voucher to the Florida Institute of Technology. The proposed voucher payment represents 100 percent of the cost of tuition and expenses of job-related courses a number of military officers of that activity attended during the period November 4, 1980, to January 27, 1981.

The question presented is whether such payment would violate the provisions of section 722 of the Department of Defense Appropriation Act, 1981. For the reasons discussed below payment of the full tuition would violate the restriction contained in that section.

The reported facts are that ARRADCOM is a major subordinate research and development command for the United States Army, located at Picatinny Arsenal. Its major assigned missions are research, development, engineering and engineering support for assigned weapons and weapons systems. Apparently, many of the military personnel

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attached to the Command are involved in professional and technical duties which require an exceptionally high level of managerial competence, since it is indicated that they are required to work with top level business and industrial personnel in the furtherance of the Command's mission. In an effort to assist the civilian and military work force to maintain job proficiency, ARRADCOM entered into an Educational Services Agreement and Contract with the Florida Institute of Technology to provide what the Command considers to be a broad range of appropriate job-related courses to be conducted at the installation during the evening hours following the close of regularly scheduled workdays.

It is, however, pointed out that command personnel, while encouraged to attend these training courses, are not required to attend. It is reported that the Florida Institute of Technology establishes the training courses to be given in a particular semester based on the indicated needs of the Command, and publicizes these offerings throughout the Command. Civilian and military personnel who are able and willing to expend the time and effort to take the specific courses offered, communicate this fact to their supervisors who in turn determine if a particular course would be considered appropriately job related for that individual. If so, and upon successful completion of the course as certified by the school, payment is scheduled to be made in that individual's behalf. However, if the particular course is determined not to be appropriately job related, attendance at the course is at the person's own expense.

Section 722 of the Department of Defense Appropriation Act, 1981, Public law 96-527, 94 Stat. 3068, 3084, provides in part:

"No appropriation contained in this Act shall be available for the payment of more than 75 per centum of charges of educational institutions for tuition or expenses of off-duty training of military personnel * * * nor for the payment of any

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part of tuition or expenses for such training for commissioned personnel who do not agree to remain on active duty for two years after completion of such training."

This language, which also appears in section 722 of the Department of Defense Appropriation Act, 1980, Public Law 96-154, 93 Stat. 1139, 1156, is not new. It can be traced back to section 730 of the Department of Defense Appropriation Act, 1955, 68 Stat. 337, 355-356, and the hearings which were held regarding departmental efforts to eliminate the restrictive language of section 641 of the Department of Defense Appropriation Act, 1954, 67 Stat. 336, 356. Section 641 precluded the payment of any tuition or associated expenses for off-duty training of officers above the grade of O-2.

In statements regarding the repeal of that prohibition, it was recognized that the services were moving into a new era, an era which indicated the need for continuing education of service members beyond that which could be appropriately provided as part of their military duties. The indicated purpose was to assist the member to maintain proficiency, expand his abilities as related to military needs and, where indicated, educationally assist the member in his transition to post-service life. It was specifically pointed out that no aspect of this proposed cooperative self-help program would interfere with a member's normal military duties, yet it could provide an incentive which might prove to be invaluable to the services. See generally, page 2053, et seq., Hearings before the Subcommittee of the Committee on Appropriations, United States Senate, 83d Congress, 1st Session, on H.R. 5969, which became the Department of Defense Appropriation Act, 1954.

The ideas embodied in the purpose for that legislative change are contained in Department of Defense Directive 1322.8, August 20, 1975, as reissued February 4, 1980, which implements these educational programs for military personnel.

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The policies as stated in the directive are to encourage additional study through use of accredited civilian institutions, whereby military personnel can enhance their military effectiveness and prepare them for positions of greater responsibility in the Armed Forces regardless of their current level of education. The installations on the other hand, are directed to provide the educational opportunity in such a way that it would, among other things, support and reinforce the training specialties of the individuals or the mission of the base or command.

It has been suggested in the submission that the tuition assistance limitation of section 722 may not be applicable to ARRADCOM military personnel since they are considered to be "on duty" 24 hours a day unless they are in an approved leave status. It is pointed out that the terminology used in DD Form 1556 (Request for Training) to describe when the course would be taken is "non-duty," rather than "off-duty" as used in the statute.

It is technically correct to describe a military member serving on active duty as being "on duty" 24 hours a day and, therefore, never being "off-duty." Clearly, however, the use of the term "off-duty training" as used in section 722 of the Department of Defense Appropriation Act relating to the tuition and expense limitation for active duty military personnel, must be given a more precise meaning; otherwise the limitation would be pointless.

In 40 Comp. Gen. 505 (1961), at page 507, in connection with the appropriation limitation, we stated:

"It is clear that the term 'off-duty training' contemplates a member being in an active military status performing regular duties attendant to such status and contemporaneously furthering his education on his own time while not engaged in military duties. * * *"

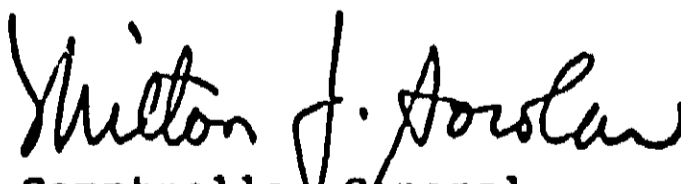
Department of Defense Directive 1322.8, defines the term "Off-Duty Time" as time when the military service member is

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not scheduled to perform official duties. The terms "off-duty training," as used in section 722 of the appropriation acts; "off-duty time" as used in the Department of Defense Directive regarding these educational programs; and "non-duty" as used in item 19 of DD form 1556, in our view have the same basic meaning. That is, they refer to those periods of time when service members on active duty are not scheduled to perform official military duties.

In the present case, from the description of the method by which a course is chosen and approved as job related, it is evident that attendance at these courses by military personnel of ARRADCOM was not a part of their official military duties even though such attendance may have enhanced their military effectiveness. It is our view, therefore, that unless the military members described in the submission were attending these courses of instruction under orders as part of their official military duties, the courses in question would come within the purview of section 722 of the Department of Defense Appropriation Acts of 1980 and 1981. As such, the Government's share of such payments is limited to 75 percent of the cost of tuition and necessary expenses. This, of course, assumes that the members in question either have or will execute the 2-year active duty agreement called for in section 722 of those acts.

Accordingly, the vouchers accompanying the submission are being returned to the submitting finance and accounting officer for modification and payment in accordance with this decision.

for 
Comptroller General
of the United States