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DECISION

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

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FILE: B-210967 **DATE:** July 8, 1983

MATTER OF: National Highway Traffic Safety Administration - Travel and Lodging Expenses

DIGEST: Use of appropriated funds by National Highway Traffic Safety Administration (NHTSA) to pay travel and lodging expenses of State officials to attend a proposed training workshop on odometer fraud is prohibited by 31 U.S.C. § 1345 (formerly § 551), as the proposed expenditures are not specifically provided for by the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. § 1981 et seq. (1976), or other statute. Also, as this proposal is to be carried out by contract, the exception in our cases for grants does not apply.

The Chief Counsel of the National Highway Traffic Safety Administration (NHTSA) on behalf of the Administration has requested a decision on whether it has the authority to expend appropriated funds for lodging and transportation costs of State officials at a proposed odometer fraud workshop. For the following reasons, we conclude that such expenditures are not authorized.

NHTSA has been delegated the responsibility for the enforcement of the Motor Vehicle Information and Cost Savings Act (Cost Savings Act), 15 U.S.C. § 1981 et seq. (1976), which prohibits odometer tampering on motor vehicles and establishes safeguards for the protection of the purchaser. The United States Attorney General or the chief law enforcement officer of the State in which a violation occurred may bring an action against violaters. See, 15 U.S.C. §§ 1990, 1990a.

In carrying out its responsibilities under the Cost Savings Act, NHTSA is interested in contracting with State motor vehicle departments to conduct odometer tampering detection workshops. The workshops would provide training to appropriate State officials in the detection, investigation, and prosecution of odometer tamperers.

The Agency cites as authority to conduct the workshop the provisions of section 1990d of the Cost Savings Act. Section 1990d(a) provides in part:

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> "(1) The Secretary is authorized to conduct any inspection or investigation necessary to enforce this title or any rules, regulations, or orders issued thereunder. Information obtained indicating noncompliance with this title or any rules, regulations, or orders issued thereunder, may be referred to the Attorney General for investigative considerations. In making investigations under this paragraph, the Secretary shall cooperate with appropriate State and local officials to the greatest extent possible consistent with the purposes of this subsection." (Emphasis supplied.)

In order to make attendance at the workshop economically feasible for the State, the Agency would like to use the State workshop contracts to pay for the attendees' food and lodging. However, under 31 U.S.C. § 1345 (formerly § 551), such expenditures are prohibited unless specifically provided by law:

> "§ 1345. Expenses of meetings
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> "Except as specifically provided by law, an appropriation may not be used for travel, transportation, and subsistence expenses for a meeting. This section does not prohibit--[exceptions not pertinent to this inquiry]."

NHTSA argues that it has "specifically provided" authority under section 1990d of the Cost Savings Act, quoted above. We do not agree. General statutory language such as that contained in section 1990d does not even specifically authorize the agency to sponsor a meeting. The "cooperation" authority in section 1990d(a), relied on by NHTSA, appears to relate to the inspection and investigation of odometer tampering by State and local officials. Nevertheless, we think such meetings can be said to be reasonably related to the overall objectives of the statute. We reach that conclusion because we are not aware of any statutory prohibition against Federal sponsorship of such meetings. On the other hand, there is a statutory prohibition against paying the travel, transportation and subsistence expenses of non-Government attendees at a meeting. See, e.g., B-193644, July 2, 1979; B-166506, July 15, 1975; and B-168627, May 26, 1970. By using the word "specifically" Congress indicated that authority to pay travel and lodging expenses of non-Government employees should not be inferred

but rather that there should be a definite indication in the enactment that the payment of such expenses was contemplated. In other words, there is a distinction between the general authority to hold a conference and the specific authority to overcome the prohibition in 31 U.S.C. § 1345. Thus, in B-166506, cited above, we held that the Environmental Protection Agency (EPA) had authority under the Solid Waste Disposal Act, 42 U.S.C. § 3253 (1970), to hold a Solid Waste Management Convention but that payment for State officials' convention-related transportation and lodging was improper because these expenditures were not specifically authorized. Similarly, in B-193644, cited above, we determined that the Federal Coal Mine Health and Safety Act of 1969, as amended, authorized the Mine Safety and Health Administration, Department of Labor, to hold safety and health training seminars but without more specific statutory authority, the Agency could not pay for the travel and subsistence expenses of the attending miners and mine operators.

In only one case have we held that authority that did not specify travel or subsistence in its language satisfied the restrictions of 31 U.S.C. § 1345. In 35 Comp. Gen. 129 (1955) we allowed payment for the proposed transportation costs of invitees to a White House Conference on Education despite the absence of language mentioning such expenditures in the authorizing statute. In doing so, we noted that the entire purpose of the statute in question (the Act of July 26, 1954, 68 Stat. 532) was to provide for a White House Conference on Education. Further, we found that the statute specified that the conference be "broadly representative of educators * * * from all parts of the Nation," and it authorized appropriations necessary for the "administration" of the Act. Since the conference was the only means of implementing the statute, we determined that payment of travel expenses was specifically authorized.

However, the justification found in 35 Comp. Gen. 129 does not apply here. As mentioned above, the Cost Savings Act is not designed for the purpose of holding workshops on odometer fraud, and the provision that NHTSA is relying on does not mandate that a conference be held. While we have no objection to agency sponsorship of the proposed odometer conference, lodging and transportation expenses are not essential for carrying out the purposes of the program. Accordingly, we conclude that in the absence of specific statutory authority, NHSTA's proposal would violate 31 U.S.C. § 1345.

The Chief Counsel, while anticipating our answer as to NHTSA's authority to contract for travel and lodging expenses, argues that this answer is without merit since it would not apply if the conference were conducted under a grant. The Chief Counsel, while recognizing that the NHTSA does not have grant authority, argues that application of different standards for grants and contracts is arbitrary. He suggests that procurement contracts should be subject to restrictions no greater than those imposed upon grantees. According to the Chief Counsel:

> "The distinction between a grant and a contract is fictitious because ultimately the same result occurs, i.e., government funds are used to pay for food and lodging. From a practical as well as a fiscal standpoint it would be beneficial to achieve this result through a contract which would provide greater government control and assure against misuse of funds."

We disagree with the Chief Counsel's view that there is no valid distinction between procurement contracts and grants. Real legal differences do result from issuing a grant rather than a procurement contract. One of the differences between grants and procurement contracts pertinent to this case is that in the case of a grant the responsibility for the grant program becomes that of the grantee rather than that of the Federal Government. Accordingly, a grantee is free to choose for itself the best means to implement the grant purpose, subject only to the applicable statutes and the terms of the grant agreement. In exercising that discretion, many restrictions that would apply to direct expenditures by the agency do not necessarily apply to grantees. See, e.g., acquisition or use of aircraft, 55 Comp. Gen. 348 (1975); restrictions on dual compensation; 25 Comp. Gen. 868 (1946); restriction on payment of State sales tax, 37 Comp. Gen. 85 (1957). The general principle in all these cases is that grant funds lose their Federal character, once the award is made, and they become funds of the grantee, subject only to the terms of his grant document, the statute which authorized the grant, and applicable regulations. 36 Comp. Gen. 221, 224 (1956).

Accordingly, we do not agree that the distinction between a grant and contract is fictitious and reaffirm our earlier decisions to the extent they are based on those

differences. If NHTSA considers the payment of State official's travel and lodging expenses to be essential to its mission, specific authorizing legislation should be sought from the Congress.

for Milton J. Socolar
Comptroller General
of the United States