



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Advance decision regarding payment of fees in support of mutual aid fire protection agreement

File: B-222821

Date: April 6, 1987

DIGEST

Under the broad authority contained in 42 U.S.C. § 1856a authorizing the heads of Federal installations to enter into mutual aid agreements with local fire departments to protect Federal property against fire and related disasters, the Navy may pay fees assessed by a municipal organization to purchase specialized equipment for training and responding to incidents involving hazardous materials.

DECISION

The Central Disbursing Officer of the Navy Regional Finance Center at Great Lakes Illinois (Navy) has requested our opinion as to whether the Navy may pay fees assessed by the Lake County Fire Chief's Hazardous Materials Fund to be used "to purchase consumable and non-consumable materials in support of the firefighting mutual aid agreement" between the Navy and participating municipal fire departments. For the reasons stated below, we conclude that the Navy may pay the fees in question.

On November 17, 1982, the Commanding Officer of the Naval Administrative Command in Great Lakes, Illinois (Naval Command) entered into a mutual aid fire protection agreement with several neighboring municipalities that belonged to the Lake County Fire Chiefs Association (Association). The agreement, which is authorized under 42 U.S.C. § 1856a, provides that whenever a participating municipality (which, for purposes of the agreement, includes the Naval Command) is stricken by a fire or other disaster which is too large to be handled by the local fire department, the other participating municipalities shall provide non-reimbursable assistance on a predetermined scale.

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In January 1984, the Association passed a resolution providing for the creation of the Lake County Fire Chief's Hazardous Fund (Fund). The Association determined that moneys in the Fund would be used to train personnel, secure specialized equipment for training purposes and equip a special response vehicle that would be available to respond to incidents involving hazardous materials. The cost of the training equipment and vehicle were to be shared by all of the participating fire departments. On February 14, 1986, all participating fire departments received assessment notices from the Fund. The Navy Central Disbursing Officer was uncertain as to whether the assessment, totaling \$2,750.00,^{1/} could properly be paid and requested our advance decision.

ANALYSIS

Prior to enactment of the Act of May 27, 1955, 69 Stat. 66, 42 U.S.C. §§ 1856-1856d, our Office had held that a Federal facility could not expend appropriated funds for the purpose of fighting fire outside of Federal reservations unless Federal property was endangered. 32 Comp. Gen. 91 (1952). This effectively prohibited Federal agencies from entering into mutual aid fire fighting agreements with any non-Federal fire fighting units or organizations. In order to remedy this situation, Congress enacted the above-cited statute which "enables the Federal Government to provide maximum fire protection for its installations and activities throughout the world at a minimum cost by utilizing local civilian fire protection personnel and facilities on a reciprocal basis * * *." S. Rep. No. 274, 84th Cong., 1st Sess. 2 (1955).

Under 42 U.S.C. § 1856a(a), an agency head charged with the duty of providing fire protection for Federal property, is authorized to enter into a reciprocal agreement with any nearby fire fighting organization "for mutual aid in furnishing fire protection for such property and for other property for which such organization normally provides fire

^{1/} The total amount assessed consists of an original membership fee of \$2,000.00 to join the Fund and an additional \$750.00 assessment for the 1986 fiscal year.

protection."^{2/} The term "fire protection" is defined in 42 U.S.C. § 1856(b) as including "personal services and equipment required for fire prevention, the protection of life and property from fire, and fire fighting."

Thus, under the statute, the head of a Federal agency or installation is authorized to enter into a mutual aid agreement that would enable the agency to furnish a participating municipality with the equipment required for fire prevention in addition to fire fighting services. Furthermore, we think that an agency would have the discretion to furnish such equipment and material directly to a participating municipality or by paying a share of the total cost of purchasing such equipment which would then remain available until it was needed.

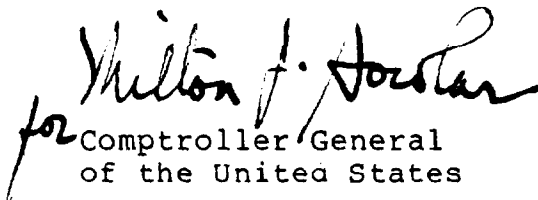
Moreover, while we recognize that Congress may not have specifically considered the problems associated with hazardous waste spills and accidents when it passed the Act of May 27, 1955, authorizing reciprocal fire protection agreements, we think that the threat of fire and related dangers (such as explosion or the release of toxic fumes) resulting from hazardous waste accidents is obviously so great that the legislation would appear to authorize agreements covering such accidents as well as ordinary fire protection. In this respect, we note that a letter dated April 18, 1985 from the Chief Naval Facilities Engineering Command, states that it is considered to be an inherent function of the fire service to respond to "emergencies involving hazardous materials for the purpose of fighting fire, performing rescue, and initiating containment actions for substances representing a fire/explosion hazard or immediate threat to human life * * *."

Thus, we are convinced that 42 U.S.C. 1856a authorizes the Naval Command to enter into a mutual aid agreement that would allow payment of the type of fees involved here. We recognize that the mutual aid agreement the Naval Command entered into in this case is more limited in scope than is authorized under the statute. The primary focus of the agreement is on authorizing the participating municipalities to respond to a disaster that is already underway.

^{2/} Under 42 U.S.C. § 1856a, the agreement may provide for reimbursement to the participants for any assistance they furnish under the agreement. However, in accordance with the discretion afforded agency heads under the statute, the particular agreement involved in this case provides that all services performed thereunder "shall be rendered without reimbursement * * *."

However, the agreement does "invite and encourage" participating municipalities "to jointly conduct training sessions," to prepare them for responding to an actual emergency. This is consistent with the objectives of the Association in establishing the Hazardous Materials program "to properly train and equip Lake County Fire Department personnel in the special skills necessary to handle hazardous material incidents." Moreover, even if the original mutual aid agreement is interpreted very narrowly as not authorizing the Naval Command to pay this type of fee, we think the January 1984 resolution which was adopted by the Association can reasonably be construed as an amendment to that agreement by which all of the participating fire departments, including the Naval Command, agreed to pay these fees.

Accordingly, based on the broad discretion provided to the heads of Federal installations under 42 U.S.C. § 1856a to enter into mutual aid agreements that will provide maximum protection for Federal property against fire and related disasters at minimum cost, we would not object to payment by the Naval Command of the fees in question. However, in light of the reciprocal nature of the mutual aid agreement, payment of such fees by the Naval Command should be conditioned on the payment of comparable fees by the other participating municipalities.


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