



The Comptroller General  
of the United States

Washington, D.C. 20548

**Decision**

Matter of: Transportation and Travel Expenses of Members as  
Witnesses  
File: B-223900  
Date: December 24, 1986

**DIGEST**

The Joint Travel Regulations may be amended to provide transportation and travel expenses for uniformed service members who serve as witnesses in criminal cases in local courts and civil cases in local, state government, government of a United States territory or possession or District of Columbia courts in proceedings directly related to the uniformed services or to members of the uniformed services, if the government has a compelling and genuine interest in the matter.

**DECISION**

This action is in response to a request for an advance decision from the Per Diem, Travel and Transportation Allowance Committee regarding transportation and travel expenses of members called to testify as witnesses in court proceedings.<sup>1/</sup> The question presented is whether members of the uniformed services may be provided with travel and transportation allowances for travel incident to duty as a witness in criminal cases in local courts and civil cases in local, state and District of Columbia courts in certain proceedings directly related to the services or members of the uniformed services. It is our view that such travel may be permitted under the circumstances set forth below.

**BACKGROUND**

There is no specific statutory authority for payment by the government of travel expenses for members of the uniformed services who are called to testify at state or local proceedings. Generally, members of the uniformed services travel at government expense pursuant to 37 U.S.C. § 404 (1982), which provides that under regulations prescribed by the Secretaries

<sup>1/</sup> The request was made by Delbert L. Spurlock, Jr., in his capacity as Chairman, Per Diem, Travel and Transportation Allowance Committee, Alexandria, Virginia.

concerned, a member is entitled to travel and transportation allowances for travel performed under orders, upon a permanent change of duty station, or otherwise, or when away from his designated duty station. Paragraph M3050-1 of Volume 1 of the Joint Travel Regulations (1 JTR), issued pursuant to that authority, provides that members are entitled to these allowances only while actually in a travel status and they shall be deemed to be in a travel status while performing travel away from their permanent duty station, on public business, pursuant to competent travel orders.

In construing the term "public business" we have held that it relates to the activities or functions of the service to which the traveler is attached, and the travel which is contemplated is that which reasonably may be considered as having been performed in the accomplishment of the purposes and requirements of such activities and functions. See 55 Comp. Gen. 1332 (1976). In other words, travel allowances are authorized for members of the uniformed services for the purpose of reimbursing them for the expenses incurred in complying with the travel requirements imposed upon them by the needs of the services over which they have no control, but not for expenses of travel considered as made for personal business. See B-202232, July 10, 1981.

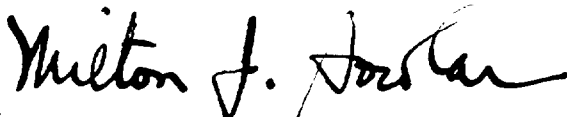
In B-202232, supra, the Committee proposed a change to the Joint Travel Regulations to allow authorization of travel and transportation expenses for members requested to appear as witnesses for a state government in a criminal proceeding. This proposal required that a determination be made that the travel is necessary and in the best interest of the service, and that the court action is one directly related to the service or a member and is one in which the service has a strong interest. We held that a determination that travel is necessary for transaction of official business is required and such a determination is a matter within the discretion of the agency concerned. Thus, in allowing a member to travel at government expense to serve as a witness in a state criminal prosecution, the service is required to make a determination based on the facts of each situation that the travel involved is to be performed because of the needs of the service. Based upon our decision, the travel regulations were amended to provide allowances under those circumstances.

The services now propose an extension of the regulations to allow authority for reimbursement of travel and transportation allowances when members serve as witnesses in criminal cases in local courts and civil cases in local, state, United States territory or possession, or District of Columbia courts in proceedings directly related to the uniformed services or to members of the uniformed services.

As an example, the services present the situation of a custody hearing involving the abused child of an Army family in which a member would have testified had he been provided transportation and travel allowances. After the hearing, the child was returned to the family and, shortly thereafter, the child died. It is speculated that the testimony of the member might have prevented the return of the child to the family and, presumably, prevented its death.

It is our view that the Joint Travel Regulations may be amended to allow travel and transportation expenses for such purposes under limited circumstances. Generally, members may not be provided transportation and travel expenses to participate in criminal and civilian legal proceedings unrelated to the service. Additionally, most jurisdictions have at least some funds and authority to provide for the expenses of witnesses called to testify on behalf of the state. We recognize, however, that military members are subject to frequent transfers, often on short notice, to distant places, and over which they have little control. We also recognize that there may be circumstances under which the services find that they have a strong interest in a case, such as where the service finds it would be in its best interest to be permitted to facilitate prosecution or defense of its military personnel, or to protect the safety of its members and their dependents. When these situations exist and appropriate determinations have been made that the service has a compelling and genuine interest in the matter, it is our view that the services should be able to provide transportation and travel expenses when a member of the uniformed services is called to testify in Federal, state, or local courts as a necessary witness. While regulations may be promulgated which allow the services to provide travel and transportation allowances in such circumstances, the regulations also should insure that the determination has been made that the travel involved is in the interest of the government. As we understand the proposal, however, this would not include travel to participate in purely private litigation, such as a personal injury case or personal contract, merely because a military member was involved.

Accordingly, we would not object to an amendment to provide for transportation and travel allowances for members of the uniformed services under the circumstances set forth above.



Acting Comptroller General  
of the United States