



The Comptroller General
of the United States

Washington, D.C. 20548

Riedinger

Decision

Matter of: Ruben Carranza - Dependents as Passengers in
Vehicles on Government Business

File: B-231814

Date: January 19, 1989

DIGEST

1. Under the provisions of 31 U.S.C. §§ 1344 and 1349 (1982 & Supp. IV 1986), a government-owned or leased vehicle may only be used for the performance of official business. It does not violate those statutes, however, for an agency to allow a dependent of an employee to accompany the employee as a passenger in such vehicle. 57 Comp. Gen. 226 (1978).
2. If a vehicle being operated by a federal employee in the performance of official business is involved in a collision due to the employee's negligence and a member of the family who is accompanying the employee as a passenger is injured, that passenger may seek damages. Since the right of recovery under the Federal Tort Claims Act, 28 U.S.C. §§ 2671-80 (1982), is predicated on the law of the place of occurrence, the government's liability might be increased by permitting the family member to accompany the employee.

DECISION

This decision is in response to a request from the Director, Office of Finance and Accounting, United States Department of Housing and Urban Development (HUD), concerning the legality of permitting dependents to travel as passengers in a vehicle being operated by a federal employee while performing official business.

BACKGROUND

An employee of HUD's Fort Worth Regional Office has requested permission to take his spouse as a passenger in a government-furnished vehicle. The agency asks: (1) whether the employee may be granted permission to do so; (2) whether the granting of such permission would increase the potential liability of the government under the Federal Tort Claims

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Act; (3) whether the same criteria would apply to commercially rented vehicles obtained under an agreement negotiated for the government by the Military Traffic Management Command or any other commercially rented vehicle; and (4) what, if any, implications are associated with dependents traveling with an employee on official government business as passengers in a privately owned vehicle?

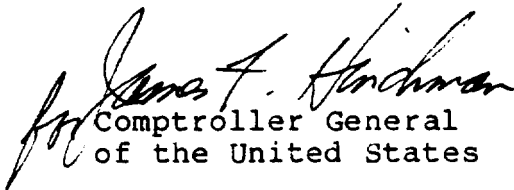
OPINION

Under the law, a government-owned or leased motor vehicle or aircraft may only be used on official business. Any other use is prohibited and would subject the employee so using that vehicle to sanctions. 31 U.S.C. §§ 1344, 1349 (1982 & Supp. IV 1986). However, there is nothing in the law or regulations which would prohibit a member of an employee's family from accompanying him as a passenger in such vehicle while he is traveling on official business for the government. In this regard, we held in 57 Comp. Gen. 226 (1978) that it would be a violation of law to transport a dependent for other than "official purposes" or to permit that dependent to drive a government vehicle on personal business. We went on to state that:

" . . . where the transportation of a dependent in a Government vehicle is such that the dependent merely accompanies an employee on an otherwise authorized trip scheduled for the transaction of official business, and the agency involved makes a determination that it is in the Government's interest for the dependent to accompany the employee (for instance, for morale purposes), we do not believe that the provisions of [31 U.S.C. § 1349] would be violated." 57 Comp. Gen. at 228.

With regard to the possible increase in liability exposure to the government due to the presence of an employee's dependent as a passenger in a government-furnished or leased vehicle, we note that under the provisions of the Federal Tort Claims Act, 28 U.S.C. §§ 2671-80 (1982), in order to establish governmental responsibility in tort, three conditions must be present. First, any monetary claim arising out of injury, death, or property damage suffered by a third party must have been caused by the negligent or wrongful act or omission of an employee of an agency. Second, the employee must have been acting within the scope of his office or employment at the time of the occurrence. Finally, the right of that third party to recover is to be determined by the law of the place where the negligent act or omission occurred.

Assuming that the first two conditions are met, the liability exposure of the government arising out of injury or property damage suffered by a passenger in a government vehicle would be dependent on the law of the place of occurrence. Some jurisdictions limit or even prohibit recovery by passengers in a vehicle being negligently operated, but other jurisdictions do not so. We believe that the government could have an increased liability exposure under the Federal Tort Claims Act because of a passenger who is not a federal employee. The fact that the vehicle in question may be a commercial rental vehicle leased under an agreement negotiated for the government by the Military Traffic Management Command, or by any other rental arrangement, rather than a government-furnished vehicle, or even if it is a vehicle privately owned by the employee which is being used on official travel, would not alter that conclusion.


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