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**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Lieutenant Colonel Tommy B. Tompkins
File: B-236330
Date: August 14, 1989

DIGEST

Army Colonel at remote location in Saudi Arabia may be reimbursed for purchase of safe drinking water for his detachment under the public necessity exception to the voluntary creditor rule. The purchase was necessitated by receipt through regular channels of a contaminated water shipment, and in view of historical problems in receiving timely shipments, there was a real need to act promptly to protect the government's interest.

DECISION

Lieutenant Colonel Tommy B. Tompkins has appealed our Claims Group's denial of his reimbursement request for buying bottled water for his detachment while stationed in Saudi Arabia in 1981. The Claims Group denied the claim on the basis that the purchase did not result from an urgent or unforeseen circumstance. Upon further consideration, we find that Colonel Tompkins is entitled to reimbursement.

The record shows that Colonel Tompkins was assigned command of 75 Army and Air Force personnel in Khamis Mushayt, Saudi Arabia, in 1981. Because the location was remote, the detachment depended on air lifts administered by the U.S. Military Training Mission (USMTM), headquartered at Dhahran, for drinking water. Colonel Tompkins was authorized by his commander to use up to \$300 in imprest funds to buy clean water from the local market in case of emergency.

Because the last USMTM shipment of water caused intestinal disorders among detachment personnel, Colonel Tompkins had the water analyzed; the analysis disclosed that the shipment was contaminated. Colonel Tompkins therefore authorized the purchase of \$300 worth of the only local bottled water known to be safe, which he judged constituted a 5-day supply. Upon being advised that this brand of water

was in short supply, and in view of frequent difficulties in getting timely airlifts from USMTM, Colonel Tompkins ordered his supply officer to buy as much of the safe water as possible, which cost an additional \$473.79.

The Accounting and Finance Officer at USMTM headquarters refused to ratify any amount over the \$300 dollar limit, and Colonel Tompkins reimbursed the government from his personal account. Colonel Tompkins then appealed, and the subsequent investigation resulted in a finding that he had acted properly and should be reimbursed. Colonel Tompkins then filed a claim with our Office.^{1/}

As our Claims Group pointed out, as a general matter an employee who spends money in excess of his authority is considered to do so voluntarily, and thus does not create a reimbursement obligation on the part of the government. This is called the "voluntary creditor" rule, and is discussed in detail in our decision in 62 Comp. Gen. 419 (1983). The employee may be reimbursed, however, under the exception for "public necessity," which considers the extent to which the program or activity involved would have been disrupted had the claimant not taken prompt action. See Claim of Bradley G. Baxter, B-232686, Dec. 7, 1988. The purpose of this consideration is to limit reimbursement to cases where there was a real need to act without delay to protect a legitimate government interest. 62 Comp. Gen., supra.

Applying the public necessity exception to the voluntary creditor rule, we have allowed reimbursement to (1) a National Guard officer who bought food for subordinates during a weekend training exercise when required paperwork was not completed in time to follow normal purchasing procedures, 62 Comp. Gen., supra; (2) an Air Force sergeant in Italy who had purchased communications equipment that could not otherwise have been obtained quickly enough to avoid mission impairment, B-195002, May 27, 1980; and (3) a government attorney who used personal funds to pay airfare for witnesses subpoenaed to appear in court when the airline inexplicably refused to honor the government transportation request. Irving M. Miller, B-210986, May 21, 1984.

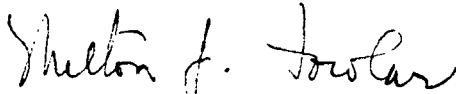
The Claims Group decided that because the record disclosed a history of water supply problems at Khamis Mushyat, the purchase in issue "did not result from an urgent or

^{1/}It is not clear from the record why the Army itself did not settle the claim.

unforeseen emergency requiring the protection of the government interest." (Emphasis in original.)2/

While it apparently is true that timely airlifts of water to USMTM had been a problem for Khamis Mushyat for some time, the fact is that this particular purchase was immediately necessitated by the receipt of contaminated water through the usual delivery channels. As such, we think the situation properly should be viewed as both unforeseen and urgent. Clearly, a failure to act on Colonel Tompkins' part would have severely disrupted the detachment's activities, so that there was a real need to act without delay to protect the government's interest. In this respect, the record shows that it took USMTM 10 days to airlift a fresh supply of water, so that Colonel Tompkins in fact was correct that the 5-day/\$300 supply of water would be inadequate.

In sum, Colonel Tompkins is entitled to reimbursement for his initiative. We therefore are instructing our Claims Group to certify the claim for payment, if otherwise proper.



Acting Comptroller General
of the United States

2/Before our 1983 decision at 62 Comp. Gen., supra, the exception generally was stated as applying only in cases involving "urgent and unforeseen public necessity." We restated the exception in 1983 because it had acquired a rigidity it never was intended to have. See pp. 422-423.