



Comptroller General
of the United States

Washington, D.C. 20548

Decision

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Matter of: Defense Medical Systems Support Center-Health and Fitness Program

File: B-240371

Date: January 18, 1991

DIGESTS

1. Under 5 U.S.C. § 7901 (1988), federal agencies may establish preventive health service programs to promote and maintain the physical and mental fitness of their employees. Moreover, regulations issued by the Office of Personnel Management to implement section 7901 specifically authorize agencies to establish and operate "physical fitness programs and facilities designed to promote and maintain employee health." Federal Personnel Manual (FPM), ch. 792 (Inst. 261, Dec. 31, 1980), as amended by FPM letter 792-15 (April 14, 1986). As such, we conclude 5 U.S.C. 7901 and its implementing regulations authorize the Department of Defense, Defense Medical Systems Support Center to use appropriated funds to provide its employees access to a private fitness center's exercise facilities.

2. The prohibition in 5 U.S.C. § 5946 against the use of appropriated funds to pay the membership dues of a federal employee in a society or association does not prohibit a federal agency from using appropriated funds to purchase access for its employees to a private fitness center's exercise facilities.

DECISION

An official of the Department of Defense, Defense Medical Systems Support Center (Center), asks whether the Center may use appropriated funds to provide access to private health and fitness facilities for its employees as a part of its health service program. For the following reasons, we conclude the Center may use appropriated funds for such a purpose subject to budgetary constraints.

BACKGROUND

For the past two years, the Center contracted with a private health and fitness facility to provide the Center's civilian and military employees access to exercise facilities.

PUBLISHED DECISION

70 Comp. Gen. 190

Recently, a contracting officer questioned whether an agency may use appropriated funds for such an expenditure and denied the Center's request to renew the contract. Therefore, the Director of the Center asked for our opinion on the matter.

DISCUSSION

Generally, agencies may not use appropriated funds to pay the costs of medical or health care treatment for civilian government employees since such costs are considered personal to the employees. 64 Comp. Gen. 835 (1985). However, 5 U.S.C. § 7901 (1988) authorizes heads of departments or agencies to establish health service programs by contract or otherwise to promote and maintain the physical and mental fitness of federal employees. B-226569, Nov. 30 1987. These health service programs include "preventive programs relating to health." 5 U.S.C. 7901(c)(4).

In a previous decision, we concluded that the Park Service could not pay a private health club to allow Park Service employees access to the club's exercise facilities. 64 Comp. Gen. 835 (1985). However, we based our conclusion on the restrictive nature of the Office of Personnel Management's (OPM) regulations implementing 5 U.S.C. § 7901, not on a lack of statutory authority. We concluded that the statutory language, "preventive programs relating to health," was sufficiently broad to encompass physical exercise programs. 64 Comp. Gen. 835, 838 (1985).

In response to our decision, OPM revised its regulations to include the establishment and operation of "physical fitness programs and facilities designed to promote and maintain employee health" in its list of appropriate preventive health services. See Federal Personnel Manual (FPM), ch. 792 (Inst. 261, Dec. 31, 1980), as amended by FPM letter 792-15 (April 14, 1986). OPM supports and encourages physical fitness programs because of the "positive impact of good health on maintaining effective performance and productivity," and "to avoid or minimize the problems associated with absenteeism, early retirement due to unavoidable disability and the decline in individual performance due to health problems." Id.

Apart from the above issue concerning the availability of agency appropriations for fitness programs, an issue has arisen concerning the applicability of 5 U.S.C. § 5946 to agency contracts for access to and use of the privately owned fitness facilities. Under 5 U.S.C. § 5946, agencies may not use appropriated funds to pay "membership fees or dues of an employee . . . in a society or association." Based on this prohibition, OPM's General Counsel, in a 1988 opinion issued in response to an OPM Regional Director's request, questioned

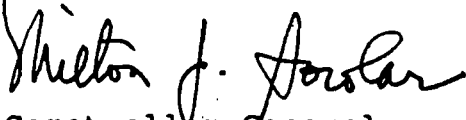
whether agencies may use appropriated funds to pay for employee "memberships" in fitness centers.

In the past, we have not objected to certain expenditures just because they were labeled as memberships in associations. See, e.g., 19 Comp. Gen. 937 (1940) (payment of "membership assessments" to secure access to a law library "association"); B-21, Jan. 5, 1939 (expenditure for "membership" in an electric cooperative). In these cases, we recognized that, regardless of the form of the expenditure, the government was actually paying a service or use charge in furtherance of authorized agency activities. See 19 Comp. Gen. 937, 939 (1940).

Similarly, here, the Center is not using appropriated funds to pay dues or fees for membership in a society or association. It is purchasing access for its employees to a private fitness center's exercise facilities as part of an agency fitness program authorized by 5 U.S.C. § 7901. As such, we do not view the expenditure in question as the type Congress intended to prohibit under 5 U.S.C. § 5946.1/

Accordingly, we would not object to the Center's use of appropriated funds, under the authority in 5 U.S.C. § 7901 to establish health fitness programs "by contract or otherwise," to provide its employees access to private health and fitness exercise facilities as part of a health service program.

In conclusion, we would like to note our agreement with the observations of the General Counsel, OPM, contained in his 1988 opinion that the "purchase of fitness club memberships for the use of employees on a continuing basis should be undertaken only where all other resources have been considered and rejected, and where employee use of the program will be carefully monitored as part of a bona fide preventive program relating to health."

for 
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1/ Of course, 5 U.S.C. § 5946 does not prohibit a federal agency from joining a society or association in its own name, where, such as would be the case here by virtue of 5 U.S.C. § 7901, such membership is otherwise authorized. See 61 Comp. Gen. 542 (1982).