



G A O

Accountability * Integrity * Reliability

Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Use of Appropriated Funds to Purchase Light Refreshments at Conferences

File: B-288266

Date: January 27, 2003

DIGEST

1. The General Services Administration (GSA), through its travel regulation on conference planning, purports to authorize federal agencies to pay for light refreshments at official government-sponsored conferences where a majority of the attendees are in travel status. 41 C.F.R. § 301-74.11. While GSA is authorized to define subsistence for travelers to include light refreshments, 5 U.S.C. § 5702, GSA does not have the authority to authorize agencies to pay for light refreshments for those not in travel status.
2. The Comptroller General is required to settle the accounts of the United States. 31 U.S.C. § 3526(a). Pursuant to his account settlement authority, the Comptroller General can take exception to an improper transaction and refuse to relieve a certifying officer from personal liability for the amount of money improperly expended. Certifying officers are afforded protection from personal liability by relying on decisions of the Comptroller General concerning the legality of payments disbursing officers may make, or of expenditures covered by vouchers presented to certifying officers for certification. 31 U.S.C. § 3529. Since Congress reposed the authority in the Comptroller General to settle the accounts of the government, certifying officers should not rely on GSA's travel regulation on conference planning to authorize light refreshments at meetings for employees in nontravel status.
3. As a general proposition, absent statutory authority, appropriated funds are not available to feed government employees at their duty station. The Comptroller General has identified other authorities that, in certain circumstances, permit the use of appropriated funds to pay for meals and light refreshments. Agencies (and their accountable officers) should rely on existing, relevant statutory authority as interpreted by the Comptroller General to determine whether they may provide food to federal employees.

DECISION

Pursuant to 31 U.S.C. § 3529(a), a Navy certifying officer asks us to clarify whether the light refreshments provision of the General Services Administration (GSA) Federal Travel Regulation (FTR) on conference planning, 41 C.F.R. § 301-74.11, permits agencies to use appropriated funds for refreshments at a meeting to discuss internal, day-to-day business operations held within the official duty station. As a general proposition, an agency may not use appropriated funds to pay for light refreshments for business meetings conducted by government agencies at an employee's duty station. There are certain statutory authorities that may permit the use of appropriated funds for light refreshments in certain situations. GSA does not, however, have the authority to permit agencies to use appropriated funds to pay for employees' food and light refreshments, except as part of an employee's travel subsistence allowance. Moreover, since Congress reposed the authority to settle the accounts of the government in the Comptroller General, 31 U.S.C. § 3526, certifying officers should not rely on GSA's travel regulation on conference planning to authorize light refreshments at meetings for employees in nontravel status.

Background

In January 2000, GSA published an amendment to the Federal Travel Regulations to address "conference planning." 65 Fed. Reg. 1326, Jan. 10, 2000. The amendment defines "conference" as "[a] meeting, retreat, seminar, symposium or event that involves attendee travel. The term 'conference' also applies to training activities that are considered to be conferences under 5 CFR 410.404."¹ 41 C.F.R. § 300-3.1. The regulation focuses on the total costs involved in employee travel to conferences, including guidance on comparing the cost of and selecting conference facilities, 41 C.F.R. §§ 301-74.2--74.5, and holding a conference at a hotel, motel, or other place of public accommodation. 41 C.F.R. § 301-74.14. In addressing the costs of

¹ Pursuant to Office of Personnel Management (OPM) regulations, an agency "may sponsor an employee's attendance at a conference as a developmental assignment under section 4110 of title 5, United States Code, when—

- (a) The announced purpose of the conference is educational or instructional;
- (b) More than half of the time is scheduled for a planned, organized exchange of information between presenters and audience which meets the definition of training in section 4101 of title 5, United States Code;
- (c) The content of the conference is germane to improving individual and/or organizational performance, and
- (d) Development benefits will be derived through the employee's attendance."

5 C.F.R. § 410.404.

conferences, the amendment includes a provision permitting agencies to pay for light refreshments at official conferences:

Agencies sponsoring a conference may provide light refreshments to agency employees attending an official conference. Light refreshments for morning, afternoon or evening breaks are defined to include, but not be limited to, coffee, tea, milk, juice, soft drinks, donuts, bagels, fruit, pretzels, cookies, chips, or muffins.

41 C.F.R. § 301-74.11. In its Federal Register notice explaining the light refreshments provision, GSA asserted that “[t]he serving of light refreshments for conference attendees . . . is a common business practice, and should not be prohibited for Government-sponsored conferences.” 65 Fed. Reg. at 1326.

GSA has advised agencies that they may use appropriated funds to pay for refreshments for nontravelers at some conferences. GSA’s Travel Management Policy Homepage explained: “We have not made it mandatory that every attendee has to be in travel status, as that would not be practical at every conference/meeting. It would not be in the Government’s best interests to not allow Non-travel attendees to participate in the break (forcing them to go elsewhere for refreshments) or to collect funds from just certain attendees and keep the appropriate records of those funds.” GSA advises, therefore, that if the majority of the attendees are in travel status, the agency may fund refreshments for all attendees. GSA, Travel Management Policy’s Frequently Asked Questions, <http://www.gsa.gov/Portal/content/offerings_content.jsp?contentOID=118763&Content Type=1004&PMTT=1>.

A Navy certifying officer submitted a request for an advance decision pursuant to 31 U.S.C. § 3529(a). The certifying officer stated that since the light refreshment provision of the travel regulation on conference planning appears inconsistent with Comptroller General decisions, the regulation has created confusion regarding when an agency may provide food for employees.

Analysis

Comptroller General’s Authority to Settle Accounts

At the outset it is useful to delineate the General Accounting Office’s and GSA’s authorities. The Comptroller General is required to settle the accounts of the United States. 31 U.S.C. § 3526(a). In carrying out this duty, the Comptroller General resolves questions about the legality of payments disbursing officers or heads of agencies may make, or the legality of expenditures covered by vouchers presented to certifying officers for certification. 31 U.S.C. § 3529. Thus, a certifying official may request a decision from the Comptroller General on a question involving a voucher in advance of the certifying officer’s certification of that voucher. 31 U.S.C. § 3529(a). A decision by the Comptroller General pursuant to 31 U.S.C. § 3529 is conclusive on the Comptroller General when settling the account containing the payment. In more

practical terms, the Comptroller General in an audit of agency obligations and expenditures may not legally object to particular financial transactions that he has already decided under section 3529 are in accordance with law.

Congress has authorized GSA to prescribe regulations necessary for the administration of travel and subsistence expenses, and mileage allowances. 5 U.S.C. § 5707. Indeed, GSA promulgates and maintains the Federal Travel Regulation that provides travel policy for federal government agencies and their travelers. 41 C.F.R. Ch. 301-304. While we recognize GSA's role in promulgating travel regulations and the deference due GSA in the exercise thereof, there is nothing explicitly or implicitly in such function that affects the Comptroller General's role as the arbiter of the use of funds for official as opposed to personal purposes.

Appropriated Funds Generally Are Not Available for the Personal Expenses, Including Food, of Government Employees

Appropriations, as a general matter, are not available for the purchase of food for government employees. This rule, though often stated, is not often explained; hence, over time, the basis for the rule may be overlooked.

Any analysis of the purpose availability of an appropriation begins with the purpose statute, 31 U.S.C. § 1301(a): "Appropriations shall be applied only to the objects for which the appropriations were made." Additionally, because a federal agency is a creature of law, the Supreme Court has articulated an axiom of appropriations law: "The established rule is that the expenditure of public funds is proper only when authorized by Congress, not that public funds may be expended unless prohibited by Congress." United States v. MacCollom, 426 U.S. 317, 321 (1976).

We, of course, do not read the purpose statute to require, nor would it be reasonable to expect, that every item of expenditure be specified in an appropriations act. We do view appropriations of public funds as enacted to finance public purposes, not the personal expenses of federal employees. An employee is expected to bear the cost of personal expenses, such as meals and refreshments, from his or her salary. 72 Comp. Gen. 178 (1993); B-270327, Mar. 12, 1997.

The Congress over the years has adjusted this rule by enacting statutory authority for agencies to pay for food for employees in particular circumstances. Some legislation addresses specific situations; for example, the John C. Stennis Center for Public Service Training and Development has statutory authority to provide meals and refreshments at its programs and activities. 2 U.S.C. § 1108(a)(7). Other legislation

has governmentwide application. An example is the legislation at issue here—GSA’s authority to define a traveler’s subsistence costs that an agency may reimburse, 5 U.S.C. § 5702. In this decision, we analyze GSA’s authority first, then we discuss briefly some other authorities. Because public confidence in the integrity of those who spend the taxpayer’s money is essential, any item, such as meals or refreshments, that may appear frivolous or that is easily abused, however legitimate it may seem in a specific context, should be authorized by the Congress if it is to be charged to public funds. B-223678, June 5, 1989.

Light Refreshment Provision of GSA’s Travel Regulation on Conference Planning

Through informal contacts with accountable and other financial officers of the government, we are aware that many agency officials would like to use appropriations to pay for food and refreshments at government-sponsored meetings and conferences, including meetings to discuss internal operational or other day-to-day matters of agency business. Typically, we will be advised that the impetus is the agency’s desire to follow common business practices in the private sector. Indeed, in its Federal Register notice explaining its light refreshments travel regulation, GSA asserts that “[t]he serving of light refreshments for conference attendees . . . is a common business practice, and should not be prohibited for Government-sponsored conferences.” 65 Fed. Reg. at 1326. Of course, reference to “common business practice” is not in itself an adequate justification for spending public money on food, or, for that matter, other objects. An expenditure of public funds must be anchored in existing law, not the practices and conventions of the private sector.

GSA’s statutory basis for the light refreshment provision of its conference planning regulation is 5 U.S.C. § 5702. Section 5702 addresses the subsistence expenses of federal employees “when traveling on official business away from the employee’s designated post of duty.” 5 U.S.C. § 5702(a)(1). Pursuant to section 5702, an employee is entitled to a per diem allowance or reimbursement for the actual expenses of travel. 5 U.S.C. § 5702(a)(1). Section 5701(3) defines “subsistence” as “lodging, meals, and other necessary expenses for the personal sustenance and comfort of the traveler.” GSA interprets “personal sustenance and comfort of the traveler” to include the light refreshments it identifies in its conference planning travel regulation. Letter from George N. Barclay, Acting General Counsel, Office of General Counsel, GSA, to Thomas H. Armstrong, Assistant General Counsel, GAO, Aug. 9, 2001.

Traditionally, GSA has not viewed light refreshments as subsistence.² Nevertheless, while the travel regulation reflects a fairly broad view of subsistence, many would

² Over the years, applying GSA regulations, we objected to agencies reimbursing travelers for the actual expenses of various snacks or light refreshments consumed while in travel status, because GSA did not deem them subsistence under GSA’s regulations. See, e.g., B-167820,

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agree that a mid-afternoon snack or light refreshment, replenishing waning energy levels, is nourishment. Similarly, some may find morning and evening snacks nourishing as well. Accordingly, we do not object to GSA's determination that subsistence for travelers may include light refreshments.

Important, nevertheless, are the statutory limitations on the application of the travel regulation. As stated above, GSA's statutory basis for the regulation is 5 U.S.C. § 5702, which authorizes agencies to use appropriated funds to pay the costs of subsistence for employees on official business away from their official duty stations. GSA's authority does not extend to employees who are not in travel status. Accordingly, certifying officers should not rely on the travel regulation to pay costs of refreshments for employees in nontravel status. Agencies (and their accountable officers) should rely on relevant statutory authority, as interpreted by the Comptroller General, to determine whether they may use appropriations to provide food or refreshments to their employees.

Other Authority

Another example of the Congress adjusting the general rule that appropriations are not available to pay for federal employees' food, and one that is relevant to the factual circumstances raised by the Navy certifying officer here, is the Government Employees Training Act (Training Act), Pub. L. No. 85-507, 72 Stat. 327 (1958). The Training Act authorizes agencies to "pay . . . for all or a part of the necessary expenses of training," and to pay "for expenses of attendance at meetings which are concerned with the functions or activities for which the appropriation is made," regardless of whether the event is held within the employees' official duty station. 5 U.S.C §§ 4109, 4110. The Comptroller General, exercising his statutory accounts settlement authorities, 31 U.S.C. §§ 3526, 3529, has interpreted and applied authorities such as the Training Act to accommodate the day-to-day realities of governmental operations within the limits imposed by the statute. To that end, in applying the Training Act, we have held that an agency may pay for the costs of meals and refreshments when they are included as an incidental and nonseparable portion of a training or meeting registration or attendance fee. 66 Comp. Gen. 350 (1987). If the cost of the food is not included in a registration or attendance fee, we have held that the meal or refreshments may be paid for if they are necessary to obtain the full benefit of the event. B-247966, June 16, 1993; B-244473, Jan. 13, 1992; B-198471, May 1, 1980. Although section 4110, which concerns meetings, generally applies only to meetings sponsored by nongovernmental organizations, we have extended section 4110 to government-sponsored meetings as long as the meeting satisfies the same conditions as required for nongovernment-sponsored meetings

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Oct. 7, 1969 (traveler's expenditures for newspapers, candy, pop, and coffee and rolls not consumed as part of a regular meal are not necessary expenses of subsistence).

and the government sponsored meeting is not an internal day-to-day business meeting. See, e.g., B-198471, May 1, 1980.³

In our analysis of whether an expenditure constitutes a personal or official expense, we do not view our case law as static and inflexible. Certainly, any analysis of a personal expense, necessarily, starts from the premise that the public's money is generally not available for the personal expenses of public employees. Recognition of that fundamental principle does not mean, for example, that an agency may not use appropriated funds to pay an expense in any given situation that in another context would be considered personal. See, e.g., 65 Comp. Gen. 677 (1986) (physical examination); B-239774, July 22, 1991 (cable television service). In these instances, we have not objected to the use of appropriations where the benefit to the government of what might otherwise be viewed as a personal expense weighs in favor of using appropriated funds. In this regard, as we weigh benefits to the agency, such as the recruitment and retention of a dynamic workforce and other considerations enabling efficient, effective, and responsible government, our decisions indicate a willingness to consider changes in societal expectations of benefits to be provided the nonfederal workforce. See, e.g., 71 Comp. Gen. 527 (1992) (eldercare as an employee benefit not typical of those benefits provided the nonfederal workforce); B-286026, June 12, 2001 (overruling our earlier decisions based on reassessment of the training opportunities afforded by examination review course).

As we noted earlier, we recognize from informal contacts from agency officials an interest in re-examining the rules on food and refreshments. Indeed, GSA's light refreshments regulation, while it exceeds GSA's authority, is an expression of that interest. We remain willing to re-examine our case law, including our decisions on food, and to revise, to the extent permitted by law, rules that agency officials believe frustrate efficient, effective and responsible government. Any revision of these rules, of course, must be founded on sound reasoning, and must include appropriate

³ The Comptroller General has exercised his statutory accounts settlement authorities in other instances, as well, to accommodate the ordinary needs of federal agencies. For example, in a 1991 decision, we concluded that the Nuclear Regulatory Commission (NRC) could pay an all-inclusive facility rental fee for a meeting of NRC employees to discuss internal NRC matters, even though the fee resulted in food being served to NRC employees at their official duty stations. B-281063, Dec. 1999. The facility charged a fixed fee that included conference rooms, refreshments at breaks, lunch, equipment and other supplies. We reasoned that renting the facilities was a reasonable expense of NRC's appropriations. Because the fee would have remained the same to NRC whether or not it accepted and its employees ate the food, the harm that the general rule is meant to prevent (i.e., expenditure of federal funds on personal items) was not present. B-281063, Dec. 1, 1999.

safeguards to prevent abuse and to ensure public confidence in the integrity of those who spend the taxpayer's money.

Conclusion

GSA does not have the authority to permit agencies to use appropriated funds to pay for employees' food and refreshments except as part of an employee's travel subsistence allowance. 5 U.S.C. § 5702. Certifying officers should not rely on GSA's travel regulation on conference planning to authorize light refreshments at conferences for employees in nontravel status. Agencies (and their accountable officers) should rely on existing, relevant statutory authority as interpreted by the Comptroller General.



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