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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

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Matter of: FBI Payment for Refreshments during Organized
Crime Investigation

File: B-234813

Date: November 9, 1989

DIGEST

Expenses incurred for food served to law enforcement personnel at a staging area before they were dispatched to execute search warrants may not be paid by the Federal Bureau of Investigation (FBI), even though provision of the food helped the FBI ensure the security of a large-scale organized crime investigation by preventing participants from leaving the premises and leaking information.

DECISION

This decision responds to a request from the Chief of the Accounting Section, Administrative Service Division, Federal Bureau of Investigation (FBI), concerning the payment of \$1,000 to the Salvation Army by the since-retired supervisor of the FBI's New York Office. This amount was paid, without certifying officer authorization, as compensation for food provided by the Salvation Army's Emergency Disaster Services unit at the staging area of a large-scale criminal investigation conducted by the FBI in conjunction with the New York City Police Department (NYCPD). Coffee and doughnuts were served by the Salvation Army during the initial briefings of FBI Special Agents, NYCPD detectives and uniformed officers. For the reasons set forth below, we conclude that the \$1,000 payment made to the Salvation Army by the supervisor of the FBI's New York Office was improper.

BACKGROUND

On the morning of January 31, 1986, the FBI and NYCPD, jointly and simultaneously, executed 471 search warrants in various locations throughout New York City in furtherance of a large-scale organized crime investigation. The participants in the investigation included 450 FBI Special Agents, 700 NYCPD detectives and more than 2,000 uniformed officers. The participants assembled at an unheated

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building located in Brooklyn around 3:30 a.m. on an extremely cold January morning.

The majority of the participating law enforcement personnel were not given any indication of the type of investigation or the nature of their assignments until they reached the staging area. The responsible officials desired to keep as much information as possible secret for security reasons. Security was of the utmost importance because the slightest leak of the forthcoming large-scale criminal investigation would have increased the danger to which law enforcement personnel were exposed and could have jeopardized the entire operation.

Responsible officials thought that the best way to insure the security of the operation was to control the activities of the participants from the time they entered the Brooklyn facility until the time they departed on their assignments. To this end, the officials prohibited all law enforcement personnel from leaving the facility. Since there were no food or rest room facilities in the building, the FBI contracted to have them provided.

The supervisor of the New York Office, who is now retired, arranged to have the Salvation Army coffee wagon at the building to provide coffee and doughnuts to all participants for a total cost of \$1,000. The supervisor of the New York Office, pleased with the service rendered by the coffee wagon, paid the Salvation Army from funds advanced to the New York Office and submitted a voucher on August 21, 1986, claiming this amount as a necessary expense of conducting the investigation.

The officials responsible for the criminal investigation contend that the coffee wagon was provided pursuant to FBI investigative authority. They state that the coffee wagon prevented the participants from leaving the premises to get food, thus facilitating the operational effectiveness of the investigation. In addition, they emphasize that the pre-arranged \$1,000 fee charged by the Salvation Army was extremely reasonable given the amount of food and services provided.

ANALYSIS

In our opinion, the payment made by the now-retired supervisor of the New York FBI Office to the Salvation Army for the food served at the staging area was improper. We have long held that without specific authority of law, the government may not pay, in addition to an employee's regular compensation, per diem or subsistence expenses to a

civilian employee at his official duty station even though he may be working under unusual conditions, 68 Comp. Gen. 46 (1988); 42 Comp. Gen. 149 (1962). In the past, we have allowed exceptions to this rule where meals were purchased for employees at headquarters who were involved in extreme emergencies posing danger to human life or destruction of federal property. See B-202104, July 2, 1981. However, in the case before us now, although the FBI was engaged in a criminal investigation with a great need for security, no emergency existed.

In 53 Comp. Gen. 71 (1973), we did not object to the provision of food to Federal Protective Services Officers of the General Services Administration (GSA), who were assembled in readiness to reoccupy a Bureau of Indian Affairs building that had been occupied by force. We noted that the food was supplied in an "extremely emergent situation involving danger to human life and the destruction of federal property." Under the circumstances, we did not question the GSA determination that the expenses involved in supplying the food were incidental to the protection of property of the United States during an extreme emergency.

Although we concluded in 53 Comp. Gen. 71 that under the circumstances the meal expense was an appropriate charge to GSA's appropriation, we cautioned that

" . . . work in occupations such as those of policemen . . . often is required to be performed under emergent and dangerous conditions and that such fact alone does not warrant departure from the general rule against payment for employees' meals from appropriated funds."

53 Comp. Gen. at 75.

Subsequent decisions have reinforced the proposition that, absent exceptional circumstances, law enforcement personnel engaged in the work of their profession are not likely to qualify for the exception. In B-229181, September 22, 1988, we held that a law enforcement officer conducting normal duties on a special detail did not come within the exception to the general rule prohibiting provision of food to employees at their permanent duty station. Similarly, in B-118638.104, February 5, 1979, we concluded that a police lieutenant could not be reimbursed for food purchased for police officers dismantling walls of a contaminated tear gas storeroom. We did not approve the reimbursement even though the officers were unable to leave the storeroom area to obtain meals due to the complete contamination of their clothing.

The absence of food facilities in the building coupled with the decision to detain law enforcement personnel in the building to maintain secrecy and security is not enough to qualify for an exception to the rule against providing food. See 42 Comp. Gen. 149. The FBI could have provided access to food for the investigation participants while at the same time satisfying its security concerns by simply contracting with the Salvation Army (or some other organization which could have provided a reliable vending service) to sell food directly to the participants rather than paying the Salvation Army to provide the food without charge to the participants. With more than 3,000 personnel in attendance, a nominal charge to each customer would have generated an amount in excess of the \$1,000 the FBI's New York Office paid to the Salvation Army.

CONCLUSION

The fact that the FBI was involved in an investigation requiring secrecy and security as well as presenting potential dangers to its agents is not enough to warrant the expenditure for coffee and doughnuts. The situation faced by the FBI would need to have involved an imminent danger to human life or the destruction of property to qualify as an exception to the prohibition against providing food to employees. See B-185159, December 10, 1975. Since the conditions surrounding the criminal investigation do not meet this standard, the \$1,000 payment made by the FBI was not authorized. However, due to the passage of time, no collection action to recover the improper payment need be taken. See 31 U.S.C. § 3526(c) (1982).

Milton J. Fowler

Acting Comptroller General
of the United States

APPROPRIATIONS/FINANCIAL MANAGEMENT

- Appropriation Availability
- Purpose availability
- Specific pupose restrictions
- Meals