

# Memorandum

**B-168096-O.M., Aug. 31, 1976**

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TO : General Counsel

FROM : Director, OAS - Larry A. Herrmann *LH*

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SUBJECT: Parking Tickets

We are requesting a determination as to whether the General Accounting Office may use funds from its appropriation for the payment of parking tickets received by our mail delivery personnel and supply delivery personnel in the performance of their regular duties. In all cases, they would be driving either a GSA motor pool vehicle which we lease from GSA on a long-term basis or they would be driving a rented vehicle with commercial tags which have been furnished by a GSA contractor.

Because we must deliver mail to some 60 locations in Washington, and because the Bicentennial crowds and Metro construction makes parking extremely difficult in some locations, it has occasionally happened that our vehicles receive parking tickets from the Metropolitan Police while the driver is inside delivering mail or supplies. (Usually these are because the policeman does not accept the right of the vehicle to be in a loading or delivery zone; it would almost never be for double parking or anything that would impede traffic and never for moving violations.) The only way to avoid this, that we know of, is to provide two drivers for each vehicle or a driver and a messenger for each vehicle; doing this would be extremely expensive, wasteful of the time of the employees, and much more costly than the few tickets that we receive. However, it does not seem fair to have the individual driver pay all of these tickets when, in fact, these are locations where an occasional parking ticket is nearly inevitable when deliveries must be made.

I have been under the impression that appropriated funds cannot be used to pay such parking tickets received by Government employees. However, I am enclosing an article from Time Magazine of several months ago which indicated that some agencies must be doing so.

Basically, we would appreciate the answer to the following questions:

1. Must tickets received by Federal employees in the performance of their official duties and while driving government-furnished vehicles be paid to the District of Columbia government?

2. If so, can we legitimately use the agency's appropriated funds to do so?

We would appreciate your early reply because of the growing difficulty we are facing with this problem.

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Indorsement

AUG 31 1976

Director, OAS

Returned. The courts have not questioned a municipality's right to enforce its traffic laws against Federal vehicles since the Federal Government is obligated to abide by the normal traffic regulations of States or municipalities in the absence of emergency or extreme Federal need. City of Norfolk v. McFarland, 145 F. Supp. 258, 260 (E.D.Va. 1956). An employee of the Federal Government must obey the traffic laws of the State even though he is traveling in the ordinary course of his employment. Oklahoma v. Willingham, 143 F. Supp. 445, 448 (E.D. Okla. 1956).

In Oklahoma v. Willingham, *supra*, the defendant, a post office employee, was charged in the State court with a violation of the State traffic laws while delivering mail. The U.S. Attorney, seeking to remove the case to the Federal courts, alleged that the defendant was a Federal employee acting under the color of his office and therefore immune from State prosecution. A motion to remand was filed by the State claiming, *inter alia*, that the Federal court lacked jurisdiction over the case. That court, granting the motion to remand, stated:

"The State of Oklahoma has not only the right but the responsibility to regulate travel upon its highways. The power of the state to regulate such travel has not been surrendered to the Federal Government. An employee of the Federal Government must obey the traffic laws of the state although he may be traveling in the ordinary course of his employment. No law of the United States authorizes a rural mail carrier, while engaged in delivering mail on his route, to violate the provisions of the state law enacted for the protection of those who use the highways." *Id.* at 448.

That is, except in emergency situations or cases of extreme Federal need wherein the violation of State or local traffic laws is, in effect, authorized, citations may be given to Federal employees who violate those laws. See, for example, 31 Comp. Gen. 246 (1952), involving an employee, using a Government-owned truck to deliver supplies, who was charged with a

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traffic violation when double parked; we noted therein that the offense was committed by him in the performance of, but not as a part of, his official duties. Moreover, since Federal agencies are entitled to reimburse these employees for parking costs incurred (see, for example, 46 Comp. Gen. 624 (1967)), we see no reason for the employees to park illegally; citations are issuable when they do.

Accordingly, municipalities may properly cite Federal employees for parking and traffic violations committed in the performance of--but not as an authorized part of--their official duties while driving Government-furnished vehicles. The State or municipality, including the District of Columbia, has the right to assess and collect fines for such violations. Your first question is therefore answered in the affirmative.

In response to your second question as to whether the General Accounting Office (GAO) may use its appropriated funds to reimburse employees for tickets received under the circumstances outlined here, we have long maintained that payment of a fine imposed upon a Government employee for a parking violation committed while driving a Government vehicle in the performance of his official duties is the personal responsibility of the employee. There is no authority for the payment of such parking fines out of appropriated funds. B-173783.188, March 24, 1976; 31 Comp. Gen. 246, *supra*. Cf. 44 Comp. Gen. 312 (1964); B-147420, April 18, 1968; and B-173660, November 18, 1971. This rule is applicable whether or not the driver or his supervisors question the legitimacy of the parking citation.

Accordingly, we cannot approve the use of GAO appropriated funds to pay parking tickets received by our mail and supply delivery employees or to reimburse those employees for any fines paid for those parking tickets.

We might suggest that you and representatives from other concerned agencies meet with municipal officials and seek a solution that would clarify the rights of vehicles used by Federal employees to park in loading or delivery zones and which might administratively resolve those citations which should not have been issued.

~~Paul G. Dembling~~

Paul G. Dembling  
General Counsel

Attachment

APPROPRIATIONS

Availability

Parking tickets

Bonds, collateral, fees, etc.

FINES

Government liability

Offense<sup>d</sup> while performing official duties