



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: DOD Section 6 School Board Members—Invitational Travel Orders

File: B-260896

Date: October 17, 1996

DIGEST

Payment may be certified for invitational travel expenses incurred by five nongovernment DOD Section 6 School Board members elected pursuant to § 6 of Public Law 81-874, since repealed, to attend school board conferences to participate in and keep abreast of current and essential educational issues that impacted the public schools. Their travel was necessary to carry out their statutory duty under 20 U.S.C. § 241(h) (1988) to "oversee school expenditures and operations." Their participation provided a direct benefit to the government for which reimbursement of travel expenses is warranted under 5 U.S.C. § 5703.

DECISION

The issue raised is the propriety of paying invitational travel and per diem expenses to nongovernment DOD Section 6 Dependent School Board members for travel to state conferences and workshops sponsored by the State School Board Associations. We conclude that the travel provided a direct benefit to the government for which reimbursement of travel expenses is warranted under 5 U.S.C. § 5703.

BACKGROUND

This advance decision is made at the request of Paul Schnittger, Commander, SC, USN, Director for Field Support, Defense Finance and Accounting Service, Cleveland Center (DFAS), to determine whether he may certify for payment certain expenses resulting from invitational travel of Department of Defense Section 6 school board members elected pursuant to § 6 of Public Law 81-874, September 30, 1950 (since repealed pursuant to Public Law 103-382, October 20, 1994), and formerly codified at 20 U.S.C. §§ 241(g) and (h).

Section 241 permitted the Secretary of Education to establish free public education in the United States if it were otherwise unavailable as a result of official action by state or local governmental authority and if no local agency were able to provide

suitable free public education. Sections 241(g) and (h) provided for the establishment of a school board as follows:

"(g) Elective school boards

"The Secretary shall ensure the establishment of an elective school board in schools assisted under this section. Such school board shall be composed of a minimum of three members, elected by the parents of students in attendance at such school. The Secretary shall, by regulation, establish procedures for carrying out such school board elections as provided in this subsection.

"(h) School board oversight of school expenditures and operations

"A school board established pursuant to subsection (g) of this section shall be empowered to oversee school expenditures and operations, subject to audit procedures established by the Secretary, and other provisions of this section."

The statute was silent with respect to travel by school board members.

Four of the board members in question (Sherry Brisendine, Roberta Chappell, Beth Patrick, and Cathy Young) represented the School Board at the Fort Campbell, Kentucky, Section 6 Dependent School; and one board member (Ms. Tammy Laurence), represented the School Board at the Fort Bragg, North Carolina, Section 6 Dependent School. All were nongovernment employees who were issued invitational travel orders by the United States Government. Department of Defense officials invited the four school board members from Fort Campbell to travel to Louisville, Kentucky, to attend a three-day conference in February 1994 sponsored by the Kentucky School Board Association. Similarly, the school board member from Fort Bragg was invited to travel to Southern Pines, North Carolina, in December 1993 to attend a two-day training seminar sponsored by the North Carolina School Boards Association.

When the school board members submitted vouchers for their travel expenses, payment was questioned by DFAS on the ground that the meetings and workshops were not directly related to the operation of the Section Six Schools.

In response, the Principal Deputy Under Secretary of Defense stated that the Section 6 school boards were required to provide oversight of the Section 6 Schools to ensure that the educational programs provided are comparable to those of the public schools in the states in which they are located. He added:

"Attendance at State and National School Board conferences is imperative. This is particularly true since our Board members have no better means of keeping abreast of current and essential educational issues that impact the public schools throughout the United States and our own Section 6 Schools. This office views attendance at these conferences as a necessary part of the functions our School Board members."¹

Nevertheless, payment was denied based on an April 8, 1994, memorandum issued by DOD's Office of General Counsel, stating that 5 U.S.C. § 5703 applies only to persons performing a direct service for the government and that the school board members did not meet the "direct service" test as set forth in 55 Comp. Gen. 750, 752 (1976).

ANALYSIS

The issuance of invitational travel orders to individuals outside the government is authorized by 5 U.S.C. § 5703 (1994), which provides as follows concerning travel and transportation expenses:

"An employee serving intermittently in the Government service as an expert or consultant and paid on a daily when-actually-employed basis, or serving without pay or at \$1 a year, may be allowed travel or transportation expenses, under this subchapter, while away from his home or regular place of business and at the place of employment or service."

A separate statute, expressly bars the use of appropriated funds to pay the travel costs of private citizens to attend meetings. This statute, 31 U.S.C. § 1345, states in pertinent part:

"Except as specifically provided by law, an appropriation may not be used for travel, transportation, and subsistence expenses for a meeting. This section does not prohibit—

"(1) an agency from paying the expenses of an officer or employee of the United States Government carrying out an official duty; . . . "

¹Memorandum of April 6, 1994 from Albert V. Conte, Principal Deputy Under Secretary of Defense to General Counsel, Department of Defense.

Although we did not directly address the relationship between 5 U.S.C. § 5703 and 31 U.S.C. § 1345 until 1976 (55 Comp. Gen. 750, supra), the relevant principles were established in several earlier cases. In one of our earliest decisions under 5 U.S.C. § 5703, we held that persons who are not government officers or employees may, "when requested by a proper officer to travel for the purpose of conferring upon official Government matters," be regarded as persons serving without pay and therefore entitled to travel expenses under 5 U.S.C. § 5703. 27 Comp. Gen. 183 (1947). See also 39 Comp. Gen. 55 (1959). A critical prerequisite is this: In order to qualify under 5 U.S.C. § 5703, the individual must be performing a direct service for the government. 37 Comp. Gen. 349 (1957).

Thus, 5 U.S.C. § 5703 permits an agency to invite a private individual (or more than one) to a meeting or conference at government expense, but only if that individual is legitimately performing a direct service for the government such as making a presentation or advising in an area of expertise. However, it is not a device for circumventing 31 U.S.C. § 1345. The "direct service" test is not met merely because the agency is interested in the subject matter of the conference or because the conference will enhance the agency's program objectives.

Before 1988, DOD regulations implementing these statutes contained in ¶ C6000, Item 3 of the Joint Travel Regulations (JTR), permitted payment of travel expenses under invitational travel orders pursuant to 5 U.S.C. § 5703, and listed 14 examples of persons to whom invitational travel orders could be issued, including lecturers in DOD programs, members of the Executive Reserve and Boards of Visitors, and situations where the individual's attendance and participation at a conference or meeting would be in DOD's best interest. On July 1, 1988, Item 3 of this regulation was changed to prohibit payment of travel expenses for individuals under invitational travel orders merely to attend conferences or meetings, except in cases where the invitee confers on an official defense matter with DOD officials, and thereby performs a direct service to DOD.

The July 1988 change was made in response to our decision In the Matter of Funding of Conferences, 55 Comp. Gen. 750 (1976), which imposed a "direct service" test on the use of 5 U.S.C. § 5703. Thus, 5 U.S.C. § 5703 permits an agency to invite a private individual (or more than one) to a meeting or conference at government expense, but only if that individual is legitimately performing a direct service for the government.

Accordingly, we have approved reimbursement of travel expenses for individuals whose attendance at a particular function was determined to be of direct benefit to the government. For example, in Security Training for Spouses of FAA Employees, 71 Comp. Gen. 9 (1991), we held that the Federal Aviation Administration may reimburse spouses of its employees who attend security training upon a determination that the travel served a sufficient government interest. Likewise, we

held in Use of Invitational Trade Orders for Military Dependents to Attend Anti-Terrorism Briefings, 71 Comp. Gen. 6 (1991), that military dependents may be paid travel and per diem to attend briefings and training when the Department of Defense determines it necessary to prepare them for life in countries where they may be endangered by terrorism or political unrest.

"In our view, travel to participate in training or conferring with agency staff, in which the Department of Defense imparts critical knowledge and information to the dependents of members . . . clearly constitutes significantly more than mere attendance at a conference or meeting."

Similarly, in our opinion, the participation of the five school board members in the present case at state school board conferences and workshops meets the "direct service" test. Their travel to participate in and keep abreast of current and essential educational issues affecting public schools imparted knowledge and information that was necessary to carry out their statutory duty under 20 U.S.C. § 241(h) (1988) "to oversee school expenditures and operations." This constitutes significantly more than mere attendance at a conference or meeting. Essentially, participation in the workshops and conferences was a necessary part of the functions of the School Board members and was directly related to DOD Section 6 schools activities.

Therefore, reimbursement of travel expenses to the five school board members to attend the state school board conferences and workshops is warranted under 5 U.S.C. § 5703.

Robert P. Murphy
General Counsel