



United States General Accounting Office  
Washington, DC 20548

## Decision

**Matter of:** Nuclear Regulatory Commission (NRC) – Payment of a Non-Negotiable, Non-Separable Facility Rental Fee that Covered the Cost of Food Served at NRC Workshops

**File:** B-281063

**Date:** December 1, 1999

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### DIGEST

Notwithstanding the general prohibition against serving food to employees within their official duty station, agency may pay under limited circumstances a facility rental fee that includes the cost of food provided to agency employees at an agency workshop. The payment was not improper because the fee was all-inclusive, not negotiable, and competitively priced to those that did not include food.

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### DECISION

The Director of the Division of Accounting and Finance, Office of the Chief Financial Officer, United States Nuclear Regulatory Commission (NRC) requests our opinion on whether it was proper for NRC to pay a non-negotiable, non-separable facility rental fee for five NRC workshops when the fee covered the cost of meals and refreshments served at the workshops. Under the circumstances described below, we conclude that the payment was not improper.

#### Background

The NRC sponsored five workshops for its employees between July and October 1997. The workshops were held at the William F. Bolger Center for Leadership Development (Bolger) in Potomac, Maryland. The workshops were attended by NRC employees exclusively and focused on internal NRC matters. The employees were not in official travel status.

Regarding the first three workshops held in July, an NRC employee was tasked with obtaining on very short notice (within two weeks) an off-site conference facility convenient to headquarters at a cost less than \$2,500 to accommodate 20 to 25 individuals to pursue NRC strategic planning initiatives. Due to the short timeframe, the employee only made inquiries to Bolger, which had been used by NRC in prior

years, and one other facility. After receiving Bolger's proposal to charge a daily flat fee of \$45.00 per person,<sup>1</sup> the employee determined that it was comparable to, if not less expensive than, the other facility and procured its use through his NRC BankCard (Visa). Bolger's flat fee included the use of a conference room and a breakout room, breaks (refreshments), lunch, equipment, and appropriate supplies.<sup>2</sup> With the success of the first three workshops at Bolger, two more workshops were scheduled at Bolger for August 15 and October 21, 1997 and procured in a similar manner. One NRC certifying officer certified the payments to VISA for the first three workshops and another NRC certifying officer certified the last two.

Some NRC officials questioned whether these payments were proper to the extent of the cost of the food provided, and whether the workshop attendees or the certifying officers should reimburse NRC for the questioned costs. Although Bolger's flat rate was non-negotiable and non-separable, Bolger responded to NRC's request to identify the portion of the daily fee attributable to meals and refreshments. Bolger stated that of the \$45.00 flat rate, \$13.00 represents amounts attributable to meals and refreshments. NRC identified 73 different employees attending one or more of the workshops, resulting in a total of 89 instances in which employees received meals and refreshments. NRC estimates the questioned costs to be \$1,157. NRC then requested our opinion on whether the payments were improper.<sup>3</sup>

## Analysis

As a general rule, the government may not furnish meals or refreshments to employees within their official duty station. 65 Comp. Gen. 508, 509 (1986). This principle comes from the proposition that expenses for food and refreshments are considered personal expenses that government employees are expected to bear from their own salaries. Id.

Two provisions of the Government Employees Training Act (Training Act) are often cited as authority for government agencies to provide meals or refreshments to employees within their official duty station. The first, 5 U.S.C. § 4109, authorizes agencies to reimburse the necessary expenses incurred by those who attend training programs at their duty stations. Agency funds may be used to provide meals under section 4109 if necessary to achieve the training program's objectives, 50 Comp. Gen.

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<sup>1</sup>Bolger inadvertently charged NRC \$28.00 per person, a rate reserved for U.S. Postal Service conferences, for the first workshop.

<sup>2</sup>Prior to 1997, Bolger's daily flat fee did not include meals or refreshments. Workshop participants paid for these costs.

<sup>3</sup>Because of our conclusion that the payments were not improper, we do not address NRC's questions about obtaining reimbursement for past improper payments, relief for two certifying officers under 31 U.S.C. § 3528, and appropriate NRC actions in future situations.

610 (1971); 48 Comp. Gen. 185 (1968); B-247966, June 16, 1993. Agency funds also may be used to pay for an employee's meals incident to training provided by other than the government if the employee's attendance at the meals is necessary to obtain the full benefit of the training, B-193955, Sept. 14, 1979. In this case, NRC acknowledges that the five workshops do not comply with the definition of "training" in the Training Act, 5 U.S.C. § 4101(4).

The second, 5 U.S.C. § 4110, allows an agency to pay for the expenses for attendance at certain meetings or conferences, but does not apply to purely internal business meetings or conferences sponsored by government agencies involving day-to-day agency operations and concerns. 72 Comp. Gen. 178 (1993); 68 Comp. Gen. 606 (1989); 68 Comp. Gen. 604 (1989). "The legislative history of [5 U.S.C. §4110] shows that it was intended to dispense with the specific appropriation authorizations required by [5 U.S.C. § 5946] for the payment of expenses of Federal officers and employees in attending meetings of members of any society or association". 68 Comp. Gen. at 608; 68 Comp. Gen. at 605-606. Consequently, there is a clear distinction between paying for meals incidental to formal conferences or meetings, typically externally organized or sponsored, involving topical matters of general interest to governmental and nongovernmental participants, and internal business or informational meetings primarily involving day-to-day agency operations of government. 72 Comp. Gen. at 180.

The general prohibition against using appropriations for food for employees within their official duty station is meant to prevent the expenditure of government funds on items that are purely personal in nature. Here, the harm that the general prohibition is meant to prevent, i.e., expenditure of federal funds on personal items, is not present. NRC determined the Bolger facility met its needs and there is nothing indicating that Bolger's fee structure providing for food influenced NRC's determination. The facility fee itself was a reasonable and necessary expense for which NRC funds were available. The facility fee would have remained the same to the government whether or not NRC accepted and the employees ate the food. Because the meals were furnished at no additional cost to the government, there was no divergence of funds for meals. No purpose would be served by applying the general prohibition against using appropriations for food for employees within their official duty station in a way that requires NRC to either (1) reject the Bolger proposal, (2) reject the food at no savings to the government, or (3) have employees "reimburse" the government even though it incurred no additional cost for the food provided. Accordingly, under the circumstances, we conclude that NRC may pay the all-inclusive facility rental fee even though the fee resulted in food being served to NRC employees at their official duty stations.

Comptroller General  
of the United States