

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

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10,636

FILE: B-193644

DATE: July 2, 1979

MATTER OF: Mine Safety and Health Administration ~~Payment~~
of Travel Expenses at Seminars

DIGEST: Use of appropriated funds by Mine Safety and Health Administration (MSHA) to pay travel and subsistence expenses of miners and mine operators attending safety and health training seminars is prohibited by 31 U. S. C. § 551, in the absence of specific authority. MSHA has no such authority either in its organic legislation or in its appropriations language. Also, 5 U. S. C. § 5703 does not provide the necessary authority since it authorizes payment of travel expenses of non-Government employees only where they are providing a direct service to the Government.

The Assistant Secretary for Mine Safety and Health, Department of Labor, requested a decision on whether the Mine Safety and Health Administration (MSHA) has authority to expend appropriated funds to pay the travel and subsistence expenses of non-Government employees to attend mine safety and health training seminars conducted by MSHA. For the reasons that follow, we conclude that the expenditures are not authorized.

MSHA holds its safety and health training seminars pursuant to authority contained in section 502 of the Federal Coal Mine Health and Safety Act of 1969 (Coal Act), as amended by the Federal Mine Safety and Health Amendments Act of 1977, Pub. L. No. 95-164, November 9, 1977. Section 502 provides in part as follows:

"(a) The Secretary shall expand programs for the education and training of operators and agents thereof, and miners in--

"(1) the recognition, avoidance, and prevention of accidents or unsafe or unhealthful working conditions in coal or other mines; and

"(2) in the use of flame safety lamps, permissible methane detectors, and other means approved by the Secretary for detecting methane and other explosive gases accurately.

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"(b) The Secretary shall, to the greatest extent possible, provide technical assistance to operators in meeting the requirements of this Act and in further improving the health and safety conditions and practices in coal or other mines. * * *"

MSHA's training seminars are usually held at the request of either mine operators or labor organizations, and encompass the requirements of health and safety regulations and technical matters related to mine safety and health. The Assistant Secretary states that the seminars are conducted at sites away from the mines to introduce a high level of efficiency in the training process and provide an environment that is conducive to instruction. Because seminars are held away from the mines, MSHA has been subsidizing the travel and subsistence expenses of some of the participants.

MSHA's current seminar program is based upon the research and experience of its predecessor agencies, the Bureau of Mines and the Mining Enforcement and Safety Administration (MESA), both of which were organizational components of the Department of the Interior. These predecessor agencies began the practice of subsidizing the travel and subsistence expenses of some of the participants several years ago. In January, 1975, the Solicitor, Department of the Interior, at MESA's request, issued an advisory opinion upholding the legality of such payments. The Solicitor's opinion was based on the then-current version of the Coal Act, a similar provision in section 15 of the Federal Metal and Nonmetallic Mine Safety Act, 30 U.S.C. § 734 (1976) (repealed by Pub. L. No. 95-164), and on the Department's appropriations language. The Solicitor's opinion also relied on the provisions of 5 U.S.C. § 5703(c) (now 5 U.S.C. § 5703), which authorizes per diem allowances for "individuals serving without pay."

Subsequently, we issued two decisions -- B-166506, July 15, 1975, and 55 Comp. Gen. 750 (1976) -- concerning the Environmental Protection Agency's (EPA) payment of travel and subsistence expenses for State officials attending the National Solid Waste Management Association Convention in 1974. Those decisions concluded that such payments violated 31 U.S.C. § 551, which prohibits the use of public funds for expenses of conventions or other assemblages without specific authority. Section 551 provides as follows:

"Unless specifically provided by law, no moneys from funds appropriated for any purpose shall be used for the purpose of lodging, feeding, conveying, or furnishing transportation to, any conventions or other

form of assemblage or gathering to be held in the District of Columbia or elsewhere. This section shall not be construed to prohibit the payment of expenses of any officer or employee of the Government in the discharge of his official duties."

The apparent conflict between these decisions and MSHA's existing practice prompted the present request.

In our decision B-166506, supra, we noted that the prohibition of section 551 applies unless payment is specifically provided by law. By using the word "specifically," Congress indicated that authority to pay travel and subsistence expenses of non-Government employees attending conventions or other assemblages should not be inferred from other laws but rather that there should be a definite indication in an enactment that the payment of such expenses was contemplated, intended and authorized. In our decision, we stated that this requirement is not satisfied merely by showing that an agency has legislative authority to hold conventions or other assemblages. The same reasoning is equally applicable to authority to train private individuals. (EPA has training authority similar to MSHA's.) We cited 31 U.S.C. § 552 as an example of authority sufficient to satisfy section 551.

Our review of MSHA's legislation and language contained in the Department of Labor Appropriation Act, 1979, Pub. L. No. 95-480 (October 18, 1978), title I, 92 Stat. 1567, has not uncovered any provision specifically indicating that MSHA has authority to pay such expenses. Similarly, the legislative history of these enactments contains no indication that Congress intended that MSHA should subsidize the travel expenses of miners or mine operators who attend MSHA training seminars.

As previously indicated, the 1975 Interior Solicitor's advisory opinion also relied on 5 U.S.C. § 5703(c). The present version of 5 U.S.C. § 5703, similar in substance to the version in effect at the time of the Solicitor's opinion, provides as follows:

"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."

The Solicitor's opinion correctly pointed out that, under the provisions of section 5703(c), we have authorized the payment of travel expenses

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for private individuals serving without pay in order that they could visit the staffs of various agencies and confer on matters of importance to the Government. E.g., 27 Comp. Gen. 183 (1947) and 39 id. 55 (1959).

In 55 Comp. Gen. 750, supra, we discussed the relationship between 5 U.S.C. § 5703(c) and 31 U.S.C. § 551. There we stated:

"Chapter 57 of title 5 of the United States Code is concerned primarily with the authorization of travel and transportation expenses for Government employees and as a general rule, an agency's appropriation for travel expenses would not be available to support the travel of anyone else. Section 5703(c), quoted supra, provides a limited exception for 'dollar a year men' who, while not Government employees, are nevertheless serving the Government. Thus, even without considering the prohibition in 31 U.S.C. § 551, there was no authority to use EPA travel funds to pay expenses of persons who were neither Government employees nor 'dollar a year men' under the exception provided by section 5703(c).

"The relationship between 5 U.S.C. § 5703(c) and 31 U.S.C. § 551 has never been discussed in any of our prior decisions. However, if EPA's contention is valid, then section 551 would be effectively repealed to the extent that a meeting or conference is administratively determined to be related to official agency business. * * *

"We have reviewed the legislative histories of both Acts and have found no evidence of any congressional intent to impart to section 5703(c) the scope suggested by EPA. Rather, it is clear from the legislative history--and, in fact, implicit in the statutory language--that this authority applies only to persons performing a direct service for the Government, such as experts, consultants, or other advisors, to permit travel to confer with Government officials in connection with the performance of that service. * * *

"We thus do not believe that section 5703(c) was ever intended to establish the proposition that anyone may be deemed a person serving without compensation merely because he or she is attending a meeting or convention, the subject matter of which is related to the official business of some Federal department or agency * * *. We believe that being called upon to confer with agency staff on official business is different from attending a meeting or convention in which a department or agency

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is also interested. In this context, both statutes may be construed and given effect consistently."

In light of the foregoing, we do not believe that MSHA has authority under 5 U.S.C. § 5703 to pay the travel expenses of miners and mine operators attending mine safety and health training seminars inasmuch as these individuals are not performing a direct service for the Government. Usually, the seminars are held at the request of mine operators or unions, which is a clear indication that the Government is not the sole or primary beneficiary of the training.

In sum, we believe that B-166506, July 15, 1975, and 55 Comp. Gen. 750 are precisely in point and the result in those decisions is equally applicable here. In the absence of specific statutory authority, 31 U.S.C. § 551 prohibits the use of appropriated funds to pay travel expenses of miners and mine operators attending MSHA training seminars. If MSHA considers such payments essential to its mission accomplishment, specific authorizing legislation should be sought from the Congress.


Deputy Comptroller General
of the United States