



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20541

E-177500

August 2, 1973

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The Honorable Arthur F. Sampson
Administrator
General Services Administration

Dear Mr. Sampson:

We have received a letter dated January 19, 1973, from Mr. B. G. Loveless, Authorized Certifying Officer, Region 3, General Services Administration, requesting our decision concerning payment for food provided to General Services Administration (GSA) Federal Protective Services Officers under the conditions described therein.

Under the authority contained in 31 U.S.C. 52d a certifying officer is entitled to a decision by the Comptroller General on a question of law involved in payment on a specific voucher that has been presented to him for certification prior to payment of the voucher, which should accompany the submission to this Office. See 52 Comp. Gen. 83 (1972).

While no voucher accompanied the request for decision, inasmuch as the problem involved in the instant situation is general in nature we are rendering our decision to you under the broad authority of 31 U.S.C. 74 which authorizes us to provide decisions to the heads of departments on any question involved in payments which may be made by that department.

In describing the circumstances giving rise to his questions, Mr. Loveless states that during the period November 3 to 8, 1972, it was necessary for GSA to assemble a cadre of approximately 175 GSA special police in connection with the unauthorized occupation of the building of the Bureau of Indian Affairs. This special cadre was assembled initially on Friday, November 3, and daily thereafter on tours of duty that for some extended to 24 hours. These groups were kept in readiness to re-occupy the building and they were not permitted to leave the marshalling area because of the imminence of court orders and administrative directives.

It is explained that the first need of food for the special police arose shortly after midnight Friday when it was decided that the force must remain on alert throughout the night until relieved later Saturday morning. As a consequence, GSA officials purchased and distributed to the cadre sandwiches and coffee costing \$85.25.

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Subsequently, arrangements were made with Government Services, Inc. (GSI) to open a cafeteria line in the Department of the Interior building and food was served to the special police officers on Saturday and Sunday until regular tours of duty started Monday, November 6. It is explained that during this time the police force was under orders to remain on duty until relieved, and were equipped appropriately for such disturbances as riots, fires, or retaking of the building by whatever method directed, and thus were unable to leave the marshalling area during the period of the alert. It is contemplated that a bill of about \$500 will be submitted by GSI for the cost of the food provided the special police on those days.

In view of the above circumstances Mr. Loveless asks whether GSA officials may be reimbursed for the food purchased for the special police; whether GSI may be paid for its costs in serving the special police over the weekend of November 5 and 6; and, whether similar costs may be incurred and paid in the event other GSA buildings are similarly occupied in the future.

Concerning the protection of Federal property under jurisdiction of the Administrator, 40 U.S.C. 318 provides in pertinent part as follows:

The Administrator of General Services or officials of the Administration duly authorized by him may appoint uniformed guards of said Administration as special policemen without additional compensation for duty in connection with the policing of public buildings and other areas under the jurisdiction of the Administrator of General Services. Such special policemen shall have the same powers as sheriffs and constables upon such Federal property to enforce the laws enacted for the protection of persons and property, and to prevent breaches of the peace, to suppress affrays or unlawful assemblies, and to enforce any rules and regulations made and promulgated by the Administrator or such duly authorized officials of the Administration for the property under their jurisdiction:
* * *

In view of such provisions it is clear that the Administrator was authorized to use the special police force in order to protect the occupied building. Consequently, there is for consideration the question whether the costs of providing food to such special police can be deemed to be "necessary expenses" within the meaning of that term as used in the Independent Agencies Appropriation Act, 1973, approved July 13, 1972,

Pub. L. 92-351, 86 Stat. 479, under the heading "General Services Administration, Public Buildings Service, Operating Expenses," which provides in pertinent part as follows:

For necessary expenses, not otherwise provided for, of real property management and related activities as provided by law * * *.

It is, of course, the general rule that in the absence of authorizing legislation the cost of meals furnished to Government employees may not be paid with appropriated funds. Following such rule we have refused to authorize the payment of such costs in a number of decisions even though, as here, there were involved unusual circumstances.

For example, in 16 Comp. Gen. 158 (1936) we held, quoting from the syllabus, that--

An Internal Revenue investigator required to perform twenty four hour daily duty on a special assignment at headquarters may not be allowed a per diem in lieu of subsistence to cover meals necessarily taken at place of assignment, nor may he be reimbursed for the actual expense of such meals, there not having been incurred expenses other than those which would have been incurred in the performance of usual duties.

In 42 Comp. Gen. 149 (1962) reimbursement to a Post Office Department official was denied for expenditures made by him from personal funds to provide carry-out restaurant food for postal employees conducting an internal election and who were required to remain on duty beyond regular office hours. Such denial was based primarily on the general rule stated above; however, reference was made also to 31 U.S.C. 665 and the rule that no person may make himself a voluntary creditor of the United States by incurring, and paying, obligations of the Government which he is not legally required or authorized to incur or pay and reimbursement therefor generally is not authorized.

Similarly, in decisions of December 15, 1959, B-141142, and April 6, 1970, B-169235, we applied the general rule stated above, and held that meals could not be supplied at Government expense to Federal mediators who were required to conduct mediation sessions considerably beyond regular hours and, at certain times, until completion.

We believe that in the above decisions payment or reimbursement for the cost of food purchased for or distributed to officials and

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employees under the unusual circumstances considered therein properly was denied in each case. However, there was noticeably absent in those cases the existence of an extremely emergent situation involving danger to human life and the destruction of Federal property such as is involved in the instant case. (For a full discussion of such situation see the Hearings entitled "Seizure of Bureau of Indian Affairs Headquarters" before the Subcommittee on Indian Affairs, House Committee on Interior and Insular Affairs, 92d Congress, 2d session, Serial No. 92-54.)

The provisions of 31 U.S.C. 665 do not prohibit the acceptance of voluntary services under such circumstances and, while we are reluctant to make an exception to the general rule followed in the above cases, we would not—in the instant case—question a determination by you that the expenses in question were necessarily incidental to the protection of property of the United States during an extreme emergency.

However, whether payment of such expenses would be proper in similar cases that may arise in the future would necessarily depend on the facts and circumstances present in each case, having in mind that work in occupations such as those of policemen, firemen, security guards, etc., 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. Consequently, and since such cases are rare, we do not believe it necessary or feasible to attempt to describe herein the circumstances under which similar payments may be deemed to be proper in future cases.

Sincerely yours,

Paul G. DeBartolo

For the Comptroller General
of the United States