

**DECISION**



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

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FILE: B-150217

DATE: January 2, 1976

MATTER OF: Department of the Interior -  
Reimbursement of actual subsistence  
expenses based on unusual  
circumstances

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DIGEST:

1. Public Law No. 94-22 provides express authority to reimburse employees for actual subsistence expenses for travel to high cost areas designated in travel regulations. Accordingly, agencies which believe that other localities should be so designated, should request General Services Administration to add those localities to the listing in the Federal Travel Regulations of high cost areas.
  
2. General Accounting Office would not object to appropriate changes that General Services Administration (GSA) might wish to make in criteria for determining when "unusual circumstances" exist so as to justify actual expense reimbursement to travelers. Also, GSA is not precluded by law or legislative history from modifying the Federal Travel Regulations by citing additional situations involving "unusual circumstances."

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This decision involves a request from the Deputy Assistant Secretary of the Interior dated March 7, 1975, that we review our decision in 42 Comp. Gen. 440 (1963) concerning the propriety of authorizing reimbursement of subsistence expenses on an actual expense basis.

In 42 Comp. Gen. 440, supra, we held that an Air Force regulation authorizing reimbursement of employees on an

actual subsistence expense basis for temporary duty assignments in designated high cost localities was not proper under the second proviso of section 3 of the Travel Expense Act of 1949, now codified as 5 U.S.C. § 5702(c) (1970). The proviso authorized an employee to be reimbursed for the actual and necessary expenses of a trip if the maximum per diem allowance would be much less than the actual expenses due to the unusual circumstances of the travel assignment. In reaching our determination, we stated on page 442 of our decision the following:

"\* \* \* We do not believe it [5 U.S.C. § 5702(c) (1970)] was intended to apply to normal, routine travel in a high expense area unless some unusual circumstance of the particular travel assignment is involved. Any cost resulting solely from inflated prices would be common to all travelers in the area; and the circumstance becomes usual rather than unusual. If normal travel within specified areas could be excepted from the commuted per diem allowance on the basis of a general cost finding for the area, then the statutory limitation on the allowance can be nullified, whenever costs rise, without further legislative action. We do not believe the law was intended to permit that effect."

In requesting reconsideration of 42 Comp. Gen. 440, supra, the Department of the Interior has requested us to consider certain statements contained in the legislative history of Public Law No. 91-114, approved November 10, 1969, 83 Stat. 190, which increased the maximum amounts allowable as per diem and reimbursement for actual subsistence expenses. Specifically, the Department refers to statements on page 7 of Senate Report No. 91-450, October 3, 1969, in which the Senate Committee on Government Operations stated that "increased use of authority to pay reimbursement for actual expenses in proper cases

would result in the correction of existing inequities" and urged agencies to make additional use of this method of reimbursement for actual travel expenses, subject to the exercise of prudence and good judgment. The Department of the Interior contends that our interpretation of 5 U.S.C. § 5702(c) (1970) substantially precludes reimbursement on an actual subsistence expense basis, and that it is unable to find any situation which would be considered to involve "unusual circumstances" under our interpretation of that phrase.

Subsequent to the date of the Department's request, the Congress passed and the President approved legislation which substantially corrects the problems referred to by the Department of the Interior. On May 19, 1975, there was enacted the Travel Expense Amendments Act of 1975, Public Law 94-22, 89 Stat. 84. The Act amended 5 U.S.C. § 5702(c) to provide that an employee may be reimbursed on an actual subsistence expense basis for travel to high rate geographical areas designated as such in regulations prescribed by the Administrator of General Services. Also, the Act continued the provision enabling the authorization of the reimbursement of actual expenses when it is determined that the per diem otherwise allowable is inadequate due to the unusual circumstances of the travel assignment.

We believe that the Act and the regulations issued thereunder cover the problem of travel to high cost areas and supersede 42 Comp. Gen. 440 in that regard.

As to travel involving "unusual circumstances," the 1975 Amendments enacted as Public Law No. 94-22 continued the prior authority to pay actual expenses. 5 U.S.C. § 5702(c), as amended, provides that, by regulations, the General Services Administration may prescribe the conditions for reimbursing actual expenses when the per diem allowances are inadequate due to unusual circumstances of the travel assignment; it does not limit the payment of actual subsistence to the examples mentioned in the legislative history. The General Services Administration has implemented the 1975 Amendments by issuing Temporary Regulation A-11, Federal Property Management Regulations (FPMR 101-7), on May 19, 1975. Paragraph 10 of Temporary

B-150217

Regulation A-11 amends paragraphs 1-8.1 through 1-8.3 of the Federal Travel Regulations (FPMR 101-7) (May 1973), concerning travel situations involving unusual circumstances. Paragraph 10 provides for authorization or approval of actual expenses by agency heads, authorizes reimbursement of daily maximum rates not to exceed the statutory maximum of \$50 a day, and contains criteria for determining when unusual circumstances exist together with several illustrative examples. However, amended FTR para. 1-8.1c(2) states that notwithstanding the outlined criteria, actual expenses shall not be authorized or approved for unusual circumstances solely on the basis of inflated lodging or meal costs since inflated costs are common to all travelers, citing 42 Comp. Gen. 440. In this connection nothing in the law or its legislative history would preclude the General Services Administration from appropriately modifying the travel regulations by changing the criteria for or citing additional examples of unusual circumstances, either on its own initiative or at the request of an agency.

Temporary Regulation A-11 was amended in June 1975 to permit agencies to authorize higher maximums than those specified in the Federal Travel Regulations for high rate geographical areas when travel to such areas also involve unusual circumstances.

We have been advised that there are localities other than those now designated as high rate geographical areas, such as Reston, Virginia, and Gaithersburg, Maryland, where lodging and subsistence expenses exceed the per diem maximum. Under current law agencies which believe that their employees are not properly reimbursed for travel to such localities by per diem payments should request the General Services Administration to designate such areas as high rate geographical areas.

PAUL G. DEMBLING

Acting Comptroller General  
of the United States