

DOCUMENT RESUME

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Reimbursement by United States of Monies Paid Pursuant to Settlement of Suit Against Government Employees. B-176229. September 22, 1977. 5 pp.

Decision re: Drug Enforcement Administration; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Personnel Management and Compensation (300).  
Contact: Office of the General Counsel: General Government Matters.

Budget Function: General Government: Other General Government (806).

Authority: 31 U.S.C. 724a. 28 U.S.C. 2401(b). 31 Comp. Gen. 245. 44 Comp. Gen. 312. B-186680 (1976). Sally Dunn v. Gillis et al., Civ. No. C-74-2013-SW (N.D. Calif.).

The Administrator of the Drug Enforcement Administration (DEA) requested an advance decision as to the propriety of paying a settlement of a civil action suit against DEA employees for acts committed while in the performance of their official duties. Liability for the settlement may be assumed by the United States. Appropriations for DEA operations are available for this purpose, but permanent indefinite appropriation for the payment of judgments is not available.  
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**DECISION**



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

FILE: B-176229

DATE: September 22, 1977

MATTER OF: Reimbursement by United States of Monies Paid  
Pursuant to Settlement of Suit Against Govern-  
ment Employees

DIGEST:

1. Liability for settlement of civil action against Drug Enforcement Administration employees for acts committed while in performance and as part of official duties may be assumed by United States.
2. Appropriations for Drug Enforcement Administration operations are available to reimburse employees for payments settling suit against them for acts committed while in performance and as part of official duties. Permanent indefinite appropriation for payment of judgments (31 U.S.C. § 724a) is not available for this purpose.

This is in response to a request for an advance decision from the Administrator of the Drug Enforcement Administration (DEA), United States Department of Justice, as to the propriety of paying a "fine or judgment" rendered against an officer or employee for acts allegedly done in the discharge of an official duty when the officer or employee is sued in his individual capacity. The Administrator asks further, if the agents can be reimbursed, whether reimbursement should be made from DEA's Salaries and Expenses appropriation for the year in which the judgment was levied, or from the permanent indefinite appropriation for the payment of judgments against the United States, established under 31 U.S.C. § 724a (1970), as amended.

It should be noted at the outset that although the Administrator refers to a "fine or judgment" rendered against the employees involved in the case which gave rise to his inquiry, there was in fact no judgment against the agents; rather, the suit against them was voluntarily dismissed by agreement of the parties. The implications of this distinction will be discussed further, infra.

The question arises from a civil suit, Sally Dunn v. Gillis et al., Civ. No. C-74-2013-SW (N.D. Calif.), in which DEA Special Agents Alvah Henley and Ronald Flinders were named as co-defendants. On September 23, 1974, the two DEA Special Agents assisted Detective Robert Gillis of the Hayward, California, Police Department in the service of both an arrest warrant and a search warrant. Detective Gillis and the DEA Special Agents were, at the time, members of the DEA San Francisco Joint Narcotics Task Force which is under the management control of DEA.

The warrants were signed by a magistrate of Alameda County, California. They were for service on an individual who had allegedly threatened a U.S. mailman with a .22 caliber rifle, and who had a previous record for the possession and sale of narcotics and other dangerous drugs. The plaintiff in the civil suit is the mother of the individual named in the warrants. She filed the action against Detective Gillis and DEA special agents Henley and Flinders for violation of her rights under the Fourth Amendment to the Constitution of the United States and the due process clause of the Fourteenth Amendment. The action was not maintained under the Federal Tort Claims Act, nor can it now be, since the 2 year statute of limitations for filing a written claim, as set out in 28 U.S.C. § 2401(b), has expired.

From the record, it appears that on September 23, 1974, at or about 8:30 p.m., the defendants, Robert Gillis, Special Agents Alvah Henley and Ronald Flinders et al., entered the home of plaintiff, Sally Dunn, with the purpose of searching the premises and the person of James Franklin Dunn, for the purpose of locating a rifle.

The allegations made in plaintiff's complaint, and subsequently denied by the defendants in their answer, were as follows:

1. That the defendants used forcible entry prior to the display of any search warrant;
2. That plaintiff was handed what was said to be a current search warrant for a rifle but was actually an executed search warrant for phencyclidine, drug trafficking paraphernalia and indicia showing residence, and dated July 17, 1974;
3. That after the initial two officers had been asked inside, Alvah Henley and Ronald Flinders et al., rushed into

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plaintiff's home and proceeded to search the entire house, garage, all drawers, cupboards, the refrigerator and freezer compartment even though it was quite obvious that most places searched were not large enough to contain a rifle;

4. That the search was made without a search warrant in that only a prior executed warrant was displayed at the time of the search;
5. That the correct search warrant, although not displayed at the time of the search, only authorized the search of the premises, structure, rooms, receptacles and safes situated at plaintiff's address, and the person of James Franklin Dunn, for a rifle.

According to DEA officials, this action never went to trial. The United States employee-defendants, through the Assistant United States Attorney, who was representing them, entered into a settlement agreement. The presiding judge ordered the matter dismissed with prejudice upon consummation of the agreed-upon settlement. The pertinent terms of this settlement agreement are set out below:

1. Payment to Mrs. Sally E. Dunn and to her attorneys of \$2,500, and
2. Rendition to defendants by Mrs. Dunn of a reasonable bid by a licensed contractor to put into a reasonable state of repair the damages and injuries inflicted upon her dwelling as a result of the search and seizures conducted by the Hayward Police Department.

With the cost of repair to the dwelling (\$500.40), the case was to be settled by payment to Mrs. Dunn of \$3,000.40. The defendants agreed among themselves that the DEA agents' share of the settlement would be \$500.

The question of reimbursement of a fine paid by an employee was at issue when a Federal agency asked whether it might reimburse an employee for a fine imposed and paid by him for a traffic violation. The violation--double parking--involved a Government vehicle driven by the employee while on official business. We held

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that there is no authority to use appropriated monies "\* \* \* for the payment of a fine imposed by a court on a Government employee for an offense committed by him while in the performance of, but not as a part of, his official duties." 21 Comp. Gen. 246, 247 (1952). It was also stated in 31 Comp. Gen. at 247, that since such a fine or forfeiture of collateral was imposed on the employee personally, payment was his personal responsibility.

The Administrator cites our decision, 44 Comp. Gen. 312 (1964), allowing payment from the agency's appropriation of a contempt fine against an employee who committed the contempt pursuant to agency regulations and specific instruction of his supervisors.

The significant factor in distinguishing cases where the employee may be reimbursed or his fine paid by the United States from those where the fine is the personal responsibility of the employee is whether the action for which the fine is imposed is a necessary part of the employee's official duties. B-186680, October 4, 1976. Thus, in 44 Comp. Gen. 312, the offense which was the occasion for the fine "arose by reason of the performance of [the employee's] duties \* \* \* and his compliance with Department regulations and instructions, and was without fault or negligence on his part \* \* \*." The employee who double-parked, in 31 Comp. Gen. 246, supra, while engaged in the performance of his official duties, was nevertheless not acting with approval of his employer, pursuant to regulations or instructions. In other words, double parking was not a part of his official duties.

The Counsel of DEA has expressed the opinion that the Special Agents were acting "well within the perimeters of their scope of employment with DEA." Moreover, the Department of Justice undertook to represent the agents based on its conclusion that no Constitutional violations were presented and, presumably, because it considered that the actions complained of were performed within the scope of their employment. According to the Administrator, DEA was fully cognizant of and actively supportive of cooperative efforts with local law enforcement activities. The Administrator concludes that the agents were acting reasonably within the scope of their employment with DEA. Although the agreement for voluntary dismissal of the complaint under Rule 41 was conditioned upon payment by the defendants of the cost of repairing damage to the plaintiff's house caused by the search, there is nothing in the record to indicate that the damage was beyond what might reasonably have been caused by a lawful search. Under the circumstances, we find no basis to disagree with the Administrator's conclusion that the agents were acting within the scope of their employment.

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Had the court actually rendered a judgment or levied a fine against the agents based on a determination that they used excessive force or otherwise violated the plaintiff's rights, our decision, 31 Comp. Gen. 246, supra, would be for application. However, no determination of fault was ever made. Accordingly, under the facts and circumstances in the instant case, DEA may reimburse its agents for their shares of the settlement.

With regard to the second question, DEA should make reimbursement from its appropriation for salaries and expenses for the year in which the settlement was made, 44 Comp. Gen. 312, supra. The permanent appropriation for the payment of judgments is not available for this purpose since no judgment was rendered against the United States. Id.

  
Deputy Comptroller General  
of the United States