



## Decision

**Matter of:** U.S. International Trade Commission—Use of Appropriated Funds to Subsidize Employee Parking Permits

**File:** B-322337

**Date:** August 3, 2012

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### DIGEST

When an agency determines that additional parking facilities are necessary to avoid a significant impairment of the agency's operating efficiency, an agency may use appropriated funds to provide parking to its employees. To justify its current or proposed employee parking program, the U.S. International Trade Commission's determination of significant impairment should address pertinent factors relevant to today's workplace and stated government policies, and articulate the consequences for operating efficiency were it not to subsidize parking permits for employees.

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### DECISION

The U.S. International Trade Commission (Commission) submitted two requests for decisions regarding the use of appropriated funds to subsidize employee parking permits. Letter from Chairman, Commission, to the Comptroller General (Aug. 1, 2011) (Request Letter 1); Letter from Chairman, Commission, to the Comptroller General (Aug. 1, 2011) (Request Letter 2). The Commission has acquired parking permits from a commercial parking vendor for unreserved spaces. The Commission makes the permits available to employees for a fee, but at a discounted rate. The first request concerns the Commission's employee parking program established in 2001, and the second request concerns the Commission's proposed revised program. We address both requests here.

While the current and proposed programs differ in some respects, both raise the same issue for consideration in this decision: May the Commission use its appropriation to purchase parking permits for resale, at discounted rates, to Commission employees? We do not object to an agency's use of appropriated funds to provide parking to its employees where such parking is necessary to avoid a significant impairment to the agency's operating efficiency. However, in making its determination of significant impairment, the Commission should consider pertinent

factors relevant to today's workplace and stated government policies. The Commission also should articulate the consequences for agency operations if it were not to subsidize employees' parking permits.

Our practice when issuing decisions and opinions is to obtain the views of the relevant agencies in order to develop a factual record and to establish the agencies' legal positions on the request's subject matter. GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), available at <http://www.gao.gov/products/GAO-06-1064SP>. The record in this case consists of the Request Letters and the Commission's response to our development letter (Response Letter), and the relevant attachments thereto.

## BACKGROUND

The Commission is an independent federal agency with investigative responsibilities on matters of trade. See Commission, *About the USITC*, available at [http://www.usitc.gov/press\\_room/about\\_usitc.htm](http://www.usitc.gov/press_room/about_usitc.htm) (last visited June 27, 2012). The Commission currently occupies office space in a building located at 500 E Street, S.W. in Washington, D.C, pursuant to an occupancy agreement with the General Services Administration (GSA). Request Letter 1, at 2.

In August 2001, the Chairman of the Commission made the following administrative determination:

“In the last several years, problems related to the lack of parking and the high cost of available parking in the Commission building have disrupted Commission operations. In order to avoid significant impairment of ITC's operating efficiency, I authorize a direct subsidy that would allow the resale of monthly parking permits in the amount of \$150.”

Commission, Admin. Order No. 01-16, *Establishment of a Tax Free Fringe Benefit Program for Parking and Authorization for Partial Subsidy* (Aug. 24, 2001) (Current Parking Order). On the basis of the administrative determination, the Commission established its current employee parking subsidy program in October 2001. The Commission currently obtains 106 parking permits for unreserved spaces by separate contract with the vendor and makes those permits available to Commission employees at a discounted rate. Response Letter, at 5 and n. 23. The highest employee fee for a parking permit is less than the purchase price paid under the contract with the vendor.<sup>1</sup> Request Letter 1, at 2; Response Letter, at 3-6. Because

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<sup>1</sup> The Commission currently pays the vendor \$255.69 per permit. Response Letter, at 15. The largest fee the Commission collects from any employee is \$150. *Id.* The Commission subsidizes employees on a sliding scale basis, with carpools and

the parking permits are for unreserved parking spaces, the permits do not give employees the right to a particular parking space.<sup>2</sup> Response Letter, at 6.

The Commission has proposed a new administrative order with respect to its employee parking program. See Commission, Admin. Order No. 11-\_\_\_, *Authorization of Partial Subsidy for Employee Parking and Tax Free Fringe Benefit Program for Parking* (August \_\_, 2011) (Proposed Parking Order). The Proposed Parking Order does not change the basis of eligibility or the rate of subsidization of the current employee parking program. Rather, the Proposed Parking Order, as explained below, elaborates on the Commission's 2001 finding and concludes that "the lack of parking facilities will significantly impair the Commission's operating efficiency and will be detrimental to the hiring and retention of Commission personnel." Proposed Parking Order, at 1.

The Proposed Parking Order considers seven factors in making the administrative determination of significant impairment to the Commission's operating efficiency: (1) daily hours of employment; (2) amount of overtime work likely to be necessary, number of persons working during overtime periods and the adequacy of public transportation during regular and overtime periods; (3) frequency of public transportation during peak periods; (4) the cost of public transportation; (5) the location of the residences of the majority of employees in relation to their place of employment and the estimated time required for travel between home and work; (6) the amount of parking available in the area, and the possible impact of increased demand on cost and availability of such existing parking if government parking is not provided; and (7) any other relevant factors including those "involving the safety of employees using public transportation." See Proposed Parking Order, at 2-6. These factors are derived from former GSA Public Buildings Service (PBS) Order No. 7030.2C, *Vehicle Parking Facilities* (Apr. 10, 1970).<sup>3</sup> See Proposed Parking

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disabled employees being subsidized at a higher rate than drivers of single-occupant vehicles. *Id.*

<sup>2</sup> Generally, without independent statutory authority or a delegation from the General Services Administration (GSA), an agency may not lease its own parking facilities. Here, however, the Commission has acquired parking permits, as opposed to leasing parking spaces. Response Letter, at 12. We have previously held that the acquisition of parking permits for unreserved spaces does not constitute an acquisition of a real property interest by lease. B-259718, Aug. 25, 1995.

<sup>3</sup> The GSA order was ultimately superseded by a limited delegation of authority to agencies to acquire parking facilities by service contract. In 1991, GSA issued Federal Property Management Regulations (FPMR) Temporary Regulation D-76 concerning the assignment and utilization of space, which included the requirement that agencies needing additional parking first consult GSA for available government-owned or leased facilities. *Assignment and Utilization of Space*, 56 Fed. Reg. 42166

Order, at 2 n. 2. We noted these same factors in B-168096, Jan. 5, 1973, for example, when describing what an agency may consider in making a determination that parking facilities for employees are required “in order to avoid the significant impairment of the operating efficiency” of the agency.

The Commission receives a regular lump-sum appropriation “for necessary expenses” that is available until expended. See, e.g., Pub. L. No. 112-55, 125 Stat. 552, 629 (Nov. 18, 2011). The Commission charges the costs of the parking permits and credits employee reimbursements to its space rental budget object classification. Response Letter, at 16.

## DISCUSSION

The issue before us is whether the Commission may use appropriated funds to acquire and subsidize parking permits for its employees.

The general rule is that where an appropriation is not specifically available for a particular item, its purchase may be authorized as a necessary expense if there is a reasonable relationship between the object of the expenditure and the general purpose for which the funds were appropriated, so long as the expenditure is not otherwise prohibited by law. B-302993, June 25, 2004. This rule, the necessary expense rule, recognizes an agency's discretion in using its appropriation to fulfill its purposes. *Id.* However, appropriated funds generally are not available for the personal expenses of an employee without specific statutory authority. 3 Comp. Gen. 433 (1924).

We have allowed exceptions to the personal expenses rule where a particular expenditure for an item that is ordinarily considered to be personal in nature primarily benefits the government, notwithstanding the collateral benefit to the employee. See, e.g., B-318499, Nov. 19, 2009; B-239774, July 22, 1991; 65 Comp. Gen. 677 (1986); 63 Comp. Gen. 296 (1984). The determining factor is whether, on balance, the agency or the individual receives the primary benefit. B-302993, June 25, 2004. If the primary beneficiary is the individual, not the agency or the government, the well-established rule is that such expenditure is not an authorized use of appropriated funds. 41 Comp. Gen. 387 (1961); B-259947, Nov. 28, 1995.

Ordinarily it is the employee's responsibility to furnish transportation to and from the place of employment, and if an employee chooses to use a private automobile for

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(Aug. 26, 1991) (temporary regulation). If no suitable space was available, agencies could use their own procurement authority to acquire parking. *Id.* The temporary regulation was made final July 29, 1993, and this part became 41 C.F.R. § 101-18.104-1(d), now 41 C.F.R. § 102-73.240 (2011). *Acquisition of Real Property Final Rule*, 58 Fed. Reg. 40592 (July 29, 1993) (final rule).

such purpose, the government is under no obligation to provide a parking space. 63 Comp. Gen. 270, 272 (1984); B-168096, Jan. 5, 1973; see also *AFGE v. Freeman*, 498 F. Supp. 651, 654–55 (D.D.C. 1980) (government employees have no constitutionally protected property right to receive free parking). Thus, we generally view the cost of parking incident to ordinary commuting as a personal expense that must be borne by the employee. B-307382, Sept. 5, 2006; B-291208, Apr. 9, 2003. In the past, exceptions have been warranted where the parking was required to avoid significant impairment to the agency’s operating efficiency. See, e.g., 72 Comp. Gen. 139, 141 (1993); 63 Comp. Gen. at 272; 49 Comp. Gen. 476, 480 (1970). In such circumstances, the employee parking expense is considered to be a necessary expense of the agency.

For example, in 1993, we addressed the availability of appropriated funds to subsidize employee parking in 72 Comp. Gen. 139. In that case, the U.S. Mint (Mint) leased three spaces in a nearby commercial garage and partially subsidized the employees’ cost of parking there.<sup>4</sup> *Id.* The three spaces were used by an executive, an employee who worked long hours and transported bulky materials, and a carpool. *Id.* There, we held that “so long as the Mint has made the requisite finding [of significant impairment], we will not object to the use of the Mint’s appropriations to pay for this parking.” *Id.* at 141.

A determination of significant impairment is necessarily a case-by-case determination. It is the agency itself that is in the best position to articulate the impact of a lack of parking on the agency’s operating efficiency. When considering the use of its appropriations for any personal expense, including parking, the agency must achieve a delicate balance of the interests of the agency and the collateral benefit to the employee. Employee inconvenience and cost should not be the primary consideration, but, indeed, may indirectly impact agency operations. For these reasons, we will not object so long as the expenditure principally benefits the government and the agency has rationally considered all of the pertinent factors. See 63 Comp. Gen. 296 (1984).

In this case, the Commission determined in 2001 and again in 2011 that the existing nearby parking facilities are insufficient, and agency operating efficiency would be significantly impaired but for its employee parking program. In arriving at this conclusion, the Commission considered factors that GSA set out in a 1970 parking order. See Request Letter 1, at 2 (citing Former GSA PBS Order 7030.2C). GSA’s order said that when requesting that GSA lease parking facilities for use by the agency’s employees, agency heads should make a “significant impairment” determination and, in doing so, take into account such factors as: (1) the daily hours of employment; (2) the amount of overtime work likely to be necessary; (3) frequency of public transportation during peak periods; (4) the cost of public

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<sup>4</sup> The Mint had requested and received approval from GSA to lease parking spaces for employees permanently assigned to the Mint’s K Street location in Washington, D.C. 72 Comp. Gen. at 140.

transportation; (5) the location of the residences of the majority of employees in relation to their place of employment and the estimated time required for travel between home and work; (6) the amount of parking available in the area; and (7) any other relevant factors including those concerning the safety of the employees using public transportation. *Id.*

The Commission's "significant impairment" determination in the Proposed Parking Order is rooted primarily in the Commission's need for overtime work. The Commission states that it is currently operating at a personnel vacancy rate of 11.6% and, thus, has significant need for overtime work. *Id.* at 2, 5. Although multiple mass transit options surround the headquarters building, the Commission finds these options offer limited availability on the weekends and evenings, requiring employees who must work on a weekend or during the evening few options but to drive. Further, the commercial parking garages generally close by 7 p.m. during the week and with some exceptions do not provide weekend access, hampering those employees who work late during the week or must drive in on the weekend. *Id.* at 5.

Although, in this case, the Commission is acquiring permits for unreserved parking spaces, not leasing parking facilities, the GSA factors in former order PBS 7030.2C are certainly relevant for the Commission's consideration. We note, however, that there are other factors, not existent 40 years ago, that the Commission should consider. For example, it does not appear that the Commission considered the impact of its determination on Washington, D.C., air quality and traffic congestion. Improving air quality, conserving energy and reducing traffic congestion are public policy initiatives that underlie two Executives Orders:

- The requirement that executive agencies actively promote the use of ridesharing (carpools, vanpools, privately leased buses, public transportation, and other multi-occupancy modes of travel) to conserve energy, reduce congestion, improve air quality and provide an economic way for federal employees to commute to work.<sup>5</sup> See Exec. Order No. 12191, *Federal Facility Ridesharing Program*, 45 Fed. Reg. 7997 (Feb. 1, 1980).
- The requirement that federal agencies located in Washington, D.C., implement a transit subsidy fringe benefit pursuant to 5 U.S.C. § 7905 to further the public policy of discouraging commuting by single-occupancy vehicle in order to improve air quality and reduce traffic congestion. See Exec. Order No. 13150, *Federal Workforce Transportation*, 65 Fed. Reg. 24613 (April 21, 2000).

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<sup>5</sup> While the Commission did not address the consequences of its determination on air quality and traffic congestion, the Commission's current and proposed orders, in fact, subsidize drivers of multi-occupancy vehicles at a higher rate than drivers of single-occupancy vehicles. Response Letter, at 15. In other words, drivers of multi-occupancy vehicles pay less for their parking permits than drivers of single-occupancy vehicles.

The Commission's determination of significant impairment also should address other factors relevant to today's federal workplace:

- The requirement that executive agencies establish a telework program. 5 U.S.C. § 6502.
- The authority of agencies to offer employees flexible work schedules. 5 U.S.C. § 6122.
- As the aging civil service workforce retires, the impact on recruitment and retention in the face of a smaller pool of eligible workers.
- The extent to which parking is subsidized in like circumstances in the nonfederal workplace.

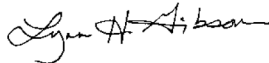
We commend the Commission for undertaking a significant impairment analysis based on factors identified in GSA's PBS Order No. 7030.2C. We believe the Commission's analysis should go somewhat further, however, to give full consideration to the fact that the Commission's office building is located in the central core of a major metropolitan area. As the Commission's Proposed Parking Order notes, the Commission's headquarters building is located in an area serviced by mass transit during weekdays with two Metrorail stations located two and three blocks away, respectively. Request Letter 2, at 3. Forty-one percent of the Commission's employees live within one mile of a Metrorail station. *Id.* at 5. There are seven publicly accessible commercial parking garages within three to four blocks of the Commission's headquarters building. *Id.* at 4. These garages charge between \$210 and \$290 for monthly parking passes. *Id.* From the facts presented to us by the Commission, it appears the Commission's headquarters is similarly situated to most other federal government buildings in Washington, D.C.

Each factor that the Commission considered in its Proposed Parking Order—the availability of public transportation and parking garages, the proximity of Metrorail stations and employee safety—are all appropriate for consideration. So too, as recognized in particular in Executive Order No. 13150, is the impact of automobile traffic in the central core of the Washington, D.C., metropolitan area. In this regard, because of the public policy underlying Executive Order No. 13150, and Executive Order No. 12191, we believe any agency housed in the center of a major metropolitan area that chooses to use public funds to acquire and subsidize commercial parking permits for its employees has an affirmative duty to explain what the impairment is and to articulate the consequences for operating efficiency if the agency were not to subsidize employee parking permits. We would have no objection to the Commission's use of its appropriation to acquire parking permits for employees so long as the Commission addresses factors and criteria, like those suggested above, that reflect current public policy and workplace considerations, and so long as the Commission articulates the consequences for operating efficiency if it were not to provide the parking permits to employees.

We are aware of no law that prohibits agencies from charging, or requires them to charge, for parking. We do remind agencies, however, of the proper disposition of monies received. When housed in GSA-leased space, an executive agency may impose a charge for furnishing space and services at rates approved by GSA. 40 U.S.C. § 586(c). Amounts received are to be credited to the appropriation initially charged for the space or service. *Id.* In the case of revenues collected from the sale of permits for unreserved parking spaces, however, such revenues constitute money for the government that must be deposited in the general fund of the Treasury pursuant to the miscellaneous receipts statute, 31 U.S.C. § 3302(b), unless the agency has other, specific statutory authority directing the disposition of amounts collected.<sup>6</sup>

## CONCLUSION

Generally, we will not object to an agency's determination that subsidizing parking permits for its employees is necessary in order to avoid significant impairment to the agency's operating efficiency. However, such determination should reflect consideration of current workplace realities and public policies. The Commission's 2001 administrative determination and its Proposed Parking Order do not address what we believe are some important factors. We suggest that the Commission consider its determination in light of these factors, and that the Commission articulate the consequences for operating efficiency if the agency were not to subsidize the parking permits.



Lynn H. Gibson  
General Counsel

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<sup>6</sup> We do not address in this decision whether the Commission has authority to credit the employee payments it receives for the parking permits to the Commission's lump-sum appropriation. See Response Letter, at 16.