

PERSONAL EXPENSES
FREQUENTLY ASKED QUESTIONS
MARCH 12, 2009

1. Certain airports have established expedited security procedures for travelers who participate in the airport's registered traveler program. Fees for this program are around \$100 per person. May an agency pay for employees' enrollments with agency appropriations?

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. 66 Comp. Gen. 356 (1987). This rule, the necessary expense rule, recognizes an agency's discretion in using its appropriation to fulfill its purposes. *Id.* Appropriated funds generally are not available for personal furnishings of employees without specific statutory authority if such items are "for the personal convenience, comfort, or protection of such employees, or are such as to be reasonably required as a part of the usual and necessary equipment for the work on which they are engaged or for which they are employed." 3 Comp. Gen. 433 (1924).

The issue presented in matters such as this is the availability of the public's money for a service that inures to the benefit of the individual employee. We generally resolve this issue by assessing the benefits to the agency from any such expenditure, recognizing that the individual is likely to attain at least some collateral benefit.

In addressing this question, an agency will need to know what specific benefits are offered under the program and whether they can be delivered efficiently and consistently, in order to assess whether an employee's enrollment in the program would result in operational efficiency that would confer a benefit to the government. The agencies should ask itself: will enrollment in the program increase the efficiency of employees who travel frequently on agency business? For example, will the ability to bypass security lines that could delay travel save the government traveler time? Delays at security lines could cause travelers to miss flights, resulting in delays in or cancellation of the delivery of government services. In addition, bypassing security lines could potentially facilitate one-day travel if schedules are tight and flights limited.

That said, an agency should not assume that because the program could result in time savings to employees on government travel, enrollment in the program would provide a significant benefit to the government. For example, if the airline or airport requires early check-in, necessitating a long wait at the airport before departure, or the traveler needs to check luggage, the time saved at security may not be useful from an efficiency or economy perspective. Use of an expedited security procedure may merely mean that the government traveler has extra time at the airport before boarding. In the absence of a meaningful time-saving component to the program, or some other explicit benefit to the

agency, the registered traveler program may prove nothing more than a personal convenience.

An agency considering using its appropriations for this program would need to carefully evaluate whether there is a significant benefit to the government warranting the expenditure of federal funds.

2. Agencies have statutory authority to use their appropriations to pay bar dues for their attorneys. 5 U.S.C. § 5757. If an attorney is a member of bars of more than one state, may an agency pay for the attorney's bar membership in each state?

In 2001, Congress enacted legislation permitting agencies to use appropriations for "expenses for employees to obtain professional credentials, including expenses for professional accreditation, State-imposed and professional licenses, and professional certification; and examinations to obtain such credentials." Pub. L. No. 107-107, § 1112(a), 115 Stat. 1238 (Apr. 12, 2001), *codified at* 5 U.S.C. § 5757. This statute does not create an entitlement; instead, it authorizes agencies to consider such expenses as payable from agency appropriations if the agency chooses to cover them. Thus, as a matter of policy, an agency could choose not to pay the expenses of any bar memberships; it could choose to pay for only one state bar per attorney; or, it could choose to pay the costs of more than one membership for each of its attorneys.

3. In order to promote healthy lifestyles by encouraging walking, may an agency use its appropriations to purchase for each employee a pedometer to monitor the number of steps taken each day?

In 5 U.S.C. § 7901, Congress authorized agencies to establish health services programs to promote and maintain the physical and mental fitness of employees. The statute specifically authorizes agencies to establish, among other programs, "preventative programs relating to health." We have concluded that the statutory language, "preventative programs relating to health," is sufficiently broad to encompass physical exercise programs. 64 Comp. Gen. 835 (1985). These programs could include activities such as walking. If an agency establishes such a program, the question for the agency is: does offering pedometers serve the purpose of the program? The agency may also want to consider if there are more cost-effective ways of achieving program goals.

4. If an item has some intrinsic value, may an agency use appropriated funds to acquire the item for distribution as a gift or souvenir?

The critical question is whether the item being purchased and distributed will further a legitimate purpose of the agency. 72 Comp. Gen. 73 (1992). In the absence of specific authority, an agency may not purchase items for distribution as gifts or souvenirs to the public unless there is a direct link between the distribution of the items and the purpose of the appropriation. 72 Comp. Gen. 73 (1992). We have held, for example, that the General Services Administration (GSA) could not use its funds to purchase "Sun Day" buttons from a private organization to be given away a GSA displays to demonstrate the agency's commitment to an alternative energy program. B-192423, Aug. 21, 1978. Other

examples of improper use of appropriations include B-223608, Dec. 19, 1988 (ice scrapers imprinted with safety slogans distributed to employees of the Army Corps of Engineers); 57 Comp. Gen. 385 (1978) (miniature novelty garbage cans containing candy in the shape of solid waste distributed by the EPA to promote solid waste management); 54 Comp. Gen. 976 (1975) (key chains distributed by the Forest Service); 53 Comp. Gen. 770 (1974) (ashtrays distributed to procurement officials by the Small Business Administration).

On the other hand, in 72 Comp. Gen. 73 (1992), we found that buttons carrying a message relating to indoor air quality advanced EPA's statutory mission to increase public awareness of indoor air quality. While we pointed out that the buttons had "no real use" other than to convey a message, the more important finding was that the expenditure was directly linked to an authorized statutory function. *See* B-193769, Jan. 24, 1979 (approving the National Park Service's purchase of sample lava rocks to be distributed to visitors of a national monument to discourage the visitors from removing lava rock elsewhere in the monument).

5. Occasionally, for various reasons such as water main breaks, the local water authorities recommend that all customers boil water before drinking. During these periods, may an agency use its appropriations to make bottled water available to employees for drinking?

In the event a municipal water supply is deemed unfit for consumption, a federal agency may purchase water for its employees. Provision of drinking water for employees has long been considered an acceptable use of appropriated funds. *See* 22 Comp. Dec. 31 (1915); B-301152, May 28, 2003 ("Without question, an agency may use appropriated funds to satisfy basic fundamental needs such as potable water . . ."). However, the purchase of bottled water is ordinarily considered a personal expense, to be borne by the individual employee. B-310502, Feb. 4, 2008; B-303920, Mar. 31, 2006.

An agency may use appropriated funds to purchase bottled water when an agency's work site has no available potable water or when the available drinking water poses health risks if consumed. B-310502, Feb. 4, 2008; 25 Comp. Gen. 920 (1946) (drinking water supply pipeline could not be reliably maintained); B-247871, Apr. 10, 1992 (drinking water analysis revealed dangerous levels of lead contamination). In other words, agencies may purchase bottled water upon a showing of necessity. Such necessity is not evidenced, however, solely by foul taste. *See* 17 Comp. Gen. 698 (1938) (water that is "very hard and unpalatable" but otherwise safe for drinking purposes, is insufficient justification to purchase bottled water).

Decision

Matter of: Internal Revenue Service Federal Credit
Union--Provision of Automatic Teller Machine

File: B-226065

Date: March 23, 1987

DIGEST

The Internal Revenue Service may provide an automatic teller machine at its own expense to the Federal Credit Union located at its Atlanta Service Center. Section 124 of the Federal Credit Union Act (12 U.S.C. § 1770) generally authorizes Government agencies to provide space and "services" to credit unions without charge. Section 515 of Public Law 97-320, which added definition of "services" to 12 U.S.C. § 1770, was clearly enacted in response to prior Comptroller General decisions holding "special services" unauthorized. As amended, statute is now sufficiently broad to encompass special services, including an automatic teller machine, if administratively determined to be necessary.

DECISION

The Director of the Atlanta Service Center, Internal Revenue Service (IRS), requested our decision on whether the IRS may provide an automatic teller machine to the Federal Credit Union located at the Center.

The Director states that the Center operates on three shifts, 7 days a week, 365 days a year. During the tax season, the Center employs a staff of over 5,500 people. In addition to other on-site services, Federal Credit Union banking services are provided. These services are relied upon heavily by the IRS employees. However, the Credit Union is closed to employees on two of the three shifts because of the overhead costs of night operations such as staff and computer time. The IRS and Credit Union have considered various alternatives, and have concluded that an automatic teller machine is the best way to provide banking services to employees on all three shifts. Under the proposal, the IRS would purchase the machine and the Credit Union

would maintain and stock it. As explained more fully below, we believe that 12 U.S.C. § 1770, by virtue of a 1982 amendment, provides the IRS with the authority to purchase the machine.

PRIOR GAO DECISIONS

A Federal credit union is a cooperative association organized in accordance with the provisions of the Federal Credit Union Act, as amended, 12 U.S.C. §§ 1751-1795 (1982), for the purpose of promoting thrift among its members and creating a source of credit for provident or productive purposes. 12 U.S.C. § 1752(1). While organized under Federal law and subject to the supervision of the Administrator of the National Credit Union Administration, a Federal credit union is a private organization. Its operating funds are generally obtained from private sources and are not appropriated by the Federal Government.

Section 124 of the Federal Credit Union Act, 12 U.S.C. § 1770, authorizes Government agencies to provide space and "services" to credit unions without charge if certain conditions are met. Prior to its amendment in 1982, it provided:

"Upon application by any credit union organized under State law or by any Federal credit union organized in accordance with the terms of this chapter, at least 95 per centum of the membership of which is composed of persons who either are presently Federal employees or were Federal employees at the time of admission into the credit union, and members of their families, which application shall be addressed to the officer or agency of the United States charged with the allotment of space in the Federal buildings in the community or district in which such credit union does business, such officer or agency may in his or its discretion allot space to such credit union if space is available without charge for rent or services."

We issued a number of decisions interpreting section 124 prior to the 1982 amendment. E.g., 58 Comp. Gen. 610 (1979); B-177610, August 17, 1981; and B-164310, August 28, 1968. We issued our most recent decision in the series, B-177610, July 23, 1982, in response to requests from the Credit Union Administration (Administration) and the National Association of

Federal Credit Unions (Association), which had asked us to reconsider our earlier decisions.

In those decisions, we drew a distinction between "normal" services and "special" services. Normal services were defined as those services necessary to meet normal space needs which would have to be paid for by the Government whether space is allotted to the credit union or not. Examples are heating, lighting and cooling. Special services are those which would result in additional costs to the Government, such as telephone service and security alarm systems. We held that, under section 124, agencies could supply normal services to credit unions without charge, but could not provide special services.

Moreover, we held that agencies could not provide special services even on a reimbursable basis. This was because, absent statutory authority to the contrary, reimbursements would have to be deposited in the Treasury as miscellaneous receipts under 31 U.S.C. § 3302, and the net result would be that the agency's funds would be used for purposes other than those for which they were appropriated, in violation of 31 U.S.C. § 1301(a).

In our July 1982 decision, which affirmed the prior holdings, we highlighted telephones and security alarm systems as examples of special services. In concluding that special services were not authorized under the legislation as it then existed, we reviewed the statute's legislative history and addressed all of the arguments that had been presented to us. We stated, "If the Congress had intended to authorize Federal agencies to provide credit unions services independent of those necessary for use of the space, it would have done so expressly."

THE 1982 AMENDMENT

In October 1982, the Congress amended section 124 by enacting section 515 of the Garn-St. Germain Depository Institutions Act of 1982.¹ The amendment added the following language to section 124:

"For the purpose of this section, the term 'services' includes, but is not limited to, the providing of lighting,

^{1/} Pub. L. No. 97-320 (October 15, 1982), 96 Stat. 1469, 1530.

heating, cooling, electricity, office furniture, office machines and equipment, telephone service (including installation of lines and equipment and other expenses associated with telephone service), and security systems (including installation and other expenses associated with security systems). Where there is an agreement for the payment of costs associated with the provision of space or services, nothing in title 31 or any other provision of law, shall be construed to prohibit or restrict payment by reimbursement to the miscellaneous receipts or other appropriate account of the Treasury."

DISCUSSION AND CONCLUSION

This is our first decision under the 1982 amendment to section 124. The issue is whether an automatic teller machine can reasonably be viewed as authorized under the amendment.

Although the legislative history contains no explicit statement on the point, it seems clear that the amendment was intended to provide the legislative authority we said in our decisions was required in order for agencies to be able to provide "special" services to credit unions. In part, this is evidenced by the amendment's timing. The July 1982 decision was issued during the period that the Congress was considering the Garn-St. Germain legislation. The decision's final paragraph states that we had held several meetings with representatives of the Senate Committee on Banking, Housing and Urban Affairs (and others) to discuss non-legislative proposals which would allow agencies to provide telephone services to credit unions on a reimbursable basis, and that we concluded that none could be implemented legally. The Chairman of that Committee proposed the amending language to the Senate on September 24, 1982, less than 2 months after our decision. 128 Cong. Rec. S12216 (daily ed., Sept. 24, 1982).

The amendment's wording provides further evidence that it was enacted in response to our decision. It can be no coincidence that the amending language cites the precise special services the decision had discussed--telephone services and security alarm systems.

Turning to the precise language of the amendment, we note that it cites examples of items we had characterized as normal services (lighting, heating, cooling, ect.) as well as items we had characterized as special

services. It is thus clear that the normal versus special distinction is no longer relevant in determining the extent of agency authority under section 124, and that the provision of what we had termed "special services" is no longer prohibited.

The amendment does not purport to define precisely what services may be provided. Rather, it gives several examples and states that the new authority "includes, but is not limited to" the items specified. Thus, the authority is not limited to only those items specified in the statute.

For purposes of determining the availability of appropriations, the 1982 amendment has made the providing of special services to credit unions an authorized agency function. Therefore, without any further definition in the statute, the standard for measuring the propriety of a particular expenditure not specified in the statute is the "necessary expense" test traditionally used in determining purpose availability under 31 U.S.C. § 1301(a). Under this test, an expenditure is permissible if it is reasonably necessary in carrying out an authorized function or will contribute materially to the effective accomplishment of that function, and if it is not otherwise prohibited by law. Applying this test in light of the agency's justification in this case, providing an automatic teller machine to the credit union strikes us as a legitimate exercise of the agency's discretion under 12 U.S.C. § 1770.

Accordingly, should the Internal Revenue Service determine that providing an automatic teller machine to the Atlanta Service Center credit union would materially contribute to what is now an authorized agency purpose under 12 U.S.C. § 1770,^{2/} it may provide the machine, either without cost or on a reimbursable basis.

Milton J. Fowler
for Comptroller General
of the United States

^{2/} It is clear that the Atlanta Director has already made this determination. We phrase our conclusion in this manner in the event that some other level of approval is required within the IRS prior to incurring the obligation.



GAO

U.S. Government Accountability Office

Matter of: EPA Purchase of Buttons and Magnets File: B-247686 Date: December 30, 1992 72 Comp.Gen. 73

APPROPRIATIONS/FINANCIAL MANAGEMENT Appropriation Availability Purpose - availability Specific purpose restrictions Publicity/propaganda Environmental Protection Agency (EPA) expenditure for buttons and magnets inscribed with messages related to indoor air quality for distribution at EPA conferences is a proper use of EPA's appropriated funds since the items are intended to convey a message related to EPA's mission.

DECISION

The Comptroller of the Environmental Protection Agency (EPA) requests our opinion concerning the availability of EPA appropriations to pay for buttons and magnets inscribed with messages related to indoor air quality. The buttons and magnets were procured to distribute to participants at a pollution prevention conference and to have in stock for distribution at future functions. The participants included officials from federal, state and local agencies, as well as academics. The buttons and magnets were furnished by an EPA contractor at a cost of \$1,280.24. For the reasons stated below, we approve the use of appropriated funds for this procurement.

The EPA is authorized under the National Environmental Education Act, 20 U.S.C. Sec. 5501 et seq. (1990), to "work with local education institutions, State education agencies, not-for-profit educational and environmental organizations, noncommercial educational broadcasting entities, and private sector interests to support development of curricula, special projects, and other activities, to increase understanding of the natural and built environment and to improve awareness of environmental problems." The Act also established within EPA the Office of Environmental Education. One of that Office's stated purposes is to "support development and the widest possible dissemination of model curricula, educational materials, and training programs for elementary and secondary students and other interested groups, including senior Americans." 20 U.S.C. Sec. 5503(a)(2).

The purchase of buttons and magnets is not specifically provided for in EPA's appropriations. When an expenditure is not specifically provided for in the appropriation act, the expenditure is permissible only if it is reasonably necessary to carry out an authorized function or will contribute materially to the effective accomplishment of that function, and if it is not otherwise prohibited by law. 66 Comp.Gen. 356 (1987).

Thus, in the absence of specific authority, an agency may not purchase items for distribution as gifts or souvenirs to the public unless there is a direct link between the distribution of the items and the purpose of the appropriation. In B-192423, Aug. 21, 1978, for example, we held that GSA could not use its funds to purchase "Sun Day" buttons from a private organization to be given away at GSA displays to demonstrate the agency's commitment to an alternative energy program. See also to the same effect: 53 Comp.Gen. 770 (1974) (ashtrays distributed to procurement officials by the Small Business Administration); 54 Comp.Gen. 976 (1975) (key chains distributed by the Forest Service); 57 Comp.Gen. 385 (1978) (miniature novelty garbage cans containing candy in the shape of solid waste distributed by the EPA to promote solid waste management); B-223608, Dec. 19, 1988 (ice scrapers imprinted with safety

slogans distributed to employees of the Army Corps of Engineers).

This is not to say, however, that an agency may never distribute objects to the public. If the objects are distributed for a legitimate purpose of the agency, appropriated funds may be used to pay for the objects as a proper and necessary expense of the agency. For example, we approved the National Park Service's purchase of sample lava rocks to be distributed to visitors of a national monument to discourage the visitors from removing lava rock elsewhere in the monument. We found the purchase to be within the authorized Park Service function of conserving national monuments. B-193769, Jan. 24, 1979.

The question presented here is whether the buttons and magnets that EPA procured for distribution along with other conference material at EPA conferences, such as the pollution prevention conference here, may be considered to be in furtherance of a legitimate purpose of the agency. We think that they were procured for a legitimate purpose of the agency. These buttons and magnets, unlike a container of candy, a key chain, or an ice scraper, have no real use other than to convey a message. They contained one of two messages: "Indoor Air, You Can't Live Without It" or "Improving Air Quality Begins At Home." Unlike the Sun Day buttons case, B-192423, *supra*, we find the buttons and magnets further EPA's statutory function of increasing public awareness of indoor air quality. Because we find a direct link between the items and an authorized agency function, we conclude that EPA may expend appropriated funds for this purpose.



G A O

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Memorandum

Date: May 28, 2003

To: General Counsel, OGC - Anthony Gamboa

Thru: Deputy General Counsel, OGC - Gary Kepplinger

From: Managing Associate General Counsel, OGC - Susan Poling

Subject: Proposed Purchase of Protective Hoods (B-301152)

Anthony H Gamboa
Gary P. Kepplinger
Susan Poling

This responds to your question regarding the availability of GAO appropriations to purchase protective hoods for use in the event of a terrorist attack involving explosives or chemical or biological weapons. For the reasons discussed below, we conclude that GAO's operating appropriation is available to cover the expense of acquiring protective hoods. Further, the Comptroller General would be within his discretionary authority to acquire hoods adequate to cover the estimated number of persons in the building, not just employees.

We are currently in the extraordinary circumstance where the government is advising that everyone take special precautions in the event of a terrorist attack and that government facilities are a likely target. See, e.g., Letter from Kay Coles James, Director, OPM, accompanying the Federal Manager's/Decision Maker's Emergency Guide, March 2003, www.opm.gov/emergency/TEXT/ManagersGuide.txt. Accordingly, GAO is in the process of evaluating to what extent GAO headquarters is at risk from either a direct attack or from collateral damage from attack on a nearby structure.¹ These attacks could potentially involve biological or chemical weapons. One feature of the agency emergency plan in the event of a chemical or biological attack might reasonably include the use of protective hoods.

From an appropriations law standpoint, we have never specifically considered an agency's purchase of hoods or other protective gear on as broad a basis as is being considered here, where the purpose is to address a threat of attack and provide for either a safe "shelter-in-place" or the orderly and safe evacuation of employees and other building occupants in that event. The issue presented in cases such as this is the availability of the public's money to supply equipment and services that inure in a very real sense to the benefit of individuals. We generally resolve this issue by assessing the benefits to the agency from any such expenditure. Of course, an individual is likely to attain at least some collateral benefit from most expenditures such as this, but the potential receipt of a benefit, however real, is not the

¹ GAO is also evaluating the risk to employees in audit sites and field offices.

determinative factor. The determinative factor is whether, on balance, the individual receives the primary benefit. If the primary beneficiary of an expenditure of public funds is the individual, not the agency or government, the well-established rule is that such expenditures are personal in nature and hence not an authorized use of appropriated funds.

As we explain in detail below, so long as an agency determines that the threat of attack is legitimate, and that the protective hoods or other gear, equipment or services sought is an appropriate, reasonable, and responsible response to such threat, agencies' operating appropriations are available for that purpose. In the exigent circumstances that we face today, it would be irresponsible, we believe, for an agency to ignore legitimate dangers posed to the premises the agency occupies. Hence, should GAO determine that there is a threat to the health and safety of its employees and others in the GAO Building, we believe an expenditure for protective hoods is a necessary, bona fide expense chargeable to GAO's appropriations.

Generally, in common law, our society expects that a property owner or an occupant in possession of property, while not an insurer of safety, will exercise reasonable care to keep the premises safe for those lawfully coming onto the premises, including employees, independent contractors, and employees of independent contractors, as well as visitors. See J. Michael Russo, "Failure to Provide Safe Place to Work," 2 Am.Jur. Proof of Facts 2d 517 (2002); 65A C.J.S. Negligence, § 598 (2002). Although our case law and federal statutory law speak most specifically to protection of federal employees and providing them a safe place to work, the case and statutory law, as well as recent emergency guidance provided to federal managers, when viewed together in an historical context, is consistent with the common law notion that an occupant of premises will exercise reasonable care to keep the premises safe for those on the premises.

As far back as World War II we have recognized that agencies have an obligation to protect their employees and maintain a healthy work environment when confronted with exigent circumstances. In 21 Comp. Gen. 731 (1942), we concluded that the then-War Department could use its appropriations to purchase protective clothing and equipment, including gas masks, for all the employees of ordnance plants in the event there are explosions or chemical releases. The Department was retaining title to the equipment; it prohibited employees from removing the equipment from the plant; and, the equipment was available for use in furtherance of the safe and successful operation of the plants primarily for the benefit of the government in keeping everyone safe. We did not view the equipment as equipment the employees reasonably might be expected to furnish as part of equipping themselves for the job. Then-Comptroller General Warren further noted that the War Department's submission made "apparent . . . from an administrative standpoint" that the equipment in question was necessary "not only for the protection of the wearers, but, also, for the protection of their fellow employees, the public, and the plant in which worn." Id. at 733. Analytically, the Comptroller General focused, not narrowly on the individual, but broadly to all workers, the public, and the facility as a whole. Id. See also B-247871, April 10, 1992 (contaminated water supply system to an agency building justified agency purchase of bottled water).

That 1942 case predated three pieces of legislation we considered in later cases involving government purchases of apparel or equipment for the health and safety of employees. The first of these is 5 U.S.C. § 7903, which authorizes the use of appropriations for the procurement of “special clothing and equipment” for the protection of personnel in the performance of their jobs. Most of our cases here involve apparel or equipment needed by specific employees doing specific jobs. The standard we apply is that the item must be special and not part of the ordinary and usual items an employee may reasonably be expected to provide for himself; it must be for the benefit of the government and not just the employee; and, the employee must be engaged in hazardous duty.

In addition, there is specific authority for agencies to establish an agency health service program to promote and maintain the health and physical fitness of its employees in 5 U.S.C. § 7901. This is the authority under which GAO supports our fitness center and health unit, which purchases equipment needed to protect the health of GAO employees, including things like flu shots and other vaccines. In 64 Comp. Gen. 789 (1985), based upon the authority in 5 U.S.C. § 7901, we held that “Smokeeaters” air purifiers placed on the desks of federal employees who smoke can be purchased with appropriated funds where they are intended to provide a general benefit to all employees working in the area.

The third line of statutory authority is the Occupational Safety and Health Act (OSHA) requirements.² Under 29 U.S.C. § 668, federal agencies are required to provide safe and healthful conditions in workplaces. Under section 668(a)(2), heads of agencies are authorized to “acquire, maintain and require the use of safety equipment, personal protection equipment, and devices reasonably necessary to protect employees.” The OSHA regulations also have a section on the provision of employee protection in 29 C.F.R. § 1910.132(a), which states that personal protection equipment shall be provided, used and maintained whenever necessary because the hazards of the environment could cause injury or physical impairment. Under the Congressional Accountability Act, Pub. L. No. 104-1, § 215, 109 Stat. 16, Jan. 23, 1995, (2 U.S.C. § 1341), GAO is required to establish and maintain an effective and comprehensive occupational health and safety program consistent with the OSHA regulations. See GAO Order No. 2792.4, Health and Safety Program, April 1, 1999.

In the 1950s and 1960s, our country faced a danger not unlike what we face today; then, we faced the threat of thermonuclear war, and planners assumed that Washington D.C. was a prime potential target. Before the full effect of radiation was understood, early efforts centered on sheltering people from a nuclear blast. There was an extensive program of designating shelter areas in government buildings and building public shelters, and equipping these for survival. As planners learned more about the full effect of nuclear blasts, emergency preparedness turned to plans for evacuation. All of these efforts were taken under the Federal Civil Defense Act of 1950, which provided for a federal role in civil defense. Codified at 50 U.S.C. App. §§ 2251 – 2297, repealed by Pub. L. No. 103-337, div. C, tit. XXXIV, § 3412(a), 108 Stat. 3111 (1994). The Act authorized federal spending for, among other things, building

² OPM's Federal Manager's/Decision Maker's Emergency Guide, *supra*, noted that federal agencies which operate in buildings managed by GSA are required to establish an Occupant Emergency Plan for safeguarding lives and property under OSHA regulations, 29 C.F.R. 1910.38.

shelters and procuring “radiological instruments and detection devices, protective masks and gas detection kits” for civil defenses purposes. 50 U.S.C. App. § 2281(h).³

Recently, the Director of the Office of Personnel Management, in a letter accompanying emergency guidance to federal managers, stated: “We all recognize that Federal office buildings are potential targets for those who would threaten our security...[I]t is up to each agency to design and to communicate a comprehensive plan that takes into account the threats that its employees are most likely to face.” Letter from Kay Coles James, Director, OPM, accompanying Federal Manager’s/ Decision Maker’s Emergency Guide, March 2003.

Consistent with societal expectations rooted in common law, and as reflected in our decisions, the cases and statutes discussed as well as the federal government’s response to recent and Cold War threats, when viewed together, evidence the government’s willingness to provide not only for the safety and health of government employees and their work environment, but also for maintaining the safety and health of the premises. In considering the availability of an agency’s appropriations for operational expenses, it is important to factor into our consideration notice of what our society expects of its employers. Without question, an agency may use appropriated funds to satisfy basic fundamental needs such as potable water, clean air, and sufficient light. It would be unreasonable to suggest that appropriations are not available for maintaining certain facilities such as restrooms. Similarly, we think that it would be irresponsible to conclude that appropriations are not available to exercise the degree of supervisory care to maintain safe premises that our society expects of the owner/occupants of those premises, particularly in the face of exigent circumstances like those we confront today. For that reason, we would not object to an agency, either as an owner of the work premises or as an occupant and supervisor of the premises, using its appropriations to supply appropriate equipment and services to maintain the safety and healthiness of those premises in response to legitimately anticipated dangers and exigencies.

For GAO in particular, the Comptroller General has exclusive custody and control over the GAO headquarters building in Washington, D.C., including the protection of the property and persons in the building. 31 U.S.C. § 781. The Comptroller General has broad authority “to make all needful rules and regulations for the Government of the General Accounting Office Building.” 31 U.S.C. § 783. Given the current circumstances, the Comptroller General, in exercising this authority, would be justified in purchasing a reasonable quantity of protective hoods, based on an estimate of the number of people in the GAO headquarters building at any one time, as a necessary expense in furtherance of his responsibilities regarding the protection of persons under 31 U.S.C. § 781. Although our 1942 decision in 21 Comp. Gen. 731, supra, did not specifically address this, we would not have found it objectionable if the War Department had supplied gas masks to contractors or other visitors to the ordnance plants for the same reasons they were supplied to plant employees. Similarly, a protective hood is an emergency item neither employees nor visitors to the building would be expected to provide. GAO would keep title to the equipment and it would be dispensed only when warranted to whomever is in the building at the

³ The GAO Historian was unable to find any memoranda discussing GAO’s Cold War efforts in this regard.

time, which would include employees, contractors, and visitors.⁴ Under the unique circumstances posed by the nature of the threat and the unpredictability of a terrorist attack, the protective hoods would prove beneficial to the protection of employees and other building occupants during either a shelter-in-place scenario or an orderly evacuation of the building.

⁴ We note that currently the Army Corps of Engineers is leasing space on the third floor of the GAO headquarters building. It is our understanding that the Corps is planning to purchase and provide protective hoods to Corps employees stationed in the GAO building.



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Department of the Army—Use of Appropriations for Bottled Water

File: B-310502

Date: February 4, 2008

DIGEST

Federal law and U.S. Army Corps of Engineers (Corps) policy require that the Corps provide access to potable water for employees working in remote areas of the Savannah District. For work sites that have no access to potable water, it is within the Corps' discretion to decide how best to meet this responsibility, whether by providing coolers or jugs for transporting water or by providing bottled water. We have no objection to the Corps using appropriated funds to provide bottled water, so long as the Corps administratively determines that providing bottled water is the best way to provide its employees at a particular remote area with access to potable water.

DECISION

A disbursing officer of the U.S. Army Corps of Engineers (Corps) has requested an advance decision under 31 U.S.C. § 3529 regarding the availability of appropriated funds to pay for bottled water for employees working in remote areas in the Corps' Savannah District. Letter to Office of General Counsel, GAO, from Anne Schmitt-Shoemaker, Disbursing Officer, Corps, to Office of General Counsel, GAO, Sept. 12, 2007 (Request Letter). Specifically, the disbursing officer has asked whether the Corps may use appropriated funds to reimburse employees for bottled water or to purchase bottled water in bulk to provide to employees working in remote areas. For the reasons stated below, we have no objection to the Corps using its appropriations for bottled water so long as the Corps administratively determines that providing bottled water is the best way to provide access to employees to a source of potable water. To protect the health and safety of its employees, federal law and Corps policy and regulation require that the Corps provide employees with access to potable water.

Our practice when rendering decisions is to obtain the views of the relevant agency to establish a factual record and the agency's legal position on the subject matter of the request. GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), available at

www.gao.gov/legal/resources.html. In this regard, we sent a development letter to the disbursing officer to clarify facts and obtain copies of legal advice that had been provided to her. Letter from Thomas H. Armstrong, Assistant General Counsel for Appropriations Law, GAO, to Anne M. Schmitt-Shoemaker, Disbursing Officer, Corps, Oct. 24, 2007. In response, the disbursing officer forwarded to us information provided by the Savannah District Office, including the opinions provided by both District Counsel and counsel at Corps Headquarters. Letter from Anne M. Schmitt-Shoemaker, Disbursing Officer, Corps, to Thomas H. Armstrong, Assistant General Counsel, GAO, Nov. 5, 2007 (Response Letter).

BACKGROUND

Army Corps of Engineers drill crews work in remote areas throughout various parts of the United States. Response Letter, at 2. Remote work sites are often not easily accessible and, at times, crews of up to 4 or 5 employees travel by boat or walk through swamps and wooded areas to reach drilling sites to begin each day's work. E-mail from Brenda Ponder, Finance and Accounting Officer, Corps Savannah District, to Anne Schmitt-Shoemaker, Nov. 2, 2007 (Ponder E-mail) (transmitted with Response Letter). Employees are often required to work outside in hot, humid, and dusty conditions for up to 12 hours during the day. *Id.* Many of these remote drilling sites in the Savannah District are not developed and contain no utility infrastructure. *Id.* In most cases, no potable water is available at or within a reasonable distance from the site. *Id.*

From time to time, Corps Finance Center has received requests to reimburse Savannah District employees for purchases of bottled water consumed while working on drill crews at remote sites.¹ Request Letter, at 1. Noting that other districts do not provide bottled water to employees working in remote areas, the disbursing officer has questioned whether she may approve payment for bottled water for Savannah District employees or for purchase of bottled water in bulk for use of employees at remote work sites. Request Letter, Attachment 2.

Included with the Request Letter is e-mail correspondence between the Finance Center and Corps Headquarters regarding Corps policy on the purchase of bottled water for use of employees. Request Letter, Attachments 1, 2. According to advice from Headquarters' Office of Counsel, the purchase of bottled water is viewed as a luxury and it should not be purchased for use of work crews unless potable water is not available within a reasonable distance from the work site. Request Letter, Attachment 2. Noting that crews working at remote sites often will have access to potable water in hotels or at home, Office of Counsel further advised, in keeping with Corps practice, that water coolers be purchased and filled with water from these sources and carried into the field for employees' consumption during field activities. *Id.*

¹ There are currently no outstanding requests for reimbursement for purchase of bottled water from the Savannah District. Ponder E-mail.

In addition to the advice provided by the Office of Counsel, the disbursing officer received what she perceived to be conflicting advice from the Savannah District Counsel, who took the position that appropriations are available for purchase of bottled water and that a water cooler is inadequate to meet the needs of the drilling crews. Request Letter, Attachment 1. According to the Savannah District Counsel, due to the extreme conditions encountered by the drilling crews, potable water is a “life safety issue” and is required by Army Regulations and agency policy. *Id.* District Counsel noted that, in most cases, the only water sources available to fill water coolers are located in motels housing employees during assignment. *Id.* Questioning whether conditions would allow for jugs or coolers to be adequately sterilized for use over multiday assignments, the District Counsel determined that the purchase of bottled water is the most cost effective way to provide potable water to employees on some remote drilling sites and concluded that, in such conditions, appropriations are available for the purchase of bottled water. *Id.*

DISCUSSION

Bottled water is ordinarily considered a personal expense of the government employee. B-303920, Mar. 21, 2006. As a general rule, without specific statutory authority, appropriated funds are not available for personal expenses. B-302548, Aug. 20, 2004; 68 Comp. Gen. 502 (1989). We have recognized exceptions to this general rule, however, when the expenditure for a particular item, otherwise personal in nature, primarily benefits the government. B-309604, Oct. 10, 2007. For example, we concluded that appropriations were available to purchase special protective clothing and equipment for federal employees of a War Department ordnance plant. 21 Comp. Gen. 731, 733 (1946). The department could show that such items, by protecting the safety of War Department employees and the public, were “essential to the safe and successful operation of the respective plants and their purchase [was] primarily for the benefit of the government.” *Id.*

Under the Occupational Safety and Health Act of 1970, Pub. L. No. 91-596, 84 Stat. 1590 (Dec. 29, 1970), agencies, as employers, must provide “safe and healthful places and conditions of employment” for their employees and establish and maintain an effective and comprehensive occupational safety and health program for their employees. 29 U.S.C. § 668(a); Exec. Order No. 12196, *Occupational Safety and Health Programs for Federal Employees*, 45 Fed. Reg. 12,769 (Feb. 26, 1980). In this regard, the Corps provides guidance requiring that each component, including the district offices, “shall establish and maintain basic sanitation provisions for all employees in all places of employment.” *Safety and Health Requirements*, EM 385-1-1, 02.A.01 (Nov. 3, 2003). As part of basic sanitation, the guidance requires that “[a]n adequate supply of drinking water shall be provided in all places of employment. Cool water shall be provided during hot weather.” EM 385-1-1, 02.B.01. Corps policy also provides extensive guidance on furnishing potable drinking water to employees working field activities throughout the United States. *See* EM 385-1-1, 02.B.01c (drinking water for field activities shall be provided according to the procedures defined in Army regulations, field manuals, technical bulletins, and Marine Corps reference publications).

We have recognized that an agency, as an employer, is expected to meet certain basic needs of its employees, particularly when it comes to protecting an employee's health and safety in the workplace. For example, we have concluded that appropriations are available to purchase protective hoods for employees' use in the event of a chemical or biological attack. B-301152, May 28, 2003. In reaching this conclusion we noted:

“In considering the availability of an agency's appropriations for operational expenses, it is important to factor into our consideration notice of what our society expects of its employers. Without question, an agency may use appropriated funds to satisfy basic fundamental needs such as potable water, clean air, and sufficient light.”

Id. Similarly, an agency may use appropriated funds to purchase bottled water when an agency's work site has no available potable drinking water or when the available drinking water poses health risks if consumed. 25 Comp. Gen. 920 (1946) (drinking water supply pipeline could not be reliably maintained); B-247871, Apr. 10, 1992 (drinking water analysis revealed dangerous levels of lead contamination).

According to the Finance Center and the Savannah District Counsel, drilling crews working in some remote areas of the Savannah District have no reliable water source or access to a water source within a reasonable distance of the work site. Request Letter, Attachment 1; Ponder E-mail. Indeed, many of these drilling sites are far from any facility that could provide a water source. For some work sites, employees may be dropped off by boat or car and, in some instances, crews are required to walk through uninhabited areas to reach the actual work sites. In light of the lack of available potable water and consistent with the Occupational Safety and Health Act and Corps policy, it is the Corps' responsibility to provide access to potable water for employee consumption at all places of employment, regardless of whether that work site is an office building or in the field. It is within the Corps' discretion, however, to determine how best to meet this responsibility, whether by supplying employees with coolers or jugs to carry water to a work site from some other location or by providing bottled water. So long as the Corps determines that bottled water is the best way to provide employees with access to potable water in a particular situation, we would have no objection to the Corps' use of appropriations for the purpose of providing the bottled water.

CONCLUSION

Federal law and Corps policy require that the Corps provide access to potable water for employees working at Corps work sites. For employees working at remote sites with no access to potable water, it is within the Corps' discretion to determine how best to meet

this responsibility, whether by providing coolers or jugs for transporting water or by providing bottled water. We have no objection to the Corps using appropriated funds to provide bottled water so long as the Corps administratively determines that bottled water is the best way to provide employees at a particular site with access to potable water.

A handwritten signature in black ink, appearing to read "Gary L. Keplinger". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Gary L. Keplinger
General Counsel



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: U.S. Agency for International Development--
Purchase of Bottled Drinking Water

File: B-247871

Date: April 10, 1992

DIGEST

The Office of Inspector General for the Agency for International Development may use appropriated funds to purchase bottled drinking water for its employees when the water otherwise available to its employees is unwholesome.

DECISION

An authorized certifying officer for the Agency for International Development (AID) asks whether the Office of Inspector General (OIG) may use appropriated funds to pay for a commercial bottled drinking water service for its employees. According to the OIG, the water available in OIG's offices through the building's plumbing system is discolored, has an unusual taste and odor, and contains elevated levels of lead. We conclude that the OIG may use appropriated funds to purchase bottled drinking water for its employees until the problems with the building's water supply are adequately corrected and the water is shown to be safe.

BACKGROUND

In the fall of 1990, OIG employees began complaining about the quality of the water in OIG's building. The employees complained of discoloration, unusual taste, and offensive smell. In response, the Assistant IG for Resource Management decided to purchase bottled water "to ensure the availability of palatable drinking water and reduce any potential health risks to the IG staff."

In July 1991, the General Services Administration, Safety and Environmental Management Division, tested water collected from water fountains and sinks throughout the building for lead content. The tests showed that water from two water fountains and two sinks exceeded the Environmental Protection Agency's "maximum contaminant level" for lead. We understand that additional tests for inorganic materials, metals, asbestos, and microbiologicals are to be performed. Until the water is shown to be safe, the IG believes that

the purchase of bottled drinking water would be a reasonable exercise of management judgment.¹

DISCUSSION

An agency may use appropriated funds to purchase bottled drinking water, which is ordinarily considered a personal expense of its employees, upon a showing of necessity. B-147622, Dec. 7, 1961; 2 Comp. Gen. 776 (1923). When water otherwise available to agency employees is unwholesome, or otherwise unpotable, the purchase of bottled drinking water may be viewed as a necessity from the standpoint of the government. B-147622, Dec. 7, 1961; see also, B-236330, August 14, 1989.

Here, besides discoloration, unusual taste, and offensive smell, tests showed that water drawn from at least four locations in building space occupied by the OIG contained levels of lead exceeding EPA's "maximum contaminant level." 40 C.F.R. § 141.11 (1991). According to the EPA, lead can cause a variety of adverse health effects in humans. See 56 Fed. Reg. 16548, June 7, 1991. Moreover, based on available data, EPA believes "there are no clearly discernible thresholds for some of the non-carcinogenic adverse health effects associated with lead." 56 Fed. Reg. 26469, June 7, 1991. Given the uncertain health effects of lead, we think the IG's concern for the health of his employees is justified.

Thus, until the problems with the building's water supply are adequately corrected and tests show that the water is free from lead and other contaminants, the determination that the purchase of bottled drinking water is a necessary expense of the agency's operations is within the legitimate range of the IG's discretion. Accordingly, until the health problems posed by the building's water supply are resolved, the Office of Inspector General may use its appropriated funds to purchase bottled drinking water for its employees.



Acting Comptroller General
of the United States

¹The IG also informed us that he intends to request that the charges for the bottled water be claimed as an offset against the rent paid on the building or, in the alternative, to pursue a separate bill for collection.