

DECISION



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

FILE: B-204486

DATE: January 19, 1982

MATTER OF: FBI Insurance from Private Firms in Undercover
Operations

- DIGEST:
1. The Federal Bureau of Investigation may purchase insurance for proprietary businesses and chattels used in its undercover operations when it determines that the insurance is necessary for the success of an undercover operation or protection of its agents. The Government policy of self-insurance does not apply when the purpose of obtaining the insurance is other than protecting the United States from risk of financial loss.
 2. The purchase of insurance by the Federal Bureau of Investigation in its undercover operations is a necessary expense of the Bureau in detecting, investigating and prosecuting crimes against the United States, when the Bureau determines that insurance is essential to the success of undercover operations. Specific authority of the Bureau in undercover operations to lease space, establish or acquire proprietary corporations or businesses and operate them on a commercial basis, and use proceeds from undercover operations for necessary and reasonable expenses incurred includes authority to obtain insurance.

This responds to a Federal Bureau of Investigation (the Bureau) request for an opinion about whether it can purchase insurance from private firms in its undercover operations. For the reasons given below, we conclude that the Bureau is authorized to obtain this insurance.

In its submission, the Bureau informed us that it has found it increasingly desirable, if not necessary, to obtain insurance in undercover operations involving proprietary businesses and chattels such as rental vehicles. The Bureau maintains that insurance is necessary to the success of undercover operations and is frequently essential to the maintenance of security and the protection of individual undercover agents.

The Bureau set forth the following as examples of alternative methods which could be used for the purchase of private insurance:

"1. A proforma policy would be obtained for 'show' purposes only. The FBI would pay for the administrative costs to issue the policy rather than premiums, and it would be the responsibility of the FBI to settle any valid claims.

"2. The FBI would disclose its interest in a proprietary to an insurance company and would obtain an actual policy and pay the premiums. The insurance company would then settle any claims within the parameters of the policy. Such policies could cover employees of the proprietary who were not Government employees, the proprietary's liability in business dealings with firms or individuals outside the proprietary; and possibly, property utilized by the proprietary.

"3. An FBI undercover Agent would obtain insurance in an undercover alias, would pay the premiums and no disclosures would be made to the insurance company as to the true identity of the insured. This situation would generally involve insurance for leased property, such as vehicles or furniture, and the insurance companies would settle any claims."

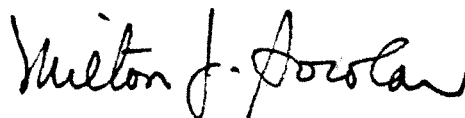
It is a long-standing policy of the United States to self-insure its own risks of loss. E.g., 55 Comp. Gen. 1343, 1345 (1976). This policy arose because the magnitude of the Government's resources and wide dispersion of the types and geographical locations of the risks made a self-insurance policy generally more advantageous since it would save items of cost and profit private insurers have to include in their premiums. Id. Accordingly, as pointed out in the FBI submission, absent express statutory authority appropriated funds generally may not be used to purchase insurance to cover loss of, or damage to, Government property. See, B-175086, May 16, 1972.

The Government practice of self-insurance is one of policy and not of positive law. It applies only to insurance of the Government's risk in a particular situation. Id. In this instance, however, the Bureau would be obtaining insurance not to protect the Government from risk of financial loss, but rather to guarantee the success of its undercover operations. For example, the Bureau wishes its undercover proprietary corporations to obtain insurance so that they can maintain their "cover" by appearing to be normal businesses. Therefore, since the rationale for the self-insurance policy does not apply here, the policy does not preclude the Bureau from using its appropriated funds to obtain insurance. Cf. 55 Comp. Gen. 1321, 1333 (1976).

It is a settled rule that where an appropriation is made for a particular purpose it is available for expenses reasonably necessary or incident to the accomplishment of that purpose. 50 Comp. Gen. 534, 536 (1971); 44 Comp. Gen. 312, 314 (1964). The Bureau receives

appropriations for expenses necessary to detect, investigate, and prosecute crimes against the United States. See, e.g., H.R. 4169, 97th Cong., 1st Sess. 19, as incorporated into the continuing appropriation resolutions Pub. L. No. 97-51, 95 Stat. 958; Pub. L. No. 97-85, 95 Stat. 1098; and Pub. L. No. 97-92, 95 Stat. 1183. The purchase of insurance would be a proper expense incident to the authority described if the Bureau determines that insurance is essential to its undercover operations. Therefore, expenditure of appropriated funds for any of the alternative methods suggested in the Bureau's submission for the purchase of insurance would be appropriate.

Further, the Bureau has particular authority in undercover operations to lease space; establish, acquire and operate proprietary corporations or businesses and operate them on a commercial basis; and use proceeds from undercover operations for necessary and reasonable expenses incurred. Department of Justice Appropriation Authorization Act, fiscal year 1980, Pub. L. No. 96-132, 93 Stat. 1040, 1045-46, as continued by Pub. L. No. 97-7, 95 Stat. 9, and extended into fiscal year 1982 by the continuing resolutions Pub. L. No. 97-51, 95 Stat. 958; Pub. L. No. 97-85, 95 Stat. 1098; and Pub. L. No. 97-92, 95 Stat. 1183. These authorities to conduct undercover operations necessarily include the authority to obtain insurance. We assume that any insurance obtained would not enlarge the recovery rights of Federal employees under the Federal Employees Compensation Act or similar statutes.



Acting Comptroller General
of the United States