



Decision

Matter of: Occupational Safety and Health Review Commission—Refreshments for a Combined Federal Campaign Event

File: B-325023

Date: July 11, 2014

DIGEST

Under the current circumstances, Occupational Safety and Health Review Commission's (OSHRC) appropriated funds are not available to pay for food at a Combined Federal Campaign (CFC) kick-off event. Food is a personal expense. Appropriations are not available to pay for food unless specifically authorized, or unless the agency can demonstrate that such expenditures are an essential constituent part of the effective accomplishment of a statutory responsibility. In this case, OSHRC has not presented compelling empirical evidence demonstrating that food will likely generate or increase contributions to the CFC. That refreshments may enhance employee enthusiasm for the campaign, by itself, is not an adequate justification to use appropriations for what is otherwise a personal expense. We are unwilling to extend the availability of appropriations to cover food at CFC fundraising events unless Congress legislates such authority or an agency can make a compelling case that the offering of food at the event demonstrably increases contributions.

DECISION

The Chairman of OSHRC requested an advance decision on the use of appropriated funds to pay for food and beverages to be served at a CFC kick-off event. Letter from Chairman, OSHRC, to Comptroller General, GAO (July 16, 2013) (Request Letter). As explained below, under current circumstances OSHRC may not use appropriated funds to pay for food at the CFC event.

Our practice when rendering decisions is to obtain the views of the relevant agency and to establish a factual record on the subject 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. The Request Letter provided relevant facts, and we followed-up with the agency by telephone for

clarification purposes. Telephone Conversation with Chief Counsel, OSHRC, and Senior Attorney, GAO (Nov. 20, 2013) (Telephone Conversation).

BACKGROUND

The CFC is an annual workplace charity campaign facilitating the solicitation of federal employees on behalf of charitable organizations. See, Office of Personnel Management (OPM), *Combined Federal Campaign*, <http://www.opm.gov/combined-federal-campaign/> (last visited June 12, 2014). It is the “uniform fundraising method for the Federal service,” allowing “every federal employee in the United States, regardless of location, [an] opportunity to participate” in the campaign. *Memorandum About the Combined Federal Campaign*, Public Papers of the Presidents of the United States, at 378 (Mar. 3, 1971). The modern CFC was established under Executive Order No. 10927, Mar. 18, 1961, which directed the Civil Service Commission, the precursor to the Office of Personnel Management (OPM), to “make arrangements for such national voluntary health and welfare agencies and such other national voluntary agencies as may be appropriate to solicit funds from Federal employees ... at their places of employment or duty stations.” 26 Fed. Reg. 2383 (Mar. 18, 1961). In 1982, the Director of OPM was directed to prescribe “such rules and regulations” as appropriate to “support and facilitate fund-raising on behalf of voluntary agencies through on-the-job solicitation.” Exec. Order No. 12353, 47 Fed. Reg. 6685 (Feb. 10, 1983). In 1987, Congress enacted permanent legislation amending CFC regulations that addressed the eligibility of participating nonprofits, the dispensation of undelegated donations, and the prohibition against coercion. Pub. L. No. 100-202, 101 Stat. 1329 (Dec. 22, 1987).

The CFC does not receive federal funds; rather campaign operating expenses are recovered “from the gross receipts of the campaign,” which consists of donations made by federal employees.¹ 5 C.F.R. § 950.106(a). Campaigns are delineated geographically and day-to-day operations are run by the Principal Combined Fund Organization (PCFO), a group of local nonprofit executives selected by the Director of OPM or his designee. 5 C.F.R. §§ 950.103 and 105. It is the PCFO’s responsibility to manage campaign expenses and, if necessary, absorb costs associated with the campaign. 5 C.F.R. § 950.106(b). Federal agencies generally permit employees to solicit funds on behalf of the CFC during working hours, often through various CFC events. CFC events support the CFC’s mission of “solicit[ing]

¹ On April 17, 2014, OPM issued final revised regulations concerning CFC donor participation, campaign infrastructure, and standards of transparency and accountability. 79 Fed. Reg. 21581 (April 17, 2014). The revised regulations will take effect January 1, 2016. *Id.* Under the final rule, which amends 5 C.F.R. Part 950, the funding and administrative structure described above will change but are not relevant to our decision.

funds from federal employees at their places of employment or duty stations.” Exec. Order No. 10927, 26 Fed. Reg. 2383 (Mar. 18, 1961).

In 2012 and 2013, OPM issued guidance to PCFOs and local coordinating committees not to incur or approve “any expenses for food, beverages or entertainment, and no such expenses [were] to be charged against the proceeds of the campaign.” CFC Memorandum 2013-2014, June 27, 2013; OPM Memo for LFCC’s and PCFOs, Mar. 28, 2012. The prohibition against using CFC funds for food or refreshments at a special event has been included in the revised CFC regulations. 79 Fed. Reg., at 21594 (April 17, 2014).

OSHRC is an independent federal agency established to decide matters of contested citations or penalties resulting from Occupational Safety and Health Administration inspections of United States work places. OSHRC, *About the Commission*, <http://www.oshrc.gov> (last visited June 12, 2014). It receives a fiscal year lump sum appropriation “for expenses necessary for the Occupational Safety and Health Review Commission.” Consolidated Appropriations Act, 2014, Pub. L. No. 113-76, 128 Stat. 5, 405 (Jan. 17, 2014). In support of the CFC, OSHRC plans to hold a kick-off event at its national office at which “light food and beverages (‘refreshments’)” are to be served to attendees. Request Letter, at 1. The proposed event will consist of representatives from several local CFC-listed charities making presentations about their organization’s activities. *Id.* OSHRC officials will give opening remarks and introduce the charity representatives. *Id.* The event will be held during the workday and attendance is voluntary. *Id.* OSHRC intends the kick-off event to be a “positive event” aimed at helping the community through CFC contributions. Telephone Conversation. OSHRC proposes to use appropriated funds to purchase refreshments, which are intended to support the “celebratory” nature of the event. *Id.*

DISCUSSION

Agencies may use appropriated funds for certain CFC-related expenses but the provision of food is a personal expense.² It is well established that an agency may not use appropriated funds to purchase items considered personal expenses, such as food, without specific authority to do so. 68 Comp. Gen. 604 (1989) (agencies may not furnish meals or refreshments to employees within their official duty

² We have long held that agencies may cooperate in charity fund-raising campaigns for health and welfare activities, even though these activities are not specifically provided for by statute. B-155667, Jan. 21, 1965; B-154456, Aug. 11, 1964. More specifically, we have held that agencies may spend reasonable amounts of appropriated funds to promote the CFC, such as the preparation of campaign instructions and mailing labels, and the distribution of campaign materials. B-225860, Feb. 12, 1988, *citing to* B-154456, Aug. 11, 1964.

stations). We have found exceptions, however, where an agency has specific statutory authority to provide food, or where it can demonstrate that such expenditures are an essential constituent part of accomplishing a statutory responsibility of the agency. See, e.g., B-301184, Jan. 15, 2004 (samples of food offered as part of cultural awareness ceremonies); 65 Comp. Gen. 738 (1986) (food at awards ceremonies held pursuant to the Government Employees Incentive Awards Act). OSHRC has not cited, and we have not identified, any specific statutory authority allowing the use of appropriated funds to purchase food for the proposed CFC event. Therefore, we consider whether funds are available for food at the CFC kick-off event under the second exception—that the expenditure is an essential constituent part of accomplishing a statutory function.

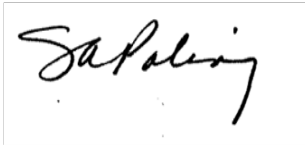
Determinations based on the second exception are rare, and are made on a case-by-case basis in light of the circumstances presented. B-310023, April 17, 2008; B-304718, Nov. 9, 2005. In B-304718, we had no objection to the Veterans Benefits Administration's (VBA) use of its appropriated funds to provide refreshments to participate in focus groups. VBA was required by statute to "measure and evaluate its programs" offered to veterans and their families. *Id.* VBA solicited feedback information through a variety of channels including telephone interviews, internet surveys and mail; however, it determined that focus groups provided the best collection method. *Id.* Based on existing professional focus group practices and objective facts, VBA argued that the provision of food would contribute materially to the successful accomplishment of its statutory responsibility to measure and evaluate benefits programs. *Id.* In support of its argument, VBA cited to methodologically sound, published research findings that food serves as an incentive for focus group participation and facilitates communication within the group. *Id.*, at 2, 4 (and publications cited therein). We determined that VBA's decision to provide food to focus group participants, under the circumstances described, was not so attenuated as to be beyond the legitimate range of the agency's discretion.

In the present case, the facts are distinguishable from the VBA case. Here, neither OSHRC, CFC nor anyone else has presented comparable sociological research establishing that serving food at a CFC fundraiser is an effective incentive to generate or increase contributions. OSHRC simply asserts that food would contribute to the "celebratory nature" of the kick-off event. Telephone Conversation. This is in contrast to VBA's use of empirical evidence from scholarly publications demonstrating that serving food would directly contribute to VBA's information collection efforts. B-304718. OSHRC's sole rationale for food is that refreshments may serve to enhance employee enthusiasm for, and interest in, CFC events. This factor alone, however, cannot serve as the justification for using appropriated funds to purchase refreshments, which are a personal expense. See B-247563, Dec. 11, 1996 (sole purpose of refreshments to make an event more pleasant for the attendees is not sufficient to authorize use of appropriated funds); B-270199, Aug. 6, 1996. Without compelling empirical evidence (such as VBA provided) demonstrating

that serving food would generate increased CFC donations, or legislation permitting agencies to use appropriations to supply food at CFC events, we are unwilling to extend the availability of appropriations to cover food at CFC fundraising events.

CONCLUSION

Under the current circumstances, OSHRC's appropriations are not available to pay for food at a CFC kick-off event. In this case, OSHRC has not presented an adequate justification to use its appropriation for what is otherwise a personal expense. If an agency can demonstrate that serving food will directly contribute to the agency's ability to solicit donations on behalf of CFC, we are willing to reconsider the purchase of food with appropriated amounts for CFC purposes provided that OPM has no objection, and the agency presents an administrative policy regarding food at CFC fundraising events.

A handwritten signature in black ink, appearing to read "S. Poling", enclosed in a thin black rectangular border.

Susan A. Poling
General Counsel