

W. E. Tuplow



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Reimbursement for State-imposed Pesticide
Application License Fees

File: B-235727

Date: February 28, 1990

DIGEST

The National Park Service may not expend its appropriations to reimburse federal employees who paid a fee to obtain state pesticide application licenses, because such fees are a personal expense to the employees incident to a condition of employment.

DECISION

This responds to a request from the Associate Director for Budget and Administration of the National Park Service (NPS), Department of the Interior, for our opinion on whether he may properly reimburse fees in the amount of \$35 each that two employees of the NPS paid to the State of Kansas for state pesticide application licenses. We conclude that the NPS may not reimburse these fees. Because the licenses are required of the two employees in their federal employment, these expenditures represent personal expenses incurred incident to qualifying for their positions.

BACKGROUND

Two NPS employees at Fort Larned National Historic Site, Kansas, a Park Ranger/Resource Management Specialist and the Maintenance Worker Foreman, were instructed by park management to carry out prairie dog control measures involving chemical applications. For a fee of \$35 each, they obtained proper certification from the State of Kansas that authorizes them to apply and supervise the application of restricted-use pesticides. The state requires such certification under authority of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. § 136 et seq., as delegated by the Environmental Protection

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Agency. See 7 U.S.C. § 136i(2); 40 C.F.R. § 171.5.1/ The employees sought reimbursement of the fees from the NPS, which has forwarded the matter to this Office for a ruling on the propriety of the use of appropriated funds for this purpose.

DISCUSSION

We have long held that it is the responsibility of a federal employee to obtain the qualifications necessary to perform the duties of his or her position. See, e.g., B-218964, Nov. 26, 1985; B-193862, Apr. 30, 1979; B-186512, above. If a federal employee must secure permits or licenses to perform the duties of his or her position, compliance with this requirement is a matter of personal qualification and payment by the government of any fees incident to obtaining these permits or licenses is not authorized. Moreover, the permit or license is issued to the individual and not to the government. The pay of the position will be set ultimately to reflect the qualifications required by the employee through position classification procedures. Therefore, an employee is indirectly compensated for obtaining or maintaining a qualification through his or her salary.

The Park Service acknowledges this long-standing general rule, but believes the situation it presents constitutes an exception. It argues that while the employees' position descriptions require them to have knowledge of pesticide use, they do not require them to apply restricted-use pesticides, nor do they require the employees to have pesticide application licenses.^{2/} The Park Service states that neither employee has any use for the license, except

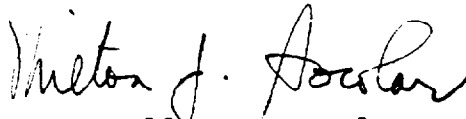
^{1/} Because the state, in certifying and licensing pesticide applicators, is acting under authority delegated by a federal agency, the state may properly impose the licensing requirement on federal employees. B-186512, Jan. 17, 1977.

^{2/} The Park Ranger/Resource Management Specialist is required to have "a working knowledge of . . . pesticide-use." The Maintenance Worker Foreman is required to advise the Site Superintendent of the need for "herbicide and/or pesticide use," and to insure that the native grass units at the Site "receive proper treatment at proper times."

for carrying out work that benefits only the Park Service.^{3/}

We are not persuaded that these circumstances warrant special treatment. Even if one accepts the Park Service's assertion that the position descriptions do not contemplate that these employees will apply restricted-use pesticides, the Site management's direction that they perform such a task would constitute a new duty for which they must qualify. Under the general rule, it is immaterial whether the license qualification was an initial condition of employment, became a condition afterwards, or was necessitated by a change in duties. See B-218964, above; B-193862, above; B-186512, above; 51 Comp. Gen. 701, 702 (1972). It is also immaterial that the employees have no off-duty need for the licenses.

Accordingly, because the employees obtained the pesticide application licenses to satisfy instructions of the Site's management, we conclude that the license fees are personal in nature, and the Park Service may not use appropriated funds to reimburse them.

for 
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^{3/} The Park Service also argues that these circumstances are similar to those described in 36 Comp. Gen. 465 (1956), in which we allowed reimbursement of notary public fees paid by employees. In that case, however, we found that the use of appropriated funds for the payment of notary public commission expenses was explicitly authorized by statute as an exception to the general rule.