



Decision

Matter of: Air Force--Appropriations--Reimbursement
for Costs of Licenses or Certificates

File: B-252467

Date: June 3, 1994

DIGEST

The Air Force, in its discretion, may expend appropriated funds to reimburse its members for licensing or certification fees required to perform their assigned duties whenever federal law compels the members to comply with state regulations requiring the license or certificate.

DECISION

The Principal Deputy Assistant Secretary of the Air Force for Financial Management asks whether the Air Force may use appropriated funds to reimburse Air Force members for the cost of licenses or certificates required to perform the members' assigned duties. We do not object to such use of Air Force appropriated funds in instances where federal law compels Air Force members to comply with state and local regulations requiring the licenses or certificates.

According to the Air Force, the number of job categories which require its members to obtain a license or certificate issued by a state regulatory agency has increased dramatically in recent years. Most of these new job categories have been created in response to the several federal laws which require federal agencies to comply with state-established environmental standards. See, e.g., 42 U.S.C. § 7418 (Clean Air Act); 42 U.S.C. § 6961 (Solid Waste Disposal Act); 42 U.S.C. § 300j-6 (Public Health Service Act); 33 U.S.C. § 1323 (Federal Water Pollution Control Act); 7 U.S.C. §§ 136(e)(1), 136i(a), (b) (Federal Insecticide, Fungicide, and Rodenticide Act). For example, South Carolina, pursuant to the Clean Air Act, requires an Asbestos Abatement License that costs \$350 per year; Texas, pursuant to the Public Health Service Act, requires a Water Treatment Facility's License at \$80 every 3 years; and, North Carolina, pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, requires a Pesticide and Herbicide Application License that costs \$523 every 3 years.

As a general matter, agencies may not use appropriated funds except for purposes for which the appropriation was made. See 31 U.S.C. § 1301(a). The Air Force "operation and

maintenance" appropriation provides that amounts will be available "[f]or expenses, not otherwise provided for, necessary for the operation and maintenance of the Air Force, as authorized by law." Pub. L. No. 103-139, 107 Stat. 1418, 1421 (1993). The concept of "necessary expenses" is a relative one, defined in any given circumstance by the relationship of a particular proposed expenditure to the specific appropriation to be charged. For this reason, it is in the first instance up to the agency to determine that a given expenditure is reasonably necessary to accomplishing the purpose of the appropriation. B-247563.2, May 12, 1993. An agency's discretion in this regard, however, is not unfettered; the agency makes its determination by applying the various laws that impose restrictions on appropriations generally and restrictions specific to the appropriation at issue, as well as by reference to the decisions and guidance of the accounting officers of the United States. As a general rule, once the agency has made its determination, we will afford it considerable deference. In this instance, we believe that the Air Force has a reasonable basis for using its "operation and maintenance" appropriation for the licenses or permits at issue here.

Fees incident to obtaining licenses or certificates necessary to qualify a federal employee to perform the duties of his position are considered, generally, to be personal expenses not properly chargeable to agency appropriations. 6 Comp. Gen. 432, 433 (1926); 3 Comp. Gen. 663, 665 (1924); 66 MS. Comp. Dec. 247, 248, July 22, 1913, cited in 23 Comp. Dec. 386 (1917):

"[A]n employee of the government has upon his own shoulders the duty of presenting himself as competent in every way for the duties of his employment. If a personal license is necessary to render him competent to discharge the duties of his employment, . . . he should fit himself for the discharge of those duties at his own expense."

However, appropriations are available for such expenditures, regardless of their personal nature, if the expenditure primarily benefits the government. See 68 Comp. Gen. 502, 505 (1989). For example, it was reasonable for the Department of Interior to use its appropriations to cover the cost of exercise equipment for Bureau of Reclamations fire fighters because the equipment was necessary for a mandatory conditioning program which would enable the employees to perform their duties more effectively. 63 Comp. Gen. 296 (1984).

Over the past several years, federal law has increasingly subjected the federal government to state environmental

regulations. Section 118 of the Clean Air Act, section 6001 of the Solid Waste Disposal Act, section 1447 of the Public Health Service Act, and section 313 of the Federal Water Pollution Control Act now require that federal agencies "shall be subject to, and comply with, all Federal, State, interstate, and local requirements" imposed under the authority of these laws.¹ 42 U.S.C. § 7418(a); 42 U.S.C. § 6961; 42 U.S.C. § 300j-6(a);² 33 U.S.C. § 1323(a). As a result, agency appropriations are available in instances where their use was previously prohibited. *See, e.g.*, 72 Comp. Gen. 225 (1993) (Treasury appropriations available to comply with state regulations requiring employers to provide incentives to encourage employee use of car pools and public transportation in Los Angeles); 58 Comp. Gen. 244 (1979) (Air Force appropriations available for costs of obtaining permits required under state air pollution regulations).

Thus, if South Carolina, for example, requires an asbestos removal license and members of the Air Force assigned to remove asbestos must have a license, it is within the Air Force's discretion to pay the licensing fees for its members in South Carolina. The Air Force would be unable to carry out an asbestos removal project in South Carolina except by employing licensed workers; Air Force activities must conform to the legally applicable regulatory requirements of the state. While the license or permit is often obtained in the name of the member,³ the primary interest in obtaining the license lies with the Air Force, which designated the task as a new assignment of the member, not with the member. Any personal benefit that Air Force members receive from the acquisition of the licenses is nominal and incidental to the performance of their official duties. *See, e.g.*, 64 Comp. Gen. 789 (1985) (appropriated funds available to purchase "smokeeaters" to place on the desks of smokers in an open

¹Additionally, the Federal Insecticide, Fungicide, and Rodenticide Act permits the Administrator of the Environmental Protection Agency to delegate to states the authority to certify pesticide applicators and "prescribe qualifications for Federally-employed pesticide applicators performing their duties on Federal facilities." B-186512, Jan. 17, 1977. *See* 7 U.S.C. §§ 136(e)(1), 136i(a), (b).

²The word "interstate" does not appear in the Public Health Service Act.

³Where state regulations allow, federal agencies should obtain the license or certificate in the name of the agency.

work area where the benefit accrued not to individual employees but to a group of employees in the work area).

We note, however, that appropriated funds are not available to meet the licensing requirements of professional personnel such as teachers, accountants, engineers, lawyers, doctors and nurses. E.g., B-248955, July 24, 1992 (professional engineer certification); B-204215, Dec. 28, 1981 (bar membership). These individuals are fully aware of the licensing requirements of their professions from the time they begin their professional education, and of the fact that society expects them to fully qualify themselves for the performance of their chosen professions. In that sense, the licensing requirements are considered to be more for the personal benefit of the individuals than for their employers. Similarly, the cost of driver's licenses are considered for the personal benefit of federal employees. 23 Comp. Gen. 386 (1917).

In conclusion, when Air Force members are required by federal law to comply with state and local regulations, the Air Force, in its discretion, may use its appropriations to cover the cost of obtaining licenses or certificates necessary to perform the regulated activities.

/s/ James F. Hinchman

for Comptroller General
of the United States