



GAO

Accountability * Integrity * Reliability

Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Navy—Reenlistment Gifts

File: B-307892

Date: October 11, 2006

DIGEST

Navy has authority under 10 U.S.C. § 2261 to use its appropriated funds to purchase and present sailors with small gifts (valued at no more than \$50) in order to recognize and commemorate enlistment and reenlistment, but must first promulgate regulations and assure that any recruiting gift programs that it implements are consistent with those regulations. The authority provided by section 2261 terminates on December 31, 2007.

DECISION

A certifying officer of the Navy Information Operations Command (Command), Fort Meade, Maryland, requested an advance decision under 31 U.S.C. § 3529 on whether Navy may use appropriated funds to purchase and present small gifts embroidered with command insignias in order to recognize sailors who reenlist in the Navy. We conclude that Navy has authority under 10 U.S.C. § 2261 to use its appropriated funds for this purpose, but must first promulgate regulations and assure that any recruiting gift programs that it implements are consistent with those regulations. In the absence of regulations, the Command may not make awards under this authority.

BACKGROUND

The Command plans to purchase and present to sailors small gifts to recognize and commemorate their reenlistment. The specified gifts—pens, mugs, ball caps, shirts, and duffle bags—would include the insignia of the command in which the sailor is reenlisting. The gifts a sailor receives would depend on the length of the reenlistment period. For example, a sailor who agrees to a 2-year reenlistment would receive a pen bearing the Command's insignia. Letter from Lt. P.R. Lindley, Certifying Officer, Navy Information Operations Command, Maryland, to Thomas H. Armstrong, Assistant General Counsel, GAO, received Aug. 3, 2006. For a 3-year reenlistment, the sailor would receive a pen and a mug, and for 6 years, a pen, mug, hat, shirt, and a duffle bag. *Id.*

The Command believes that these gifts would help Navy “retain highly skilled sailors on active duty,” and that the “cost of the gift is minimal, especially in comparison to the cost of training a replacement sailor.” *Id.* The Command states, “No price can be placed on the experience lost or the time a new sailor will take to acquire the same skills.” *Id.* Navy would use its Operation and Maintenance appropriation to pay for these gifts. *Id.*

DISCUSSION

Appropriated funds may be used only for authorized purposes. 31 U.S.C. § 1301(a). The general rule is well established that appropriated funds may not be used for personal gifts, except as authorized by law. *See, e.g.*, 68 Comp. Gen. 226, 227 (1989) (the Department of Housing and Urban Development could not use appropriated funds to pay for gifts to Russian exhibit organizers and participants in connection with its support of an international trade show because of “the well recognized rule of appropriations law that prohibits the use of appropriated funds for entertainment and gifts, unless specifically authorized”). *See also* 70 Comp. Gen. 248, 251 (1991). In this case, Congress has statutorily authorized Navy and other military departments to use appropriated funds to procure and award small gifts for the purposes of recognizing and commemorating recruitment and reenlistment in the armed forces. 10 U.S.C. § 2261.¹

In pertinent part, section 2261 of title 10 of the United States Code provides:

“(a) Expenditures for recognition items—Under regulations prescribed by the Secretary of Defense, appropriated funds may be expended—

“(1) to procure *recognition items of nominal or modest value for recruitment or retention purposes*; and

“(2) to present such items—

(A) to members of the armed forces.”

Id. (emphasis added). Section 2261 defines a “recognition item of nominal or modest value” as “a commemorative coin, medal, trophy, badge, flag, poster, painting, or other similar item that is valued at less than \$50 per item and is designed to recognize or commemorate service in the armed forces.” *Id.*

¹ This provision was enacted by the National Defense Authorization Act for Fiscal Year 2006, Pub. L. No. 109-163, div. A, title V, § 589(a)(1), 119 Stat. 3136, 3279 (Jan. 6, 2006).

The meaning and purpose of section 2261 seem plain on its face. Congress has authorized the Department of Defense (including Navy) to use appropriated funds to make small gifts to military members in order to recognize or commemorate their decisions to enlist and reenlist. Congress has limited the value of the gifts to less than \$50 each.

The legislative history of section 2261 supports this plain meaning.² The Senate Committee on Armed Services, in reporting the bill that became law, stated:

“[T]he Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108-375) authorized through December 31, 2005, the award of recognition items . . . to members of the Army Reserve, Army National Guard, and Air National Guard. The committee believes that this authority has proven valuable during time of war in enabling commands to appropriately express appreciation for the dedicated service and sacrifices of individual members, family members, and others who have served and supported the Armed Forces, and that this authority should be extended to all Active and Reserve components.”

S. Rep. No. 109-69, at 323 (2005).

Thus, section 2261 grants Navy the authority to use appropriated funds to present sailors with small gifts (valued at no more than \$50) to recognize or commemorate their enlistment and reenlistment decisions. However, use of the section 2261 authority is subject to regulations issued by the Secretary of Defense. 10 U.S.C. § 2261(a). The Secretary delegated to the military department secretaries the responsibility of issuing implementing regulations for their respective departments, and Navy has not yet issued its regulations under section 2261. Letter from Anne M. Brennan, Assistant General Counsel of the Navy, to Thomas H. Armstrong, GAO, July 27, 2006, at 3 (Brennan Letter). Until regulations are issued, section 2261 may not be used as authority for gifts to those who reenlist.

Whether the specific recognition items the Command is considering comport with the statutory definition of a recognition item of modest value is, in the first instance, for Navy to determine. We would object to a particular item only if the relationship between that item and the purpose of the statute was so attenuated as to take the

² Reference to legislative history is useful to illuminate congressional intent and to confirm a statute’s plain meaning. *E.g., Conroy v. Aniskoff*, 507 U.S. 511, 514, 516 (1993) (although it found the statute to be “unambiguous, unequivocal, and unlimited,” the Court examined legislative history to confirm that its literal reading of the statute was not absurd, illogical, or contrary to congressional intent). *See also* 55 Comp. Gen. 307, 325 (1975) (use of legislative history to “illuminate intent,” as opposed to “writing into the law that which is not there”).

matter beyond Navy's legitimate range of discretion. *See, e.g.*, 70 Comp. Gen. 720, 721 (1991); B-247563.3, Apr. 5, 1996. As noted above, the statute defines a "recognition item of nominal or modest value" as a commemorative coin, medal, trophy, badge, flag, poster, painting or other similar item that is "designed to recognize or commemorate service in the Armed Forces." 10 U.S.C. § 2261(c). Navy recognizes that the examples provided in the statute do not include the items that the Command proposed—hats, mugs, and duffle bags with the Command insignia. Brennan Letter, at 3. However, there is no reason to believe that Congress intended the list of examples provided in the statute to be all-inclusive. *See* 10 U.S.C. § 2261(c) (granting discretion to present "other similar items"). Navy notes that Congress required that each item have a value of less than \$50 and be designed to recognize or commemorate service in the Armed Forces. Brennan Letter, at 3. "Arguably, nothing better could commemorate an individual's service in the armed forces than an item displaying the logo of the command in which the individual served." Brennan Letter, at 3.

We recognize that the items which the Command is considering are less traditional and less formal in nature than those mentioned in section 2261, and that they may have some practical utility different from those items. However, we accept Navy's suggestion that, notwithstanding their practical value, items imprinted with the Command's insignia may serve to express the Command's appreciation for the member's sacrifice and bring public recognition to the member's reenlistment, particularly when presented solely upon reenlistment. Section 2261 expressly aims to recognize enlistment and reenlistment by bestowing honor on those who do so. So long as the Navy properly promulgates regulations to implement section 2261 and the items authorized to be awarded under those regulations do not exceed the statutory dollar limitation, are designed by Navy to recognize or commemorate service in the Navy, and are awarded under circumstances that reflect ceremonial honor and recognition, those items may serve the statute's purposes. *Cf.* B-243025, May 2, 1991.

The authority granted by section 2261 is temporary. The provision stipulates, "The authority under this section shall expire December 31, 2007." 10 U.S.C. § 2261(d). Thus, in the absence of additional legislative action, after December 31, 2007, section 2261 will no longer authorize Navy to make such gifts.³

³ Under other authority, the Secretary of Defense "may authorize the payment of a cash award to, and incur necessary expense for the honorary recognition of, a member of the armed forces." 10 U.S.C. § 1124(a). Navy does not view this as authority to present gifts to sailors to promote reenlistment. *See* Brennan Letter, at 3 n. 1.

CONCLUSION

Navy has authority under 10 U.S.C. § 2261 to use its appropriations to procure and present to sailors small gifts to recognize or commemorate their enlistment and reenlistment, if Navy promulgates regulations and ensures that any recruiting gift programs are consistent with those regulations. Section 2261 provides for the award of recognition items that are valued at less than \$50 each and are designed to recognize or commemorate service in the armed forces. 10 U.S.C. § 2261. We see no objection if Navy's regulations were to permit the items that the Command is considering. In the absence of regulations implementing this authority, however, the Command may not make awards under section 2261.

Gary L. Kepplinger
General Counsel