



G A O

Accountability \* Integrity \* Reliability

Comptroller General  
of the United States

United States Government Accountability Office  
Washington, DC 20548

## Decision

**Matter of:** U.S. Army Garrison Ansbach—Use of Appropriated Funds to Purchase Food for Participants in Antiterrorism Exercises

**File:** B-317423

**Date:** March 9, 2009

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### DIGEST

The U.S. Army Garrison Ansbach conducts yearly antiterrorism training exercises for federal civilian employees, military members, and nonfederal participants such as contractors and host nation first responders. In general, appropriated funds are not available to purchase food for the participants, unless specific authority exists or unless the agency can demonstrate that such expenditures are an essential, constituent part of accomplishing an authorized agency function. Here, food may be a proper training expense for federal civilian employees and military members under 5 U.S.C. § 4109 and 10 U.S.C. § 3103 where the food is necessary for the civilian employees and military members to obtain the full benefit of the training exercise. Additionally, appropriated funds may be used to purchase food for nonfederal participants such as contractors and host nation first responders where their attendance is essential to the training of the civilian employees and military members and the provision of food is necessary to ensure the realism of a simulated emergency training exercise.

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### DECISION

An accountable officer at the U.S. Army Garrison Ansbach (Ansbach) requests an advance decision under 31 U.S.C. § 3529(a) regarding the use of appropriated funds to purchase food for federal civilian employees, military members, and nonfederal participants such as contractors and host nation first responders at annual antiterrorism training exercises conducted by Ansbach. Letter from Theresa Murray, Accountable Officer, U.S. Army Garrison Ansbach, to Office of General Counsel, *Subject: Request for Legal Opinion/Decision on Use of Appropriated Funds to Purchase Food Items for Participants of Anti-Terrorism Exercises*, Sept. 28, 2007

(Request Letter).<sup>1</sup> As explained below, Ansbach may use appropriated funds to purchase food for federal civilian employees and military members if Ansbach determines that the food is necessary for the civilian employees and military members to obtain the full benefit of the training exercise. Ansbach also may use appropriated funds to purchase food for nonfederal participants such as contractors and host nation first responders where Ansbach determines their attendance is essential to the training of the civilian employees and military members and the provision of food is necessary to ensure the realism of a simulated emergency training exercise.

Our practice when rendering decisions is to obtain the views of the relevant agency to establish a factual record on the subject matter 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](http://www.gao.gov/legal/resources.html). Consistent with our practice, we sought additional information regarding Ansbach's antiterrorism training exercises, which the accountable officer provided to us. E-mail from Theresa Murray, Accountable Officer, U.S. Army Garrison Ansbach, to Felicia Lopez, Staff Attorney, GAO, Jan. 21, 2009 (E-mail Response).

## BACKGROUND

Pursuant to Department of Defense<sup>2</sup> and Department of the Army<sup>3</sup> requirements, Ansbach plans and conducts antiterrorism training exercises. Ansbach executes one realistic antiterrorism exercise annually, which is intended to help identify and reduce antiterrorism vulnerabilities and to test and define antiterrorism response plans and procedures. Request Letter. The antiterrorism training exercises generally last from 1 to 4 days, and participants include federal civilian employees, military members, contractors such as contract installation guards, and host nation first responders such as the police, fire department, local Red Cross, and city officials. *Id.* The role of the host nation participants is to provide a real world response with personnel and equipment deployed and used just as the host nation would in a real terrorist incident. E-mail Response. Ansbach does not exercise control over the host nation participants, and they are free to act on their own and to leave at any time. *Id.* In practice, however, host nation participants do not leave because it would affect the realism of the training exercise. *Id.*

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<sup>1</sup> The Request Letter was originally sent to a Pentagon address and was not forwarded to GAO until October 2008.

<sup>2</sup> Department of Defense Directive 2000.12, *DoD Antiterrorism (AT) Program* (Aug. 18, 2003), available at <http://www.dtic.mil/whs/directives/corres/dir.html> (last visited Jan. 31, 2009).

<sup>3</sup> Department of the Army Regulation 525-13, *Antiterrorism* (Sept. 11, 2008).

## DISCUSSION

### Purchase of Food for Federal Personnel

In general, appropriated funds are not available to provide food to government employees at their official duty stations. B-270199, Aug. 6, 1996. Feeding oneself is a personal expense that a government employee is expected to bear from his or her salary. *Id.* We have generally recognized, however, that food may be provided for employees as a necessary expense under the Government Employees Training Act, which provides that the head of an agency may pay the necessary expenses of training, including the necessary cost of "other services or facilities directly related to the training of the employee," 5 U.S.C. § 4109(a)(2)(F). B-270199, Aug. 6, 1996. Uniformed members of the U.S. Army are similarly covered under the Secretary of the Army's responsibility and authority to conduct training. 10 U.S.C. § 3013(b)(5). Use of appropriations to provide food to civilian employees and military members requires a determination that the provision of food is necessary in order for the employees and military members to obtain the full benefit of the training. B-247966, June 16, 1993.

Here, the purpose of the training is to simulate realistic antiterrorism scenarios, and, for that reason, civilian employees and military members, who will train for prolonged periods of time, are expected to simulate what could actually occur in an antiterrorism response. Request Letter. Simulated exercises, especially those simulating emergency situations, may require nonstop participation through mealtimes. Therefore, we would not object to the Ansbach commander's determination that the provision of food to civilian employees and military members is necessary for them to obtain the full benefit of the training. An antiterrorism response, indeed, could very well require nonstop participation in order to protect life and property, and it is certainly within the commander's discretion to insist that readiness training simulate what could actually occur in an antiterrorism response.

Also, there may be a training benefit to having designated participants actually practice the act of providing food to other participants. We have not objected to the purchase of food for employees working in unanticipated emergency situations involving danger to human life or destruction of federal property. B-272985, Dec. 30, 1996. Although this is a very narrow exception requiring extreme life-threatening emergencies, we can understand that an antiterrorism training exercise might mimic such an emergency and thus, we would not object if the Ansbach commander also determined that training participants to provide food during an emergency was itself a valuable component of the overall training.

### Purchase of Food for Nonfederal Personnel

Neither the Government Employees Training Act nor 10 U.S.C. § 3103(b)(5) applies to nonfederal personnel. In examining the provision of food to nonfederal participants such as contractors and host nation first responders, we must consider whether the purchase of food is essential to the agency accomplishing its authorized training

function. B-310023, Apr. 17, 2008. We examine the facts on a case-by-case basis, making our determination in light of circumstances presented. *Id.* For example, in B-310023 we concluded that providing light refreshments to nonfederal attendees of the Forest Service's National Trails Day events did not contribute materially to the accomplishment of an agency function. The Forest Service stated that the purpose of the Trails Day event was to make people aware of recreational activities in their area and to get them involved in trails and recreation areas with a focus on enjoying the health benefits of being active. The Forest Service did not demonstrate how providing refreshments to attendees contributed to that purpose. Conversely, in B-304718, Nov. 9, 2005, we concluded that the Veterans Benefits Administration (VBA) could use its appropriations to provide refreshments to nonemployee veterans and their families who participate in focus groups. VBA is required by statute to measure and evaluate the effectiveness of its programs, including the delivery of services to veterans and their families. VBA explained that the expenditure of funds for light refreshments and meals served as an effective incentive to obtain information and, given the target population and their availability, providing refreshments was necessary to obtain focus group participation. Accordingly, we did not object to VBA's determination since the expenditures "contribute[d] materially to the effective accomplishment of that function." *Id.* at 5.

We concluded that appropriations were not available for coffee breaks for nonfederal participants in a Coast Guard simulated emergency training exercise. B-247966, June 16, 1993. This decision rested on the lack of express statutory authority for such a purchase but did not discuss whether coffee breaks for the nonfederal participants could be viewed as an official expense, necessary to the agency accomplishing its authorized function. For the reasons discussed below, we will no longer follow the reasoning in our 1993 decision to the extent it conflicts with this decision.


In a post-9/11 and Hurricane Katrina world, we are aware of the importance of federal and local cooperation in responding to emergency situations. Likewise, U.S. Army and host nation cooperation is critical in an antiterrorism response. We, therefore, will not object to Ansbach providing food to nonfederal personnel, so long as the Ansbach commander determines that their participation in the training is essential to accomplishing the required training and to simulating realistic antiterrorism scenarios. For example, we would not object if the commander determined that the provision of food to nonfederal participants allowed federal and nonfederal personnel to train to work in a coordinated fashion without separating for food breaks, as, most likely, they would in an actual antiterrorism response. We also would not object if the commander determined that the provision of food to nonfederal participants allowed the scenario to continue in an uninterrupted fashion, as, most likely, it would in an actual antiterrorism response. Additionally, in order to enhance the simulated nature of the exercise, the commander would want the food to resemble those types of meals and snacks which one would expect to be provided during an actual antiterrorism response. However, if training is of a limited duration or does not involve simulated exercises, nonfederal participants may not be essential and, thus, the use of appropriations to purchase food for nonfederal participants would not be authorized. Where, however, the training of federal civilian employees

and military members and the realism of the simulated exercise depend on the attendance of nonfederal participants such as contractors and host nation first responders, Ansbach may use appropriations to purchase food for nonfederal personnel in the same manner as for federal personnel.

In her request for a decision, the accountable officer noted that it was an “embarrassment” for Ansbach not to provide food to the host nation first responders. Request Letter. This reason is not sufficient justification for using appropriated funds to purchase food for nonfederal personnel. The Ansbach commander should purchase food for nonfederal, as well as federal, participants only where the commander makes the requisite determinations discussed in this decision.

#### CONCLUSION

The U.S. Army Garrison Ansbach may use appropriated funds to purchase food for federal civilian employees and military members where the Ansbach commander determines the food is necessary for the civilian employees and military members to obtain the full benefit of the antiterrorism training exercise. Additionally, Ansbach may use appropriated funds to purchase food for nonfederal participants such as contractors and host nation first responders where the Ansbach commander determines that their attendance is essential to the training of the civilian employees and military members and to ensure the realism of a simulated emergency training exercise.

A handwritten signature in black ink, appearing to read "Gary L. Keplinger". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Gary L. Keplinger  
General Counsel