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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Natural Resources Conservation Service—Use of Appropriated Funds for Contest Entry Fees

File: B-317891

Date: May 26, 2009

DIGEST

The Natural Resources Conservation Service (NRCS) may use appropriated funds to reimburse an employee for fees paid by the employee to enter agency-produced public outreach products in a marketing and communications awards contest if NRCS makes an administrative determination that participation in the contest benefits its mission and any award would be to NRCS.

DECISION

An NRCS certifying officer requests an advance decision under 31 U.S.C. § 3529(a) regarding the use of appropriated funds to reimburse an employee for contest entry fees paid by the employee to enter agency-produced public outreach materials in a marketing and communications award contest. The employee submitted the entries and the contest made awards in the name of the agency. Letter from A. Stefan Fechter, State Administrative Officer, Certifying Officer, NRCS, to Gary L. Kepplinger, General Counsel, GAO, Feb. 16, 2009 (Request Letter). As explained below, NRCS may use appropriated funds to reimburse the employee for contest entry fees if NRCS makes an administrative determination that participation in the contest benefits the agency's mission.

Our practice when issuing decisions is to obtain the views of the relevant agency. 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. NRCS provided relevant factual information in its request letter and submitted a memo of justification from the employee seeking reimbursement.

BACKGROUND

In February 2008, an NRCS public affairs officer entered nine agency-produced public outreach pieces in the Spark Awards contest sponsored by the Spokane Regional MarCom Association. Request Letter. MarCom is a regional organization concerned with promoting the professional development of its membership, which is comprised of marketing and communications professionals.¹ Six of the nine NRCS entries won awards including a “Wonders of Wildlife” campaign brochure,² a news release on the dangers of snowpack, a video presentation, and a radio spot, among others.³ MarCom presented commemorative plaques bearing the agency’s name to NRCS for its winning pieces. Memo from Ron Nichols, Public Affairs Officer, NRCS, to Nancy Burnett, Budget Analyst, NRCS, June 6, 2008 (Nichols Memo).

The Spark Awards recognize public outreach campaigns conducted by area organizations.⁴ Industry professionals evaluate each entry and provide written feedback, such as “engaging, descriptive writing with good facts and quotes to support it . . . headline too long . . . [and] dashes should be used instead of hyphens,”⁵ describing a news release, or “top notch . . . beautiful brochure for the budget . . . nice use of testimonials [but] photo resolution on back too low,”⁶ evaluating a brochure. It is asserted that these critiques may be used by NRCS “to improve the research, planning, execution and evaluation of subsequent NRCS communications products to more effectively reach various publics.” Nichols Memo.

In April 2008 the public affairs officer filed a claim for \$270 for the contest entry fees. Nichols Memo. In its request letter, NRCS states that these requests for reimbursement have been denied in the past but did not provide its reasons for doing so. The certifying officer also expressed concern about whether there was sufficient justification of a direct benefit to NRCS programs to support reimbursement of the entry fees. Request Letter.

¹ Spokane Regional MarCom Association, Our Mission, *available at* www.spokanemarcom.com/about/mission.asp (last visited May 26, 2009).

² NRCS, Washington State, “Wonders of Wildlife,” *available at* www.wa.nrcs.usda.gov/news/Wonders/Wonders.html (last visited May 26, 2009).

³ Spokane Regional MarCom Association, Spark Award Winners, *available at* www.spokanemarcom.com/news.asp?id=99 (last visited May 26, 2009).

⁴ Spokane Regional MarCom Association, Awards, *available at* www.spokanemarcom.com/awards (last visited May 26, 2009).

⁵ Judging Score Form for Divisions 1-5, *Snowpack Could Spell Danger*, 2008 Spark Awards.

⁶ Judging Score Form for Divisions 1-5, *Wonders of Wildlife*, 2008 Spark Awards.

DISCUSSION

As a general matter, an agency may use appropriations to engage in information dissemination and related activity to further its legitimate interest in informing the public about its policies and programs. B-304228, Sept. 30, 2005. In assessing an agency's justification, one important factor is the agency's statutory authority to disseminate information: the more explicit an agency's authority to carry out promotional or informational activities, the stronger its ability to justify its associated outreach activities. B-302504, Mar. 10, 2004. In NRCS's case, it possesses both the specific statutory authority to disseminate information⁷ and the appropriations to carry out that purpose.⁸

Appropriated funds are available for contest entry fees where the award is made to the agency rather than the individual employee, and the agency makes an administrative determination that participation in the contest would benefit the agency's mission. *See* B-172556, Dec. 29, 1971; B-164467, Aug. 9, 1971; B-164467, June 14, 1968. In the present case, an NRCS employee entered NRCS publications in an awards contest that recognizes professional skill and excellence in developing public outreach materials, and employs communications professionals as judges to provide critique and feedback. MarCom awarded plaques in the agency's name, not the individual employee's. The employee asserted that the written critiques may be used to "improve research, planning, execution and evaluation . . . of subsequent NRCS" materials, providing an agency-wide benefit.

In light of NRCS's clear information dissemination mission, we believe that NRCS could make an administrative determination that participation in the contest serves the agency's mission. For example, written feedback from contest judges could serve as an effective management tool for annual evaluation of its outreach programs, or participation could increase actual dissemination of the agency's message. *See* B-164467, Aug. 9, 1971, and B-172556, Dec. 29, 1971.

Because NRCS has denied these requests for reimbursement in the past, it seems unlikely that NRCS has made such an administrative determination. In any event, NRCS still retains the discretion to choose not to reimburse the employee if it finds that the contest entry fees at issue here are not a good use of NRCS funding. That said, we would not object if NRCS made the determination that entry in the contest furthers its mission, is a good use of agency funds, and does not create other concerns, such as a conflict of interest. If NRCS does so, it may wish to consider

⁷ Soil Conservation and Domestic Allotment Act, Pub. L. No. 74-46, 49 Stat. 163 (Apr. 27, 1935), *codified at* 16 U.S.C. § 590a(1) (authorizing NRCS to "publish the result of . . . surveys, investigations, or research, [and] . . . disseminate information").

⁸ Omnibus Appropriations Act, 2009, Pub. L. No. 111-8, div. A, title II, 123 Stat. 524, 538 (Mar. 11, 2009) (appropriating funds for "necessary expenses . . . [including] dissemination of information").

providing internal guidance to employees concerning the availability of its appropriations for contest entry fees. Such guidance could require prior approval for future entry fee expenditures and could set out criteria for approval, such as the nature of the contest, the potential for conflicts of interest, and the benefit to the agency.

A handwritten signature in black ink, appearing to read 'D. Gordon', with a long horizontal flourish extending to the right.

Daniel I. Gordon
Acting General Counsel