

MEMORANDUM FOR

SUBJECT: Request for Legal Opinion

1. Your request, dated 30 November 2000, to the Chief Counsel for a legal opinion has been referred to me for response. This memorandum addresses your concerns regarding the appropriateness of changing the method of financing base operations/support functions (BASEOPS) and other services at TACOM. As you know, one of the identified options is to charge mission accounts for BASEOP services which are provided above the common level of support. It is interesting to note that your organization participated fully in the development of these options. I will attempt to address your concerns seriatim.

- a. Paragraph 3a. of your memorandum states: "It has been proposed to pay the tenant assessments at Rock Island Arsenal and Watervliet Arsenal from mission and customer funds. Currently TACOM finances these support costs with OMA BASEOPS. This method of OMA BASEOPS financing is in accordance with Army Reimbursement Policy as support by AR 37-49, Budgeting, Funding and Reimbursement for Base Operations Support of Army Activities."

AR 37-49 was rescinded in a memorandum issued by the Department of the Army (DA) on 19 May 1995 (Enclosure 1). DA's memorandum was entitled "US Army Base Support Reimbursable Policy". Under the Army Reimbursable Policy, there is no prohibition against using mission/customer funds to pay the base support costs outlined in the TACOM option. Indeed, in a message dated 27 May 1997 (Enclosure 2), DA directed that Army tenants with different appropriations than the host that have received their own independent funding in the past will transfer such funding to the host who will provide a common-level of BASEOPS support. The message then states that the tenant "will reimburse the host for base support services above standard levels." Thus, it seems clear that the Army policy directs Army customers with different appropriations than the host to use their mission funds if they want to purchase BASEOPS above the common level of support.

- b. Paragraph 3b of your memorandum states: "Proposals have also been made to charge other appropriations for other base operations services such as communications, postage, logistics and public works support."

The Legal Office is not aware of any attempt to institute a blanket or percentage assessment for base operations services. As you are aware, the TACOM option only addresses the use of mission/customer funding from tenants/internal organizations for those services **sought by that tenant/internal organization** that are **above the common-level of support provided by the host organization**. Host organizations are still required to provide a common-level of support for themselves and their tenants/internal organizations. Due to unfinanced requirements created by the identified funding shortfall we are facing, TACOM is going to have to reduce (and possibly eliminate) the common level of support. In this case, "(t)enants may then buy back the level of support they deem necessary" on incremental and reimbursable bases. AMC Policy for Base Support and Support Agreement Formulation dated 21 January 1999 (Enclosure 3). TACOM's option is clearly in conformance with Army and AMC policies because only those tenants/internal organizations that seek services above the common-level of support must reimburse the host. TACOM's option does not assess any tenant/internal organization for any services not requested by that tenant/internal organization.

- c. Paragraph 5 of your memorandum states: "I have also been made aware that potential OMA shortfalls exist in the central procurement account for acquisition and legal support. It again has been proposed to pass these shortfalls to customers and corresponding RDTE and PAA appropriations. Accordingly, request your thoughts on this matter as well."

As I said in the last DTV we had on UFRs, Tony Gianfermi and I researched the issue of using other than the OMA central procurement account to fund acquisition positions. We have used other than OMA to fund certain lawyer positions for years. This has been based on an organization's willingness to fund services over and above what would otherwise be the common-level of support. In the case of the RDTE appropriation, for example, we believe that support for this practice is found in DFAS-IN Manual 37-100-XX, Chapter 340. In the case of using other than OMA to fund acquisition positions, Tony and I found no dispositive guidance one way or the other. I think it's appropriate to apply the reimbursable guidance identified above and therefore think that organizations wanting acquisition services over and above the common-level of support can use their mission/customer funds to pay for such services.

1. At no time have I sensed that anyone thinks that the options we've identified are a good idea or the right thing to do. They are the products of truly desperate times. I think what's been identified over and over again is the mission failure that is going to occur if we don't get our shortfalls funded. It is my opinion that the options TACOM has developed are legal. It is also my supreme hope that we don't have to implement any of them.
2. Please feel free to contact me or Mike Walby if you have other questions or need clarification. I can be contacted at DSN 786-5493; bacone@tacom.army.mil. Mike Walby can be reached at DSN 786-8591; walbym@tacom.army.mil. This opinion has been coordinated with Resource Management, TACOM-Warren.

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