AMSRL-CS-CC

SUBJECT: Use of Appropriated Funds for Refrigerators, Microwaves, and Other Miscellaneous Items

Recently, there has been renewed interest in what is almost a perennial topic: may appropriated funds be used to buy microwaves and refrigerators for the use of ARL employees. This office was asked to look into the question, as well as the "purchase of miscellaneous items such as coffee, coffee pots, napkins, plates, utensils…"

The plan of this memo is to lay out the basic fiscal law framework, then see how it has been applied in relevant Comptroller General decisions, and finally to analyze how all of this relates to our situation in ARL

Basic Fiscal Law

Perhaps the most fundamental statute in this area is 31 USC 1301(a): "Appropriations shall be applied only to the objects for which appropriations were made except as otherwise provided by law." In other words, public funds may be used only for the purposes for which they were appropriated. Without this doctrine, Congressional power of the purse would be largely meaningless. Note that violation of this statute may well involve a violation of the Antideficiency Act which may carry criminal penalties.

Generally, one looks to the words of the appropriation to determine those purposes. However, this can be expanded a bit by the "Necessary Expense" doctrine. This may be thought of as a combination of two closely related concepts:

i) An appropriation made for a specific object is available for expenses ***necessarily*** incident to accomplishing that object unless prohibited by law or otherwise provided for.

ii) Appropriations frequently use the term "necessary expenses" to refer to "current or running expenses of a miscellaneous character arising out of and directly related to the agency's work."

There is no clear formula for the application of this doctrine. Instead, determinations are made on a case by case basis. However, there are three tests which must be met.

i) The expenditure must make a director contribution to to carrying out either a specific appropriation or an authorized agency function for which more general appropriations are available.

ii) The expenditure must not be prohibited by law.

iii) The expenditure must ***not*** be otherwise provided for.

We can now take a look at relevant case law. All of the items at issue are in one way or another food-related. It was established as long ago as 1930 that the government has no responsibility to provide eating facilities for its

employees (10 Comp. Gen. 140). However, the Government ***may*** subsidize the operation of an employees' cafeteria if it is administratively determined to be necessary to the efficiency of operations. (B-169141, November 17, 1970) It has even been held allowable for the Government to ***temporarily*** pay for paper napkins for use in a new cafeteria when an agency official determined that improved productivity would result from the use of an on-premises cafeteria (B-204214, January 8, 1982). More recently, the Central Intelligence Agency was allowed to use appropriated funds to equip the workplace with refrigerators once it administratively determined that this was reasonably related to the efficient performance of agency activities, and not just for the personal convenience of the employees (B-276601, June 26, 1997). The Comptroller General noted that CIA headquarters is "somewhat isolated and relatively distant from private eating establishments" Perhaps the crucial point was that this would not be so much for employee morale as to minimize the time employees spent away from the workplace.

The point of these cases is not that there are loopholes in the basic prohibition. The point is that it is the purpose of the expense which controls, not the item purchased. Employee morale or convenience is not a sufficient reason for the expenditure of appropriated funds. Entertainment is not a good reason. Demonstrable benefit to the efficiency or mission of the agency, and lack of other practical alternatives, ***will*** generally constitute sufficient justification.