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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-178574

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June 22, 1973

Lieutenant Colonel J. R. Love, USA
Finance and Accounting Officer
Through Chief, Field Services Office
Finance Center, U. S. Army
Indianapolis, Indiana 76249

Dear Colonel Love:

With letter of October 31, 1972, file FINCY-AL, the Army Finance Center forwarded here several Air Force vouchers in the total amount of $1,159.56 under the provisions of section 8.4 of Title 7, GAO Manual for Guidance of Federal Agencies. Section 8.4(c), relating to goods and services furnished by one agency of the Government to another agency on a reimbursable basis under section 601 of the Economy Act (31 U.S.C. 686) or similar provision of law, provides that--

> Accounts receivable established on the basis of bills to another Government agency should be collected promptly. A disputed interagency bill for goods or services, together with applicable documents and reports, may be submitted by the billing agency to the Claims Division [now Transportation and Claims Division] United States General Accounting Office * * * for settlement.

We will consider the submission as made a request for an advance decision.

Your letter of September 19, 1972 (with attachments) was submitted with the letter of October 31. The papers show that requisitions submitted by various U.S. Military Advisory Group (MILGP) personnel, stationed in Paraguay and Uruguay, specified airlift of commissary goods from the Canal Zone on a space-available basis only; but it appears that some unidentified persons assigned to the U.S. Army Forces Southern Command (USARSO) Commissary erroneously represented to the Military Airlift Command (MAC) Headquarters, Scott Air Force Base, Illinois, the eligibility of three shipments for space-required airlift.

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The limit by local authority for airlift of commissary goods was space-available, but regulations in effect at the time did not provide for space-available airlift. AFR 76-11, para. 31. The record is clear on these points, but the inadvertent nature of their violation encouraged requests of MAC, by the commanders of the various procuring groups involved, for cancellation of the airlift charges. MAC refused, and we believe rightfully so, as also recognized by the U.S. SOUTHCOM Legal Advisor, based on pertinent regulations cited in his memorandum of November 22, 1971. A memorandum from G4 to Chief of Staff SCARGD, dated August 30, 1972, shows that this view is shared by the USARSO Staff Judge Advocate.

You ask whether appropriated funds may be obligated in payment of the approved vouchers which have been prepared by the billing agency. In the event appropriated funds are chargeable, there is a question of whether reimbursement should be sought from the individuals who requisitioned the goods.

Considering the questions in the order presented, we conclude that it would not be improper to charge appropriated funds. Although commissaries are required generally to be operated on a self-sustaining basis, they are appropriated fund activities. See 10 U.S.C. 4621(1). Section 714 of the Department of Defense Appropriation Act, 1972, Public Law 92-204, 85 Stat. 716, 729 (as well as various previous acts), authorizes exclusion of transportation outside the United States from the cost of purchase in the operation of commissary stores. We construed this exclusion in 39 Comp. Gen. 385 (1959) to embrace carriage from one place to another outside of the United States.

The report by the Special Subcommittee on Exchanges and Commissaries of the Committee on Armed Services (H.A.S.C. No. 91-77), House of Rep., 91st Congr., 2d sess., at page 12379, discloses congressional interest in distinguishing commissary costs to be supported by funds collected from patrons, from costs supported by appropriated funds, and refers approvingly to new Armed Services Commissary Store Regulations. Section IV (enclosure 1) of DOD Directive 1330.17, October 29, 1971, adheres to the aforementioned intentions. While the policy set forth in section 714 of the Appropriation Act is reflected in section 4-401, sections 4-403 and 4-405.1 provide that all transportation costs of commissary store supplies and equipment outside the United States are costs not requiring reimbursement from funds collected from commissary store patrons.

But for the absence of local authority to ship commissary goods as space-required cargo, there appears to be no question that appropriated funds are chargeable for the airlift services, and we believe that especially where the violation of local policy is inadvertent, payment from appropriated funds for MAC airlift services is not objectionable.

With reference to identification of the funds chargeable, we refer again to the memorandum of the SOUTHCOM Legal Advisor. In paragraph 2.d. it is stated that the Department of the Army is the Administrative Agency for USCINCSCO areas of responsibility. Paragraph 4-3a. of AR 1-75/OPNAVINST 4900.31C/AFR 400-45, March 23, 1971, states that commissary services, among others, are expenses chargeable to the military functions appropriations of the administrative agent.

Other references point to the same conclusion. Section 686(c) of Title 31, United States Code, provides that orders placed by one agency with another are considered obligations upon appropriations the same as orders or contracts with private contractors. Paragraph 4.A(2) of DOD Directive 7220.6 provides that orders for specific services should be recorded as obligations against the appropriations of the ordering agency.

There is no dispute in the record that USARSO was the responsible administrative agent for the area; that it was the agency that ordered the MAC airlift services; that it was responsible for determining the eligibility of the goods for space-required airlift; and that USARSO commissary personnel committed the manifesting error. Under these circumstances we concur with the opinion of USSOUTHCOM in its letter to USARSO of April 26, 1972, that appropriated funds available to USARSO should be charged with the MAC billings. Under these circumstances we would not object to charging the Army operation and maintenance appropriation cited on the vouchers.

Pecuniary liability for the error commencing the series of events that led to the MAC airlift charges would seem to rest, if anywhere, on USARSO commissary personnel. However, we see no basis for assessing the charges on the commissary officer since his custodial relationship with the Government as an accountable officer relates to property or funds. In the absence of any specific regulations that would impose liability on individuals, there is no general authority for the assessment of charges against employees of the Government for losses sustained by the Government as a result of errors in judgment or neglect. See 26 Comp. Gen. 806,

868 (1947) and 25 Comp. Gen. 299, 301 (1945). Moreover, interagency reimbursement for the cost of services performed by the billing agency pursuant to lawful authority cannot be viewed as a "loss" to the Government in the usual sense of the word.

Accordingly, the vouchers submitted are returned herewith, and if otherwise proper, payment may be made on the basis indicated.

Sincerely yours,

Paul G. Dembling
For the Comptroller General
of the United States

Enclosures