



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

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May 22, 1973

The Honorable William P. Rogers.
The Secretary of State

Dear Mr. Secretary:

This refers to the letter of February 28, 1973, with enclosures, from Mr. Charles N. Brower, Acting Legal Adviser, requesting an advance decision from our Office as to the propriety of paying the legal fees of Mr. John D. Hemenway, a former Foreign Service Officer of the Department of State, under the circumstances related below.

Mr. Hemenway, formerly a Foreign Service Officer, initiated a grievance proceeding on September 26, 1969, under section 1820 of Volume 3 of the Foreign Affairs Manual. A grievance committee was established on October 22, 1969. On September 26, 1972, after lengthy hearings, the committee issued its report recommending, among other things, that Mr. Hemenway be reimbursed legal fees incurred by him in the prosecution of his grievance provided the Department had the necessary legal authority. This was concurred in by the Deputy Secretary of State.

Your acting legal adviser stated in letter of February 28, 1973, that in connection with a previous grievance proceeding where the issue of legal expenses was raised, the office of the legal adviser considered the question of the State Department's authority to pay such expenses. The legal adviser's opinion discussed the provisions of section 1031 of the Foreign Service Act of 1946, 22 U.S.C. 810, and section 4 of Public Law 84-885, as amended. Section 1031 is an exception to the prohibition contained in 5 U.S.C. 3106 against departments other than the Justice Department employing attorneys for the conduct of litigation in which the United States is a party. Section 1031 as codified in 22 U.S.C. 810 provides as follows:

8610. Retention of attorneys by Secretary.

The Secretary may, without regard to sections 49 and 314 of Title 5, authorize a principal officer to procure legal services whenever such services are required for the protection of the interests of the Government or to enable

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an officer or employee of the Service to carry on his work efficiently.

Sections 49 and 314 of Title 5 were repealed and reenacted as 5 U.S.C. 3106.

The legal adviser stated that it was clear from the legislative history that section 1031 was not intended to authorize payment of attorney's fees in the circumstances of grievance proceedings. The legislative history referred to indicates that the primary purpose of that provision was to permit the utilization of attorneys overseas in connection with questions pertaining to local laws.

Section 4 of Public Law 84-885, 70 Stat. 870, provides in part as follows:

The Secretary of State is authorized to--(a) make expenditures, from such amounts as may be specifically appropriated therefor, for unforeseen emergencies arising in the diplomatic and consular service and, to the extent authorized in appropriation Acts, funds expended for such purposes may be accounted for in accordance with section 291 of the Revised Statutes (31 U.S.C. 107) * * *

The purpose of the authorization is explained in H. Report No. 2509, 84th Congress, 2d Session, at page 13, as follows:

Authority for an appropriation to the President for unforeseen emergencies arising in the diplomatic and consular service appears in the Appropriation Act of 1897 (24 Stat. 481). Prior to that time other amounts had been appropriated to be spent on the certificate of the Secretary of State for expenses in connection with the Neutrality Act.

This subsection limits expenditures "from such amounts as may be specifically appropriated therefor" for unforeseen emergencies in the diplomatic and consular service.
* * *

In connection with Public Law 84-885, the legal adviser indicated that it would be difficult to say that payment of attorney fees in a

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grievance proceeding amounts to "infernissan emergencies arising in the diplomatic and consular service."

We concur in the views of the legal adviser as to the statutory provisions which he considered. Moreover, we are not aware of any other authority whereby attorney fees incurred by an employee in a grievance hearing such as here involved may be reimbursed.

Sincerely yours,

For the PAUL G. DEMBLING
 Comptroller General
 of the United States