



Office of the General Counsel

B-271666

April 24, 1996

John P. Carey, Esq.
General Counsel
Federal Emergency Management Agency
Washington, DC 20472

Dear Mr. Carey:

This is in response to your March 28, 1996, letter requesting our opinion on whether it is appropriate for the Federal Emergency Management Agency (FEMA) to reimburse, from the President's Disaster Relief Fund, the hotel costs of 17 federal workers whose services were essential to performing urgent disaster relief efforts pursuant to the Stafford Act.¹

The Director of FEMA, acting for the President, is authorized by statute to coordinate the federal government's disaster relief efforts. See 42 U.S.C. § 5170a (1994). The President has delegated to the Director of FEMA the authority to coordinate emergency management and assistance functions of the federal government. See § 4-203 of Executive Order 12148, July 20, 1979, as amended.² Section 5122 of the Stafford Act defines major disaster as

"any natural catastrophe (including . . . snowstorm . . .) . . . which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under this chapter to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby." 42 U.S.C. § 5122 (1994).

¹Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121 et seq. (1994).

²Exec. Order No. 12148, 3 C.F.R., 1979 Comp., p. 412.

Your letter states that, pursuant to the Stafford Act, the President declared major disasters in the District of Columbia and Maryland on January 11 due to the winter storms. In addition, five more major disaster declarations were imminent in other states as a result of the winter storm which had occurred on January 6 and 7. Another severe storm was predicted to begin later in the day on January 11.

Because of the ongoing and imminent disaster response activity, the Director of FEMA determined that it was essential for FEMA's response efforts to continue through the night of January 11 and into the next day. Therefore, he directed the establishment of an emergency support team (EST) at midday on January 11. The EST served as the federal government's mechanism for coordinating the entire federal response to the severe winter storm which had struck the eastern part of the United States on January 6 and 7 and for the second winter storm which was predicted to begin later on January 11. FEMA identified 30 employees who were available to form an EST.

Thirteen of the 30 EST team members either had four-wheel drive vehicles or lived in the vicinity of underground subway stations and were therefore able to work either the day or the night shift of the EST and still commute to and from their homes. However, 17 of the 30 EST team members were not able to rely on four-wheel drive vehicles or underground subway stations to commute to and from the EST, so they were directed to remain at FEMA's headquarters through the night of January 11 and into January 12 in order to be able to coordinate the federal government's disaster response efforts during this critical period. These 17 EST team members were provided rooms at a hotel in the same building as FEMA headquarters.

You ask whether FEMA may reimburse these 17 federal workers for their hotel costs from the President's Disaster Relief Fund.

As you point out, it is a well-established rule that the government may not pay the subsistence expenses of or furnish free food to civilian employees from appropriated funds without specific authority of law. 53 Comp. Gen. 71 (1973). The rule has been upheld even where unusual circumstances exist. William Perkette, 71 Comp. Gen. 517 (1992). However, reimbursement has been allowed under very limited circumstances. In 53 Comp. Gen. 71, food was provided to federal protective services officers of the General Services Administration who were assembled in readiness to reoccupy a building of the Bureau of Indian Affairs which had been occupied by force. We stated that we would not object to a determination by the agency that the expenses in question were necessary during an extreme emergency involving danger to human life and the destruction of federal property.

Also, in B-193034, July 31, 1979, we permitted reimbursement for meals and lodgings at headquarters by ACTION employees who train VISTA volunteers because the Director, ACTION, had specific statutory authority under the Domestic Volunteer Service Act to train volunteers and to provide them with supervision and support as deemed necessary by the Director. We allowed the subsistence expenses of the employee trainers because, under his statutory authority, the Director had determined that these employees must remain at the training facility overnight to provide supervision and other necessary services incident to the training.

Similarly, the facts of the present case warrant an exception to the general prohibition on payment from appropriated funds of employee's subsistence expenses at headquarters. The President declared a major disaster in the District of Columbia and Maryland. The Director of FEMA, in implementing his authority under the Stafford Act and Executive Order 12148, activated an EST to coordinate the federal government's response to the then-current blizzard conditions and the impending disaster declaration generally along the East Coast. The Director also determined it was essential that the EST operate through the evening of January 11 and into January 12 in order for the EST to function as required. The location of the FEMA headquarters within the presidentially declared disaster area led to a determination that it would be impossible to staff the EST unless those essential disaster workers not having access to four-wheel drive vehicles nor residing near an underground subway station, and therefore unable to travel between work and home, were provided lodging near FEMA headquarters for the night of January 11, 1996.

Under the particular circumstances of a major winter storm disaster with immediate danger to life and property, FEMA could reasonably determine that providing lodging for these 17 EST members was necessary to fulfill disaster relief duties under the specific statutory authority of the Stafford Act and the executive order.

Accordingly, FEMA may reimburse the lodging expenses of the 17 employees.

Sincerely yours,

Robert P. Murphy
General Counsel

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DIGEST

The Director, FEMA, established an emergency support team (EST) to coordinate disaster relief efforts under the Stafford Act, 42 U.S.C. § 5121 et seq. (1994), during the blizzard of 1996 and some team members were unable to travel to and from their homes because of the blizzard conditions. The present case warrants an exception to the general prohibition on payment of employee's subsistence expenses at headquarters from appropriated funds. The presidentially declared major disaster conditions presented immediate danger to human life and to property; the Director, FEMA, was authorized to establish the EST to coordinate relief efforts under the Stafford Act; and he determined it was essential to provide hotel rooms to those team members who were unable to travel to and from their homes. Under the particular circumstances, the Director of FEMA may reimburse the lodging expenses of these 17 EST members as necessary to fulfill his statutory duties in a major disaster involving danger to life and property.