



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: National Security Agency--Availability of Appropriations To Purchase Food as a Nonmonetary Award under the Government Employees Incentive Awards Act.

File: B-271511

Date: March 4, 1997

DIGEST

1. The National Security Agency may use appropriated funds to purchase food or food vouchers for use as a nonmonetary award under the Government Employees Incentive Awards Act (Act), 5 U.S.C. §§ 4501-4506. We have no legal basis to object to the Office of Personnel Management's conclusion that agencies may use meals or food vouchers as informal recognition awards provided that the agency concludes that (1) the contribution being recognized will be properly rewarded by presenting an informal recognition award of nominal value, rather than a cash award, time off award, or an honorary award; and (2) meals or vouchers therefor represent a form of informal recognition award that would not jeopardize the credibility and integrity of the government's incentive awards program.

2. The Act authorizes agencies to "incur necessary expenses for the honorary recognition of employees." 5 U.S.C. § 4503. We have previously interpreted the Act to permit agencies to use operating appropriations to pay for refreshments and meals in connection with agency employee awards ceremonies, if the agency determines that a reception with food would enhance the recognition value of the awards. 65 Comp. Gen. 738, 740 (1986); B-235163.11, February 13, 1996.

DECISION

The Comptroller of the National Security Agency (NSA) asks whether appropriated funds are available to purchase food or food vouchers for use as a nonmonetary award under the Government Employees Incentive Awards Act (Act). NSA further asks that if food or food vouchers may be used as an award, can it also use appropriated funds to provide food at a reception honoring the awardee of the non-monetary award. Given the Office of Personnel Management's (OPM) advice concerning implementation of the Act, we have no basis to object to NSA's use of its appropriations for food or food vouchers of nominal value as informal recognition awards. Further, should NSA determine that a reception with food

would enhance the recognition value of the nonmonetary award, the cost of that food may be considered a "necessary expense" for purposes of the Act.

DISCUSSION

NSA, as part of its proposed revision to its awards program, would like to use food as a nonmonetary award. The NSA submission indicates that it would use food as an award in two ways. The first would consist of meals, e.g., lunches, dinners, banquets, or picnics, and would be provided to the employee(s) at their official duty station or at a local restaurant. The other would be in the form of a voucher, e.g. a gift certificate to a restaurant.

As a general rule, appropriated funds are not available for the costs associated with food because we have always considered meals and other such expenses as personal in nature. 65 Comp. Gen. 16 (1985); 47 Comp. Gen. 657 (1968). Accordingly, except in very limited emergency situations, the decisions of the accounting officers of the government have required congressional authorization before agency appropriations may be used for such expenses. B-223678, June 5, 1989. The Government Employees Incentive Awards Act, 5 U.S.C. §§ 4501-4506, is an often cited example of such authority. The Act authorizes agency heads to

"pay a cash award to, and incur necessary expenses for the honorary recognition of, an employee who by his suggestion, invention, superior accomplishment, or other personal effort contributes to the efficiency, economy, or other improvement of Government operations or achieves a significant reduction in paperwork or who performs a special act or service in the public interest in connection with or related to his official employment."

5 U.S.C. § 4503. The Act specifically authorizes OPM to prescribe regulations and instructions under which agency awards programs will be carried out. 5 U.S.C. § 4506.

In interpreting OPM's prior regulations, this Office has held that agencies have the authority to procure items at nominal cost to be used as honorary nonmonetary awards under the Act. 46 Comp. Gen. 662 (1967) (engraved plastic holder containing employee's credentials); 55 Comp. 346 (1975) (plaques); B-184306, Aug. 27, 1980 (desk medallions); B-243025, May 2, 1991 (\$50 jackets bearing agency insignia); B-257488, Nov. 6, 1995 (mugs and pens). Our decisions have also accepted informal nonmonetary awards as permissible under the Act and OPM's regulations. See 67 Comp. Gen. 349 (1988) (telephones of nominal value) and B-256399, June 27, 1994 (sporting or entertainment event tickets of nominal value).

On December 31, 1993, OPM abolished its Federal Personnel Manual (FPM) to allow agencies greater flexibilities in managing their human resources. With regard to performance awards, OPM issued final regulations on August 23, 1995, to "deregulate performance management and incentive awards." 60 Fed. Reg. 43936. The current regulations define "award" as "something bestowed or action taken to recognize and reward individual or team achievement that contributes to meeting organizational goals or improving the efficiency, effectiveness, and economy of the government or is otherwise in the public interest." 5 C.F.R. § 451.102 (1996). In addition to the "cash" awards explicitly authorized by the Act, OPM regulations permit an agency to grant, in addition to cash, an honorary, or informal recognition award, 5 C.F.R. § 451.104 (1996), but do not specify the form such noncash awards may take. In view of the limited guidance currently available and OPM's statutory authority to prescribe regulations and instructions for agency awards programs, we requested OPM's views on the issue presented by NSA.

In its January 13, 1997, response to us, OPM advised that meals or food vouchers could be used as informal recognition awards.¹ OPM qualified their advice by requiring two agency findings: "(1) the contribution being recognized will be properly rewarded by presenting an informal recognition award, which must be of nominal value, rather than a cash award, time off award, or an honorary award; and (2) 'meals or vouchers therefor' represent a form of informal recognition award that would not jeopardize the credibility and integrity of the Federal Government's incentive awards program." In support of its conclusion, OPM pointed out that, "[o]n its face, purchasing food does not seem inappropriate, especially since food can be provided at recognition events Using a generic definition of ['merchandise' as] 'things bought and sold,' meals could be considered a form of merchandise."

OPM is the agency responsible for establishing the policies and instructions for carrying out the Act. As such, its views are entitled to deference. Nothing in the Act prohibits OPM, or agencies generally with OPM's concurrence, from authorizing

¹Pursuant to its current regulations, OPM has distinguished between honorary nonmonetary awards and informal nonmonetary awards. OPM states that informal awards "are clearly intended to recognize contributions of lesser scope that might otherwise go unrecognized" and "typically have more informal approval procedures and presentation settings." In contrast, OPM states that honorary nonmonetary awards "must meet all of the following criteria: (1) [t]he item must be something that the recipient could reasonably be expected to value, but not something that conveys a sense of monetary value; (2) [t]he item must have a lasting trophy value; (3) [t]he item must clearly symbolize the employer-employee relationship in some fashion; and (4) [t]he item must take an appropriate form to be used in the public sector and to be purchased with public funds."

award programs under which merchandise is used as a form of award. Nor does anything compel treating food differently from other merchandise for purposes of the Act. Accordingly, given the views expressed by OPM, we have no basis to object to NSA's use of its appropriations for food or food vouchers of nominal value as informal recognition awards pursuant to the Act.

NSA additionally asked whether appropriated funds are available for food provided to attendees at a reception honoring the awardee of the food or food voucher. The Act authorizes agencies to "incur necessary expenses for the honorary recognition of employees." 5 U.S.C. § 4503. We have interpreted this language to permit agencies to use operating appropriations to pay for refreshments and meals in connection with agency employee awards ceremonies. 65 Comp. Gen. 738, 740 (1986); B-235163.11, February 13, 1996. Should NSA determine that a reception with food would enhance the recognition value of the nonmonetary award, the cost of that food may be considered a "necessary expense" for purposes of 5 U.S.C. § 4503. Id. Although "a meal" is a nonmonetary award and considered a form of merchandise, it does have unique implications. As OPM points out: "any meal provided as an informal recognition award would have to be separated from any other meals served to guests and colleagues of the award winner to preserve its being considered the award itself." Consistent with OPM's requirement that agencies determine that using food or food vouchers as awards will not run the risk of discrediting the awards program, agencies should exercise good judgment when using food both as an award and to enhance an "award ceremony."

/s/Robert P. Murphy
for Comptroller General
of the United States