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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: National Institutes of Health - Food at Government-Sponsored Conferences

File: B-300826

Date: March 3, 2005

DIGEST

The National Institutes of Health (NIH) may pay for legitimate, reasonable conference costs, including meals and light refreshments, of a formal conference pertaining to Parkinson's disease subject to the conditions outlined herein. A formal conference typically involves topical matters of interest to, and participation of, multiple agencies and/or nongovernmental participants. In addition, other indicators of a formal conference include registration, a published substantive agenda, and scheduled speakers or discussion panels. An agency hosting a formal conference may consider the cost of providing meals and refreshments to conference attendees an allowable conference cost so long as (1) meals and refreshments are incidental to the conference, (2) attendance at the meals and when refreshments are provided is important for the host agency to ensure full participation in essential discussions, lectures, or speeches concerning the purpose of the conference, and (3) the meals and refreshments are part of a formal conference that includes not just the meals and refreshments and discussions, speeches, or other business that may take place when the meals and refreshments are served, but also includes substantial functions occurring separately from when the food is served. The NIH conference here satisfies these three criteria.

Without statutory authority to charge a fee and retain the proceeds, NIH may not charge a registration or other fee to defray the costs of providing meals or light refreshments. An appropriation establishes a maximum authorized program level, and an agency, without specific statutory authority, may not augment its appropriations from sources outside the government.

In applying this decision, NIH should develop an agency policy specifying the types of formal conferences at which NIH may consider providing food. NIH also should develop procedures to ensure that the provision of meals and refreshments meet the criteria listed above. We expect agency counsels, as well as certifying officers, agency auditors, and Inspectors General, to apply these criteria. To the extent that agency officials are uncertain as to the applicability of the criteria in particular circumstances, they may request a decision from this office, pursuant to 31 U.S.C. § 3529, before proceeding.

DECISION

Pursuant to 31 U.S.C. § 3529(a), a certifying officer at the National Institutes of Health (NIH) requested an advance decision regarding the use of appropriated funds to provide meals and light refreshments to federal government and nonfederal attendees and presenters at an NIH-sponsored conference. The certifying officer also asked whether NIH may charge a registration or other fee to defray the costs of any food provided.

NIH may pay for all legitimate, reasonable costs of hosting a formal conference pertaining to Parkinson's disease. A formal conference typically involves topical matters of interest to, and the participation of, multiple agencies and/or nongovernmental participants. In addition, other indicators of a formal conference include registration, a published agenda, and scheduled speakers or discussion panels. An agency may consider the cost of providing meals and refreshments to conference attendees an allowable conference cost so long as (1) meals and refreshments are incidental to the conference, (2) attendance at the meals and when refreshments are provided is important to ensure full participation in essential discussions, lectures, or speeches concerning the purpose of the conference, and (3) the meals and refreshments are part of a formal conference that includes not just the meals and refreshments and discussions, speeches, or other business that may take place when the meals and refreshments are served, but also includes substantial functions occurring separately from when the food is served.

Agencies must have specific statutory authority to charge a fee for their meetings or programs and to retain the proceeds. NIH has no such specific authority and therefore may not charge a registration or other fee to defray the costs of the conference, including providing meals or light refreshments.

BACKGROUND

NIH plans to hold a formal conference on the latest scientific advances in treating Parkinson's disease. NIH has designed the event to be of broad interest to a number of professional disciplines and to advance NIH's research and information sharing efforts. Attendees will include a mix of federal employees and nonfederal individuals. Nonfederal attendees will include grantees, contractors, and research/science advisors. Some of the nonfederal individuals will be presenters

who will receive honoraria, and some will be on invitational travel. NIH will engage a contractor to assist in organizing the conference. The conference will be held at a hotel in Maryland close to NIH headquarters. The cost of food will not be included in the fee NIH is paying for the conference space.¹ NIH would like to charge a fee for meals and light refreshments that it plans to provide at the conference.

NIH asked us if its appropriated funds are available to pay for food for the various attendees and whether NIH has the authority to charge the attendees a fee that could be used to recover the costs of the food.

ANALYSIS

Questions concerning the cost of food at a conference are often raised when an agency wants to know whether it may pay for food for an employee attending a formal conference. In this decision we address the question from a different perspective—that of the agency hosting a conference—and whether, as host, it may use its appropriation to provide food to conference participants. In our analysis we first discuss when an agency may sponsor a formal conference. Then, from the perspective of the agency as host, we analyze whether the agency may provide food, as a conference expense, to participants, and whether appropriated funds may be used to provide food for other federal agency and nonfederal attendees. We also analyze whether agencies must have specific authority to both charge a fee for conference-related expenses, including food, and retain the proceeds.

NIH's authority to host a formal conference

An agency, generally, does not need express statutory authority to host a conference, so long as the agency determines that a formal conference is reasonably and logically related to carrying out its statutory responsibilities and serves its statutory mission. It would not be inappropriate, for example, for an agency that is charged with promoting public health to organize a conference to bring together elected local officials, physicians, public health leaders and practitioners to identify precautions to avoid a possible influenza epidemic. Similarly, it is not inappropriate for NIH to

¹ In a 1999 decision, we concluded that the Nuclear Regulatory Commission (NRC) could pay an all-inclusive facility rental fee for a meeting of NRC employees to discuss internal NRC matters, even though the fee also covered the cost of food. B-281063, Dec. 1, 1999. The facility charged a fixed fee that included conference rooms, refreshments at breaks, lunch, equipment, and other supplies. We concluded that renting the facilities was a reasonable expense of NRC's Environmental Programs and Management appropriation. Because the fee would have remained the same to NRC whether or not it accepted, and its employees ate, the food, the harm that the general rule is meant to prevent (*i.e.*, expenditure of federal funds on personal items) was not present. *Id.*

organize a conference to coordinate and discuss Parkinson's disease research efforts within the scientific community.²

NIH, an agency of the Public Health Service, is composed of 27 institutes and centers that were established "to conduct and support research, training, health information, and other programs with respect to any particular disease or groups of diseases or any other aspects of human health." 42 U.S.C. § 281. Several of its research institutes, as well as a number of universities, medical centers, and pharmaceutical companies, conduct research to understand and find a cure for Parkinson's disease. For the formal conference discussed in this decision, NIH has invited experts from the private sector as well as from other federal agencies, in addition to researchers from its own research institutes. Given NIH's statutory mission "to conduct and support" research, it is well within NIH's discretion, we believe, to organize a formal conference of interested researchers to discuss and coordinate research efforts to encourage efficient and productive research aimed at a common goal—understanding and curing Parkinson's disease.³

Provision of food at an agency hosted formal conference

In hosting a formal conference, an agency incurs a number of expenses, many of which are discretionary but legitimate nonetheless so long as they serve the purposes of the conference. For example, a conference host typically incurs such obvious expenses as the cost of program materials, conference space, signage, the production of a video or other form of presentation, and personnel costs to administer the conference and conference registration. While meals and refreshments have not been obvious costs of government-sponsored conferences, meals or refreshments are not significantly different from these other expenditures and in some circumstances may be considered, like programs, videos, and signage, to be reasonable, legitimate expenses of the conference.

² Because several of NIH's research institutes conduct Parkinson's disease research, Congress has required NIH to coordinate their research efforts. 42 U.S.C. § 284f(b)(1). "Coordination shall include the convening of a research planning conference not less than once every 2 years." 42 U.S.C. § 284f(b)(2).

³ From the perspective of participating or sponsoring federal agencies and their employees, many conferences similar to NIH's proposed conference may qualify as "training" under the broad definition thereof in the Government Employees Training Act, 5 U.S.C. § 4101. Paragraph 4 of section 4101, title 5, United States Code, defines "training" to include "making available to an employee . . . a planned, prepared, and coordinated program . . . of instruction or education, in scientific, professional . . . fields which will improve individual and organizational performance and assist in achieving the agency's mission and performance goals." Although not crucial to our holding, the NIH conference, arguably, falls within this definition.

In determining when meals or refreshments are allowable expenses of an agency hosting a formal conference, we turn to earlier decisions dealing with the cost of food as an employee training expense. As noted earlier, the perspective of these decisions look at when an agency may pay for the costs of meals and refreshments incurred by an agency in providing training to its own employees or to an agency employee attending a conference. The Government Employees Training Act (Training Act), Pub. L. No. 85-507, 72 Stat. 327 (1958), authorizes an agency to pay the necessary expenses incident to an authorized training program. 5 U.S.C. § 4109. We have held that the government can provide meals and light refreshments under this authority if the agency determines that providing the meals and refreshments to federal employees is necessary to achieve the objective of the training program. 48 Comp. Gen. 185 (1968); 39 Comp. Gen. 119 (1959); B-247966, June 16, 1993; B-193955, Sept. 14, 1979. Similarly, the Training Act authorizes agencies to pay “for expenses of attendance at meetings which are concerned with the functions or activities for which the appropriation is made.” 5 U.S.C. § 4110. To be considered “expenses of attendance at meetings” under section 4110, we have held that the costs of meals and refreshments must be included as an incidental and nonseparable portion of a registration or attendance fee—B-288266, Jan. 27, 2003; 64 Comp. Gen. 406 (1985); 38 Comp. Gen. 134 (1958); B-233807, Aug. 27, 1990—or satisfy the following criteria: (1) the meals and refreshments are incidental to the conference or meeting, (2) attendance at the meals and when refreshments are served is important for the employees’ full participation in the conference or meeting, and (3) the meals and refreshments are part of a formal conference or meeting that includes not just the meals and refreshments and discussions, speeches, lectures, or other business that may take place when the meals and refreshments are served, but also includes substantial functions occurring separately from when the food is served. 72 Comp. Gen. 178 (1993); B-233807, Aug. 27, 1990; B-198471, May 1, 1980.

We think similar criteria should apply to determining whether the costs of meals or refreshments are allowable expenses of the agency hosting a formal conference. As the discussion above indicates, we have long permitted agencies, under appropriate circumstances, to cover their employees’ costs of meals when attending formal conferences. 38 Comp. Gen. 134 (1958); B-198471, May 1, 1980; B-154912, Aug. 26, 1964. Further, we have permitted agencies that hold formal in-house training conferences for their employees to cover the cost of meals when necessary to achieve the program or conference objective. 48 Comp. Gen. 185 (1968); 39 Comp. Gen. 119 (1959).⁴ We think the presence of private citizens or federal employees from other agencies who are essential to achieve the program or conference objectives should not change the character of the expense from

⁴ Federal employees who are in travel status, however, are required to reduce their allowances for meals by the amounts specified in the regulations for each meal furnished as part of the event. 41 C.F.R. § 301-74.21.

allowable to unallowable. The fact that the meals and refreshments also are available to private citizens and employees of other agencies should not be an obstacle so long as an administrative determination is made that their attendance is necessary to achieve the conference objectives.

The extension of the availability of appropriated funds to these circumstances should satisfy the criteria discussed earlier. In this regard, to determine whether the costs of meals and refreshments at an agency-hosted conference involving, in addition to its employees, other interested federal employees and private citizens administratively determined necessary to achieve the conference objectives, the criteria are as follows: (1) the meals and refreshments are incidental to the formal conference, (2) attendance at the meals and when refreshments are served is important for the host agency to ensure attendees' full participation in essential discussions, lectures, or speeches concerning the purpose of the formal conference, and (3) the meals and refreshments are part of a formal conference that includes not just the meals and refreshments and discussions, speeches, lectures, or other business that may take place when the meals and refreshments are served, but also includes substantial functions occurring separately from when the food is served.

The level of formality required is the same as what one would expect of a conference sponsored by a nongovernmental entity. *See* 64 Comp. Gen. 604 (1980); B-249795, May 12, 1993. Thus, a formal conference must involve topical matters of interest to, and the participation of, multiple agencies and/or nongovernmental participants. *See* B-249795, May 12, 1993. In addition, a formal conference would include, among other things, registration, a published substantive agenda, and scheduled speakers or discussion panels. Meetings discussing business matters internal to an agency or other topics that have little relevance outside of the agency do not constitute formal conferences. For example, day-long quarterly supervisors meetings discussing general business/management topics, suggestions, issues, and problems of the agency are not formal conferences. 68 Comp. Gen. 606 (1989); B-249749, May 12, 1993.

As NIH explained its conference to us, the conference has the indicia of a formal conference and will meet the three criteria described above. The conference will include a registration process, a published substantive agenda, and scheduled speakers or discussion panels. It is designed to be of broad interest to a number of professional disciplines, and attendees will include a mix of federal employees and nonfederal individuals. The conference will be organized to take full advantage of the participants' and presenters' time and availability and not to accommodate the provision of food. In order to make the best use of the participants' and presenters' time, essential discussions, panels, and speeches will occur at the time the meals and light refreshments are served. Finally, NIH also has scheduled substantive presentations and discussions separately from the time when the food is served.

Accordingly, based on the conference description NIH provided to us, we conclude that NIH may provide food at this formal conference.⁵

The purpose of the criteria we set out is to balance the legitimate benefits that accrue to an agency hosting a conference with the need to ensure that the agency is not expending public funds on a personal expense, food. It is important to note that these criteria necessarily apply on a case-by-case basis. Before implementing this decision, an agency should develop an agency policy specifying the types of formal conferences at which the agency may consider providing food, consistent with the criteria contained in this decision. An agency also should develop procedures to ensure that the provision of meals and refreshments meet the criteria listed above. We expect agency counsels, as well as certifying officers, agency auditors, and Inspectors General, to apply these criteria. To the extent that agency officials are uncertain as to the applicability of the criteria in particular circumstances, they may request a decision from this office, pursuant to 31 U.S.C. § 3529, before proceeding.

Registration fees to cover expenses of formal conferences

If an agency wishes to charge a fee for one of its programs or activities, it must have statutory authority to do so. B-300248, Jan. 15, 2004. In addition, even if an agency has authority to charge a fee, it may not retain and use the amounts collected without statutory authority. *Id.* An appropriation establishes a maximum authorized program level, meaning that an agency, absent statutory authorization, cannot operate beyond the level that can be paid for by its appropriations. *See* 72 Comp. Gen. 164, 165 (1993). An agency may not circumvent these limitations by augmenting its appropriations from sources outside the government, unless Congress has so authorized the agency. *Id.*

In a recent decision we explained that the Independent Offices Appropriation Act, 31 U.S.C. § 9701, known as the user fee statute, provides general authority for an agency to impose a fee if certain conditions are met. *Id.* The user fee statute authorizes an agency to charge recipients of special benefits or services a user fee. 62 Comp. Gen. 262 (1983). Our decisions have not addressed specifically whether

⁵ Because hosting this conference is reasonably related to NIH's statutory responsibilities and serves to advance its statutory mission, NIH is not barred by the prohibition of 31 U.S.C. § 1345 from providing food. Section 1345 prohibits the use of appropriated funds for "travel, transportation, and subsistence expenses for a meeting." Section 1345, however, has limited application, addressing only those conventions and other forms of assemblages or gatherings that private organizations seek to hold at government expense. *See* 72 Comp. Gen. 229, 231 (1993) (effectively overruling prior GAO decisions that applied section 1345 to meetings and conferences other than assemblages and gatherings that private organizations sought to hold at government expense).

the user fee statute authorizes an agency to charge a conference registration or attendance fee, and we need not address that question here. Even if we were to conclude that the user fee statute would permit NIH to charge a registration fee, we are aware of no specific authority that would permit NIH to retain the proceeds. Without such a specific authorization, agencies may not retain or use fees collected under the user fee statute or other laws but must deposit them in the general fund of the Treasury as miscellaneous receipts.⁶ B-300248, Jan. 15, 2004. Nor could NIH authorize its contractor to charge a fee to offset costs because, pursuant to 31 U.S.C. § 3302(b), a contractor receiving money for the government may not retain funds received for the government to pay for the conference costs. B-300248, Jan. 15, 2004.⁷

If a host agency concludes that it cannot use its appropriations to provide food to participants because the conference does not satisfy the criteria we discuss herein, or if the host agency otherwise decides not to provide food (for example, because of budgetary constraints), the participants may cover the costs of their food using their own personal funds.

CONCLUSION

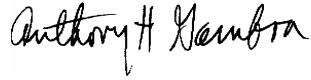
NIH may pay for meals and light refreshments, for all conference participants including federal employees from other agencies and nonfederal participants, at a formal conference pertaining to Parkinson's disease, subject to the conditions outlined herein. However, without statutory authority to charge a fee and credit the proceeds to its appropriation, NIH may not charge a registration or other fee that can then be used to defray the costs of providing meals or light refreshments.

In applying this decision, NIH should develop an agency policy specifying the types of formal conferences at which NIH may provide food. NIH also should develop procedures to ensure that the meals and refreshments meet the criteria above. We expect agency counsels, as well as certifying officers, agency auditors, and

⁶ The "miscellaneous receipts" statute requires an official or agent of the government receiving money for the government from any source, absent statutory authority to the contrary, to deposit the money into the general fund of the Treasury. 31 U.S.C. § 3302(b).

⁷ The only other statute that would have bearing in this situation -- the Economy Act, 31 U.S.C. § 1535, which authorizes an agency to provide goods or services to another agency on a reimbursable basis -- is not applicable in these factual circumstances.

Inspectors General, to apply these criteria. To the extent that agency officials are uncertain as to the applicability of the criteria in particular circumstances, they may request a decision from this office, pursuant to 31 U.S.C. § 3529, before proceeding.

A handwritten signature in black ink, reading "Anthony H. Gamboa". The signature is written in a cursive, slightly stylized font.

Anthony H. Gamboa
General Counsel