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21 June 1955

11824
[Handwritten initials]

MEMORANDUM FOR: Chief, Finance Division ✓
THROUGH : Comptroller
SUBJECT : Allowance of Claims for Operational Luncheons for Agency Personnel

OGC HAS REVIEWED.

1. Your memorandum of 31 May 1955 requests an opinion on the legality of a claim for the expense of an operational luncheon attended solely by persons associated with this Agency.

2. This claim was submitted by a staff employee for reimbursement for the expenses of an operational luncheon attended by himself, one other staff employee, one contract agent and one covert associate. Information received verbally from your office on 15 June indicated that both the contract agent and the covert associate devote substantially full time to the service of this Agency and that they receive annual salaries comparable to those paid staff employees with similar responsibilities. It is assumed that the luncheon was necessary for operational reasons and that therefore if the circumstances comply with the requirements of [redacted] "Reimbursement for Operational Expenditures", the claim should be paid in accordance with the provisions of that regulation.

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3. In paragraph 3b(1) of [redacted] it is provided that:

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"Reimbursement will not be allowed for the expenses of entertaining officers or employees of the U. S. Government exclusively. However, where such persons' presence is necessary or incidental to the procurement of confidential information or special services or for other operational reasons such expenses may be allowed."

Paragraph 3b(2) provides that:

". . . Each CIA employee in a TDY travel status and receiving a per diem allowance who partakes of an entertainment meal shall be required to deduct one-fifth of the authorized per diem rate for the corresponding date on the voucher claiming reimbursement for travel expenses. . . ."

The key question is whether or not the contract agent and covert associate are officers and employees of the U. S. Government within the meaning of this

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regulation, for if they are the claim is for reimbursement for the expenses of entertaining officers or employees of the U. S. Government exclusively and must be disallowed. By definition in CFR 14.9, "A Contract Agent is a person . . . who is not an employee . . ." Similarly in CFR 14.14 it is said of a Covert Associate that, "He does not become an employee of CIA or of the U. S. Government, nor does he acquire any of the benefits, financial or otherwise, resulting from such employment solely by virtue of his association with the Agency". It may be in the cases of the agent and associate in question that they have some of the indicia of employees. The fact that each devotes substantially full time to Agency activities and receives a salary comparable to a staff employee holding similar responsibilities weighs in favor of considering them as employees. However, the Agency has chosen to put them under contracts which provide that they are not employees. This has been done in order that certain advantages may accrue to the Agency, not as an attempt to benefit the agent and associate. The Agency cannot now determine that for some other purposes which will be of advantage to the Agency these individuals are to be considered employees of the U. S. Government. For all purposes they are either employees or they are not. Since the Agency has chosen to enter contracts with them providing that they are not employees of the U. S. Government they must be considered to fall outside of the term "officers and employees of the U. S. Government" for all purposes. Their status cannot be changed as it may happen to be of advantage to the Agency.

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4. It may be that had this situation been considered in the drafting of [redacted] the regulation would have been worded so as to prohibit this type of claim. The fact is that the regulation as it stands does not prohibit the claim. If the intention of the Agency is to broaden the limitations of the regulation so as to limit or bar claims for reimbursement for the expenses of entertaining those associated with the Government other than as officers and employees it must be done by changing the regulation. We cannot read into a regulation a meaning which may have been intended, but which is not stated in the regulation as written.

5. Since two of the persons attending the luncheon were not officers and employees of the U. S. Government the claim for reimbursement is valid. For the same reason the contract agent need not reduce his claim for per diem by one-fifth for the day of the luncheon.

[redacted] 25X1A
Office of General Counsel