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B-173660, Nov 18, 1971

Number: B-173660

Date: 1971-11-18

B-173660, NOV 18, 1971

CIVILIAN EMPLOYEE - REIMBURSEMENT FOR FINE DENIED DECISION DENYING CLAIM OF MR. HENRY V. MURACH FOR REIMBURSEMENT OF $30 POSTED AS BOND IN CONNECTION WITH HIS ARREST FOR SPEEDING WHILE DRIVING A GOVERNMENT VEHICLE IN THE COURSE OF HIS OFFICIAL DUTY ASSIGNMENT. ALTHOUGH THE SPEEDOMETER WAS INACCURATE TO THE EXTENT THAT IT REGISTERED 73 MPH WHEN THE VEHICLE WAS ACTUALLY TRAVELLING 85 MPH, NO LEGAL BASIS EXISTS TO ALLOW REIMBURSEMENT OF FINES AND/OR COLLATERAL IMPOSED UPON A GOVERNMENT EMPLOYEE WHILE IN PERFORMANCE OF, BUT NOT AS A PART OF, HIS OFFICIAL DUTIES.

TO MR. HENRY V. MURACH:

THIS IS IN FURTHER REFERENCE TO YOUR LETTER OF JUNE 29, 1971, REQUESTING RECONSIDERATION OF THE DENIAL, INDICATED IN OUR CLAIMS DIVISION LETTER OF JUNE 18, 1971, OF YOUR CLAIM FOR REIMBURSEMENT OF THE $30 POSTED AS BOND BY YOU IN CONNECTION WITH YOUR ARREST FOR SPEEDING WHILE DRIVING A GOVERNMENT VEHICLE IN THE COURSE OF YOUR OFFICIAL DUTY ASSIGNMENT. YOU ALSO REQUEST ADVICE, IN THE EVENT OUR OFFICE CANNOT ALLOW THE CLAIM, OF FURTHER AVENUES TO PURSUE.

ON DECEMBER 8, 1971, YOU WERE SCHEDULED TO TRAVEL FROM CLEVELAND, OHIO, TO THE DEFENSE CONSTRUCTION SUPPLY CENTER, COLUMBUS, OHIO, AND RETURN. THE RETURN TRIP, DURING WHICH YOU WERE DRIVING A GOVERNMENT VEHICLE, YOU WERE ARRESTED FOR SPEEDING, HAVING BEEN CLOCKED DRIVING AT A CORRECTED SPEED OF 85 MILES PER HOUR. IN ORDER TO BE RELEASED AND TO RETURN TO YOUR DUTY STATION, YOU POSTED BOND OF $30 WHICH APPARENTLY WAS FORFEITED.

YOU STATE THAT WHEN YOU RETURNED TO CLEVELAND, IT WAS ESTABLISHED FROM TESTING THAT THE SPEEDOMETER ON THE GOVERNMENT VEHICLE WAS INACCURATE TO THE EXTENT THAT IT WOULD REGISTER A SPEED OF 73 MILES PER HOUR WHILE THE VEHICLE WAS IN FACT TRAVELING AT A RATE OF 85 MILES PER HOUR. THE CERTIFICATION AS TO THE INACCURACY OF THE SPEEDOMETER WHICH YOU HAVE SUBMITTED IS NOT IN DISPUTE. YOUR REQUEST FOR REIMBURSEMENT IS PREDICATED UPON THIS INACCURACY. YOU STATE THAT SINCE THE GOVERNMENT FURNISHED YOU A VEHICLE, THE SPEEDOMETER OF WHICH WAS IN UNSATISFACTORY CONDITION, THE GOVERNMENT OUGHT PROPERLY TO BEAR THE RESPONSIBILITY FOR THE $30 BOND WHICH WAS REQUIRED TO BE POSTED BY YOU.

AS YOU WERE ADVISED BY OUR CLAIMS DIVISION LETTER, THERE IS NO AUTHORITY FOR THE USE OF APPROPRIATED FUNDS TO REIMBURSE AN EMPLOYEE FOR A FINE OR FORFEITURE OF COLLATERAL IMPOSED UPON HIM FOR AN OFFENSE COMMITTED WHILE IN THE PERFORMANCE OF, BUT NOT AS A PART OF, HIS OFFICIAL DUTIES.

YOU NOW ASSERT THAT AT THE TIME YOU WERE ARRESTED YOU WERE IN FACT IN THE

PERFORMANCE OF YOUR OFFICIAL DUTIES, HAVING BEEN DIRECTED BY YOUR SUPERVISOR TO TRAVEL TO COLUMBUS, OHIO, TO PARTICIPATE IN THE CONDUCTING OF A CLASS GIVEN THERE. YOU WERE ASSIGNED THE USE OF A GOVERNMENT VEHICLE FOR THE PURPOSE OF THIS TRAVEL. YOU CONTEND THAT THE GOVERNMENT WAS AT FAULT IN THE MATTER BECAUSE OF FAILURE TO PROVIDE YOU WITH A SATISFACTORILY EQUIPPED VEHICLE.

THE BASIS FOR YOUR CLAIM IS ESSENTIALLY AN ALLEGATION OF NEGLIGENCE, NAMELY, THAT AS A RESULT OF THE NEGLIGENCE OF THE GOVERNMENT IN FAILING TO PROPERLY MAINTAIN THE VEHICLE WHICH WAS ASSIGNED TO YOU, YOU INCURRED DAMAGES IN THE AMOUNT OF $30. THIS OFFICE IS WITHOUT AUTHORITY EXCEPT AS TO ITS OWN EMPLOYEES TO SETTLE CLAIMS SOUNDING IN TORT, AND THEREFORE THERE IS NO BASIS UPON WHICH YOUR CLAIM MAY BE SETTLED HERE.

THE FEDERAL TORT CLAIMS ACT, 28 U.S.C. 2672, GRANTS TO THE HEAD OF EACH AGENCY OR HIS DESIGNEE THE AUTHORITY TO CONSIDER TORT CLAIMS WITH CERTAIN LIMITATIONS NOT HERE INVOLVED. IF YOU WISH TO PURSUE THE MATTER UNDER THE FEDERAL TORT CLAIMS ACT, IT IS PROPERLY FOR PRESENTING TO YOUR AGENCY.

A COPY OF YOUR JANUARY 28, 1971, LETTER TO THIS OFFICE AND YOUR ORIGINAL EXHIBITS ARE RETURNED.