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B-179057, May 14, 1974

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PURCHASES OF PERSONAL CLOTHING AND TOILETRY ITEMS BY INVESTIGATIVE PERSONNEL WHILE ON A "MOVING" SURVEILLANCE ARE NOT MISCELLANEOUS EXPENDITURES NECESSARILY INCURRED BY A TRAVELER IN CONNECTION WITH OFFICIAL BUSINESS UNDER THE PROVISION OF THE FEDERAL TRAVEL REGULATIONS, FPMR 101-7, PARAGRAPH 1-9-1(D) NOR DO SUCH ITEMS CONSTITUTE SPECIAL CLOTHING AND EQUIPMENT WITHIN THE PROVISIONS OF 5 U.S.C. 7903.

TO BUREAU OF NARCOTICS AND DRUGS:

THIS DECISION INVOLVES THE PROPRIETY OF CERTIFYING FOR PAYMENT THE TRAVEL VOUCHERS OF MESSRS. ROBERT T. JOHNSTONE, GEORGE D. KARST, LEO A. DEFRANCO, AND STEVEN W. CASTEEL, IN THE AMOUNT OF $41.06, $40.56, $10.82 AND $10.82, RESPECTIVELY, FOR EXPENSES WHICH THEY INCURRED WHILE IN A TRAVEL STATUS AS EMPLOYEES OF THE BUREAU OF NARCOTICS AND DANGEROUS DRUGS (BNDD), UNITED STATES DEPARTMENT OF JUSTICE.

THE RECORD SHOWS THAT THE EMPLOYEES WERE SPECIAL AGENTS FOR BNDD AND AS SUCH WERE INVOLVED IN A "MOVING" SURVEILLANCE INITIATED IN CHICAGO, ILLINOIS, ON SEPTEMBER 5, 1972, WHICH TOOK THEM TO STONINGTON, MICHIGAN, WHERE THE INVESTIGATION CONTINUED FOR SEVERAL MORE DAYS ON A STATIONARY BASIS AND RESULTED IN THE ARREST OF TWO SUSPECTED VIOLATORS OF FEDERAL NARCOTICS LAWS.

IT IS PRESUMED THAT THE EMPLOYEES WERE PAID TRANSPORTATION COSTS AND PER DIEM IN LIEU OF SUBSISTENCE WHILE IN A TRAVEL STATUS.

THE TRAVEL VOUCHERS WHICH HAVE BEEN SUBMITTED FOR CERTIFICATION ARE FOR EXPENSES INCURRED OVER AND ABOVE THOSE ALLOWABLE BY THE PERTINENT REGULATIONS AND INVOLVE THE PURCHASE OF CLOTHING SUCH AS TROUSERS, COATS, T-SHIRTS, ETC., AND SOME TOILETRY ITEMS SUCH AS SHAVING CREAM, TOOTH BRUSHES, ETC., WHICH BECAME THE PERSONAL PROPERTY OF THE PURCHASERS.

THE CLAIM FOR REIMBURSEMENT OF THESE ITEMS IS BASED ON NECESSITY WHICH WAS DICTATED BY THE SUDDEN DEPARTURE OF THE AGENTS INVOLVED IN THE SURVEILLANCE AND BY THE NEED FOR PROTECTION AND PERSONAL HYGIENE.

THE USE OF GOVERNMENT FUNDS FOR THE PURCHASE OF WEARING APPAREL AND PERSONAL FURNISHINGS TO BE USED BY EMPLOYEES IN CONNECTION WITH THEIR OFFICIAL DUTIES HAS BEEN THE SUBJECT OF VARIOUS DECISIONS. GENERALLY, THE TEST TO BE APPLIED WITH REFERENCE TO SUCH PURCHASES, IN THE ABSENCE OF SPECIFIC AUTHORITY THEREFOR, IS WHETHER THE EXPENDITURES ARE ESSENTIAL FROM THE STANDPOINT OF CARRYING OUT THE OBJECT OF THE APPROPRIATION INVOLVED, AND WHETHER THE WEARING APPAREL IS SUCH AS

THE EMPLOYEE REASONABLY MIGHT BE EXPECTED TO FURNISH AS A PART OF THE PERSONAL EQUIPMENT NECESSARY FOR HIM TO PERFORM THE REGULAR DUTIES OF HIS POSITION. SEE 3 COMP. GEN. 433 (1924); 32 ID. 229 (1952).

PARAGRAPH 1-9.1(D) OF THE FEDERAL TRAVEL REGULATIONS, FPMR 101-7, PROVIDES THAT MISCELLANEOUS EXPENDITURES WHICH ARE NECESSARILY INCURRED BY A TRAVELER IN CONNECTION WITH OFFICIAL BUSINESS WILL BE ALLOWED. HOWEVER, CLOTHING CONSTITUTING ORDINARY ITEMS OF WEARING APPAREL AND TOILETRY SUCH AS INVOLVED HERE AND RETAINED FOR PERSONAL USE ARE NOT REIMBURSABLE UNDER THAT REGULATION. SEE 35 COMP. GEN. 361 (1955); 45 ID. 272 (1965); COMPARE 48 ID. 48 (1968). ADDITIONALLY, THERE APPEARS TO BE NO BASIS FOR FINDING THAT THE SUBJECT PURCHASES MAY BE CONSIDERED SPECIAL CLOTHING AND EQUIPMENT WITHIN THE PROVISIONS OF 5 U.S.C. 7903. SEE B-173682, SEPTEMBER 27, 1971.

ACCORDINGLY, THE VOUCHERS SUBMITTED BY MESSRS. R. T. JOHNSTONE, G. D. KARST, L. A. DEFRANCO, AND S. W. CASTEEL, MAY NOT BE CERTIFIED FOR PAYMENT.