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B-201183, Feb 1, 1985

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B-201183, FEB 1, 1985

ATTORNEYS - FEES - AGENCY AUTHORITY TO AWARD - CIVIL RIGHTS ACT COMPLAINTS DIGEST: THERE IS NO LEGAL AUTHORITY TO REIMBURSE A FORMER EMPLOYEE OF THE DEPARTMENT OF AGRICULTURE FOR LEGAL FEES INCURRED IN CONNECTION WITH A DISCRIMINATION COMPLAINT IN WHICH HE WAS NAMED AS AN ALLEGED DISCRIMINATING OFFICIAL.

JOHN E. SCHROTE:

WE HAVE BEEN ASKED BY THE DEPARTMENT OF AGRICULTURE /1/ FOR A DECISION ON THE QUESTION OF WHETHER MR. JOHN E. SCHROTE, A FORMER ACTING ASSISTANT SECRETARY FOR ADMINISTRATION, MAY BE REIMBURSED FOR ATTORNEY FEES INCURRED INCIDENT TO AN EMPLOYEE'S FORMAL DISCRIMINATION COMPLAINT IN WHICH HE WAS NAMED AS AN ALLEGED DISCRIMINATING OFFICIAL. THERE IS NO AUTHORITY TO USE APPROPRIATED FUNDS TO REIMBURSE MR. SCHROTE HIS ATTORNEY FEES IN THESE CIRCUMSTANCES.

AN EMPLOYEE OF THE DEPARTMENT OF AGRICULTURE FILED A FORMAL COMPLAINT WITH THE DEPARTMENT UNDER THE CIVIL RIGHTS ACT OF 1964. MR. SCHROTE, WHO WAS NO LONGER EMPLOYED BY THE DEPARTMENT, WAS NAMED AS AN ALLEGED DISCRIMINATING OFFICIAL. AFTER HE WAS CONTACTED BY AN INVESTIGATOR REGARDING THE COMPLAINT, HE ENGAGED PRIVATE COUNSEL. HE NOW SEEKS REIMBURSEMENT OF $376.95 FOR ATTORNEY FEES RELATING TO DEFENSE TO THE COMPLAINT.

WE HAVE STATED THE GENERAL RULE THAT ABSENT EXPRESS AUTHORITY, REIMBURSEMENT OF ATTORNEY FEES MAY NOT BE ALLOWED. JULIAN C. PATTERSON, 61 COMP.GEN. 411 (1982). REGULATIONS OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, WHICH IMPLEMENT TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, AS ADDED BY PUBLIC LAW 92-261, MARCH 24, 1972, 86 STAT. 111 AS AMENDED, 42 U.S.C. SEC. 2000E-16 (1982), LIMIT THE AWARD OF ATTORNEY FEES TO EMPLOYEES OR APPLICANTS FOR EMPLOYMENT WHO PREVAIL ON THEIR DISCRIMINATION COMPLAINTS. SEE 29 C.F.R. SEC. 1613.271(C) (1984). THIS AUTHORITY IS CONSISTENT WITH THE PROVISIONS OF TITLE VII SINCE, UNDER THAT TITLE, THE PROVISION OF THE CIVIL RIGHTS ACT OF 1964 WHICH PERMITS AWARD OF ATTORNEY FEES TO THE PREVAILING PARTY, NOT THE ALLEGED DISCRIMINATING OFFICIAL, IS APPLICABLE TO COMPLAINTS MADE BY FEDERAL EMPLOYEES. SEE 42 U.S.C. SECS. 2000E-5(K) AND 2000E-1BD). ACCORDINGLY, WE HAVE HELD THAT THERE IS NO AUTHORITY TO USE APPROPRIATED FUNDS TO PAY ATTORNEY FEES INCURRED BY AN ALLEGED DISCRIMINATING OFFICIAL. JULIAN C. PATTERSON, 61 COMP.GEN. AT 413, SUPRA.

WE ARE AWARE OF NO MATERIAL CHANGE IN THE LAW OR REGULATIONS SINCE THAT DECISION. SINCE MR. SCHROTE WAS NOT THE COMPLAINT BUT WAS NAMED AS AN ALLEGED DISCRIMINATING OFFICIAL, THE ATTORNEY FEES INCURRED BY HIM IN CONNECTION WITH THE COMPLAINT MAY NOT BE REIMBURSED.

/1/ THE REQUEST WAS MADE BY WILLIAM J. RILEY, JR., DIRECTOR OF PERSONNEL, OFFICE OF THE SECRETARY, DEPARTMENT OF AGRICULTURE.