Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Export-Import Bank

File: B-272254

Date: March 5, 1997

DIGEST

Under 12 U.S.C. § 635(a)(1) (1994), the Export-Import Bank may not charge its customers for travel expenses incurred by the Bank in connection with a customer's transactions, and deposit the receipts to the credit of the Bank's appropriation. Section 635(a)(1) permits the Bank to accept voluntary reimbursements for the travel expenses of its employees from non-federal sources; it does not authorize the Bank to charge fees to cover employees' travel expenses.

DECISION

This is in response to a request for our opinion from the United States Export-Import Bank (Eximbank) concerning its authority to require its customers to pay for travel expenses incurred by Eximbank officers and employees in connection with customer transactions and to deposit the proceeds of such charges to its appropriation for administrative expenses. The Eximbank believes that Congress has provided it with such authority in 12 U.S.C. § 635(a)(1) (1994). As explained more fully below, we disagree. Eximbank's authority to accept reimbursement of travel expenses under 12 U.S.C. § 635(a)(1) does not authorize it to charge customers for its employees' travel costs associated with a customer's transactions.

Background

The Eximbank is a federal corporation created to facilitate export financing of United States goods and services by matching the terms of other governments' export financing and absorbing credit risks that the private sector will not accept. 12 U.S.C. § 635. Export financing includes loans, loan guarantees, export credit insurance and working capital (pre-export) financing such as for pre-export production or development of foreign markets. The Eximbank's goals include providing export financing at rates, terms, and other conditions which are fully competitive with government-supported financing available to foreign exporters in competitor countries and aiding small exporting businesses. The Eximbank receives appropriations to cover the administrative expenses, including travel and transportation expenses, of carrying out its mission.

The Eximbank is authorized to accept reimbursement for travel and subsistence expenses incurred by a director, officer or employee of the Eximbank in accordance with subchapter I of chapter 57 of title 5, United States Code, and to credit amounts received to the appropriation which initially paid for such travel. 12 U.S.C. § 635(a)(1). Eximbank states that it has exercised this authority only when a non-federal source such as a borrower or co-lender invited an Eximbank employee to attend a meeting or similar event and offered to pay the travel expenses for the employee. In order to "improve its efficiency and conserve government funds," the Eximbank proposes to change this policy so that it may charge its customers for travel expenses incurred by Eximbank officers and employees in connection with customer transactions, and deposit the proceeds of such charges to its appropriation for administrative expenses.

As a general proposition, where Congress appropriates funds to an agency to cover its operations, in the absence of some other authority, Congress expects the agency to provide services to carry out its mission using the funds appropriated for that purpose and no other. 2 Principles of Federal Appropriations Law, 6-103 (2d ed. GAO/OGC 1992). The rationale for this principle is that to permit otherwise would allow an agency to augment its appropriations, that is, to spend more than Congress had appropriated for that program, thereby loosening congressional control. Id. In a number of different circumstances, Congress has authorized agencies to charge fees for services or privileges provided, 31 U.S.C. § 9701 (1994); 5 U.S.C. § 552(a)(4)(A) (1994), or, as here, to accept reimbursements from outside sources for expenses incurred, 12 U.S.C. § 635(a)(1) (1994). In either event, the fact that Congress has authorized an agency to charge a fee or to accept reimbursement does not mean that the agency may credit the amounts received to its appropriations. For the very reason stated above, absent statutory authority to the contrary, an agency must deposit fees collected in the Treasury as miscellaneous receipts. 2 Principles of Federal Appropriations Law, 6-126 to 6-129 (2d ed. GAO/OGC 1992). For the same reason, an agency may not credit to its appropriations voluntary payments such as authorized reimbursements, gifts or donations it receives from outside sources, absent statutory authority. 46 Comp. Gen. 689 (1967).

Analysis

The issue here is the scope of Eximbank's authority to charge its customers for travel expenses incurred by its officers and employees in connection with a customer's transaction. The Eximbank relies on the authorities provided by 12 U.S.C. § 635(a)(1). The relevant language states:

> "Subject to regulations which the Bank shall issue pursuant to section 553 of title 5, United States Code, the Bank may impose and collect reasonable fees to cover the costs of conferences and seminars

> sponsored by, and publications provided by, the Bank, and may accept reimbursement for travel and subsistence expenses incurred by a director, officer, or employee of the Bank, in accordance with subchapter I of chapter 57 of title 5, United States Code. Amounts received under the preceding sentence shall be credited to the fund which initially paid for such activities and shall be offset against the expenses of the Bank for such activities."

12 U.S.C. § 635(a)(1) (underscoring added).

The underscored language, which was added by Public Law No. 101-240 § 101(c)(1), 103 Stat. 2492, 2494 (1989), refers to donative or voluntary reimbursements. The legislative history of the provision affirms this conclusion. The accompanying House Report states that "This section authorizes Eximbank's directors, officers, or employees to accept payment or reimbursements for services, travel and subsistence expenses incurred in non-Eximbank sponsored activities if they are directly related to the mission of the agency. The reimbursements would be subject to existing practices that restrict gift acceptances by government employees * * * *." H.R. Rep. No. 101-271, at 23 (1989), reprinted in 1989 U.S.C.C.A.N. 3557, 3561.

Congress thus intended that the Eximbank abide by Executive branch practices with regard to the acceptance of gifts. The amendment to section 635(a)(1) was enacted shortly after enactment of a provision permitting employees in an agency in the Executive branch to accept reimbursement of travel expenses from non-federal entities for attending "any meeting or similar function relating to the official duties of the employee." See 31 U.S.C. § 1353 (1994). The Eximbank's regulations governing gift acceptance are, in concept, consistent with the regulations issued by the General Services Administration implementing 31 U.S.C. § 1353, and further support the view that these reimbursements are voluntary in nature, not mandatory. For example, the Eximbank's regulations, consistent with GSA regulations, prohibit employees from soliciting payment for travel expenses from a non-federal source. Compare 12 C.F.R. § 412.3(b) to 41 C.F.R. § 304-1.2(b).

There is a clear difference between the authority to accept voluntary donations and the authority to charge fees to cover the costs of services provided. 2 Principles of Federal Appropriations Law, p. 6-128 (2d ed. GAO/OGC 1992). This difference is clearly reflected in the statute at issue. The first half of the first sentence of section 635(a)(1) specifically authorizes the Eximbank to impose and collect "reasonable fees to cover the costs of conferences, seminars and publications" it provides. The Eximbank also has statutory authority to impose fees for certain other services it provides. See 12 U.S.C. § 635(b)(1)(B) (credit application fee) and § 635(c)(1) (Eximbank shall charge fees and premiums commensurate with the risks covered in connection with contractual liability that it incurs for loan guarantees and insurance). However, the second half of the first sentence of section 635(a)(1) does

not authorize the Eximbank to impose and collect fees. By its own terms, it does no more than authorize the acceptance of reimbursement for the cost of travel and the crediting of such amounts (like the fees collected) to Eximbank's appropriations. Given the language and structure of the first sentence of section 635(a)(1), had Congress intended to authorize the Eximbank to impose a fee for travel expenses in exchange for some Eximbank service or consideration, we think it would have done so explicitly.

The Eximbank's proposal goes beyond the acceptance of voluntary reimbursements of travel expenses contemplated by section 635(a)(1). Neither the language nor the legislative history of section 635(a)(1) would support an Eximbank requirement that those to whom it provides services must pay for related travel by its employees. We do not believe that the Eximbank may implement this proposal without statutory authority.

/s/Robert P. Murphy
for Comptroller General
of the United States