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Comptroller General
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United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Forest Service—Light Refreshments for National Trails Day

File: B-310023

Date: April 17, 2008

DIGEST

U.S. Forest Service appropriations are not available to provide light refreshments for attendees of National Trails Day events. Appropriations are not available to pay for food unless specifically authorized, or unless the agency can demonstrate that such expenditures are an essential, constituent part of accomplishing an authorized agency function. Neither of these conditions is present in this case. Providing light refreshments to attendees of Trails Day does not contribute materially to the accomplishment of an agency function.

DECISION

The Seward Ranger District of the Chugach National Forest, U.S. Forest Service, requests our decision under 31 U.S.C. § 3529 on whether its appropriations are available to pay for light refreshments for nongovernmental attendees of its National Trails Day (Trails Day) events. Letter from Nancy S. O'Brien, Acting Administrative Officer, Chugach National Forest, to General Counsel, GAO, Aug. 3, 2007 (Request Letter). The Forest Service is an agency of the Department of Agriculture (USDA). As explained below, we conclude that its appropriations are not available for this purpose.

Our practice when rendering decisions is to obtain the views of the relevant agency to establish a factual record and the agency's legal position on the subject matter of the request. GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), *available at* www.gao.gov/legal/resources.html. In this regard, USDA provided its views on the legal issues involved. Letter from L. Benjamin Young, Jr., Assistant General Counsel, USDA, to Thomas H. Armstrong, Assistant General Counsel for Appropriations Law, GAO, *Subject: Forest Service—Light Refreshments for National Trails Day*, Sept. 28, 2007 (Young Letter). The agency also provided additional information regarding this

matter. Letter from Nancy S. O'Brien, Acting Administrative Officer, Chugach National Forest, to Thomas H. Armstrong, Assistant General Counsel for Appropriations Law, GAO, Sept. 25, 2007 (O'Brien Letter).

BACKGROUND

National Trails Day (Trails Day) is an annual national event sponsored by the American Hiking Society (Society), a private nonprofit organization dedicated to preserving and promoting hiking. The Society holds Trails Day to "introduce people to the many enjoyments and benefits of trails." American Hiking Society, *Our Work: National Trails Day*, available at <http://americanhiking.org/NTDGeneralInfoFaq.aspx> (last visited Apr. 11, 2008). The Society provides guidance and publicity for other organizations such as community groups, businesses, and government agencies that hold Trails Day events locally. Executive Order No. 13195, entitled *Trails for America in the 21st Century*, directs federal agencies, to the extent permitted by law, to participate in National Trails Day, coordinating events with the American Hiking Society. Exec. Order No. 13195, *Trails for America in the 21st Century*, 66 Fed. Reg. 7391 (Jan. 18, 2001).

The Seward Ranger District has participated in Trails Day every year since its inception. O'Brien Letter. The District's participation consists of activities it conducts throughout the year—not just on Trails Day. Chugach Forest personnel lead visitors on hikes and serve as guides on walks and instructors for educational activities. Telephone Conversation between Nancy S. O'Brien, Acting Administrative Officer, Chugach National Forest, and Jonathan Barker, Senior Attorney, GAO, Nov. 5, 2007. In the past, attendees brought their own lunches to the event. For future Trails Day events, the District would like to provide snacks for attendees. The agency states that the snacks would be especially appropriate for hiking (including, for example, apples, raisins, dried fruit). Request Letter.

DISCUSSION

In general, an agency may not pay for food because it is a personal expense, and the public's money is not available for personal expenses. B-288266, Jan. 27, 2003; 57 Comp. Gen. 806 (1978). There are exceptions, however; an agency may provide food if it has specific statutory authority, or where it can demonstrate that such expenditures are an essential, constituent part of accomplishing an authorized agency function. *Id.* The Forest Service has not identified any statutory authority to use its appropriations for food in these circumstances. Thus, if funds are available for these snacks, it must be under the second exception.

In considering the second exception, we examine the facts on a case-by-case basis, making our determination in light of circumstances presented. For example, in 57 Comp. Gen. 806 (1978), we concluded that the Administrative Office of the

U.S. Courts (AOUSC) could not use the appropriation for “expenses of jurors” to provide snacks to nonsequestered jurors.¹ AOUSC had argued that providing snacks at government expense would help maintain jurors’ morale and attention during trial. 57 Comp. Gen. at 807. We pointed out that jurors already had access to snack bar facilities via the marshals and that the marshal’s staff could collect money from the jurors to pay for the snacks. *Id.*

We have applied the second exception, however, where the expenditure will contribute materially to the effective accomplishment of a statutory responsibility or authorized function. In B-304718, Nov. 9, 2005, we concluded that the Veterans Benefits Administration (VBA) could use its appropriations to provide refreshments to nonemployee veterans and their families who participate in its focus groups. VBA is required by statute to measure and evaluate the effectiveness of its programs, including the delivery of services to veterans and their families. VBA explained that the expenditure of funds for light refreshments and meals served as an effective incentive to obtain information, and given the target population and their availability, providing refreshments was necessary to obtain focus group participation. Accordingly, we did not object to VBA’s determination since the expenditures “contribute[d] materially to the effective accomplishment of the function.” *Id.*

The determining distinction between these two cases is that VBA demonstrated that the proposed expenditure was integral to the accomplishment of an authorized agency function. AOUSC could not demonstrate that, given the ready alternatives for individual jurors to obtain individual snacks and refreshments, the use of appropriated funds to provide snacks to nonsequestered jurors was otherwise integral to successfully carrying out the jury function.

In the case before us, the Forest Service has not demonstrated how providing refreshments to Trails Day attendees is an essential, constituent part of accomplishing an authorized agency function. The Forest Service receives an appropriation for the “necessary expenses of the Forest Service . . . for management, protection, improvement, and utilization of the National Forest System.” *See, e.g.*, Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, div. F, title I, 121 Stat. 1844, 2129 (Dec. 26, 2007). The agency states that the purpose of the event is to make people “aware of the recreational activities in their area and to get them involved in building, maintaining and enjoying trails and recreation areas with a focus on getting kids and their caregivers outdoors to enjoy the health benefits of being active.” O’Brien Letter. Clearly, the Forest Service appropriation is available for Trails Day activities. Indeed, the activities that Forest Service offers Trails Day attendees are the same as those that it offers routinely the rest of the year. However, the Forest Service can successfully carry out all of the planned activities (*e.g.*,

¹ The U.S. courts do have statutory authority for payment of subsistence expenses for sequestered juries. 28 U.S.C. § 1871.

guided hikes, crafts) without light refreshments, just as it does at other times of the year and just as it has for previous Trails Days. Unlike the VBA case, providing light refreshments is not an essential, constituent part of accomplishing an authorized agency function, any more so than in the AOUSC case.

USDA Office of General Counsel agrees that the Forest Service's appropriation is not available to pay for light refreshments for Trails Day. Young Letter. USDA believes that 31 U.S.C. § 1345 prohibits agencies from paying for refreshments for nongovernmental persons who attend events like Trails Day. Although we agree with USDA's conclusion, we disagree with its reason.² Section 1345 provides, "Except as specifically provided by law, an appropriation may not be used for travel, transportation, and subsistence expenses for a meeting. . . ." Congress enacted the statute in 1935 to prohibit the use of appropriations to underwrite "conventions or other form of assemblage or gathering" that various private organizations were seeking to hold at government expense. *See* 79 Cong. Rec. 709–11 (1935).³ In the 1982 codification of title 31, United States Code, the more generic term "meeting" was substituted for "conventions or other form of assemblage or gathering." Out of context, the word "meeting" suggests a broader coverage than the principal focus of section 1345. When Congress enacted the codification, it specified that provisions that were restated, as section 1345 was, "may not be construed as making a substantive change in the laws replaced." 31 U.S.C. note prec. § 101.

We have held previously that section 1345's application is not as broad as USDA believes. For instance, we held that section 1345 did not apply to the use of Department of Defense (DOD) appropriations to pay the travel and lodging expenses of public school recruiters attending overseas job fairs for teachers at DOD Dependents Schools. 72 Comp. Gen. 229 (1993). *See also* B-300826, Mar. 3, 2005

² In support of its position, USDA cites an Office of Legal Counsel opinion, Memorandum Opinion for the Deputy Secretary, Department of Commerce, *Use of Appropriations to Pay Travel Expenses for an International Trade Administration Fellowship Program*, OLC Opinion, Oct. 7, 2004. OLC applies section 1345 broadly, such that use of appropriations for travel, transportation, and subsistence for nongovernmental employees for any kind of meeting is prohibited. As noted, we read section 1345 more narrowly, consistent with Congress' original intent.

³ The Chairman of the House Committee on Expenditures explained that it would address "the activities of national organizations of all characters that are continually making requests of governmental agencies to advance money for the purpose of paying their transportation, lodging, food and so forth, in order that they may come to Washington in support of or in opposition to legislation pending before Congress, and also matters pending before Congress, and also matters pending before some of our emergency organizations." 79 Cong. Rec. at 709.

(light refreshments and meals at National Institutes of Health conference on Parkinson's disease); 45 Comp. Gen. 476 (1966) (transportation of female guests to provide social and recreational services to Job Corps enrollees). The use of the words "travel, transportation, and subsistence" in section 1345 indicates Congress's desire to curb those costs incident to someone in government travel. Where, as here, no one is in travel status, we need not even reach the question of whether Trails Day is a "meeting" within the meaning of section 1345.

CONCLUSION

Providing light refreshments to Trails Day attendees is not an essential, constituent part of accomplishing an authorized agency function. Accordingly, Forest Service appropriations are not available to pay for light refreshments for nongovernmental attendees of Trails Day events hosted by the Forest Service.

A handwritten signature in black ink, appearing to read "Gary L. Kepplinger". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Gary L. Kepplinger
General Counsel