



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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B-176229

MAY 1 1973

Mr. Frank A. Schorr
Authorized Certifying Officer
Albuquerque Area Office
Bureau of Indian Affairs
U.S. Department of the Interior
P. O. Box 8327
Albuquerque, New Mexico 87108

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Dear Mr. Schorr:

Your letter of October 17, 1972 (your reference: Finance), with enclosure, requests reconsideration of our decision of October 5, 1972, B-176229, to you disallowing payment of a voucher in the amount of \$441.18 in favor of Mr. John Gray, an employee of the Bureau of Indian Affairs, for reimbursement of a judgment, interest thereon, and costs assessed against him, which he believes resulted from actions arising within the scope of his employment and allegedly at the direction of his superior. You believe that Mr. Gray is entitled to reimbursement under the rationale of the so-called Merovka case, wherein the Claims Division of our Office reimbursed certain employees of the Bureau of Sport Fisheries and Wildlife, Department of the Interior, for the amount they were required to pay as a result of a court judgment.

The facts of this case were set forth in detail in our decision of October 5, 1972, supra, and need not be repeated here. Our decision denied reimbursement to Mr. Gray on the basis that the circumstances in his case were clearly distinguishable from the Merovka case. The decision pointed out that the record in the Merovka case disclosed that the liability of the employees involved arose from their actions taken in accordance with the policy of their employing Bureau, the directions of their superiors, and with legal advice of the United States Attorney; that they were required to act in the line of duty; and that they intended faithfully to carry out the law enforcement activity of said Bureau. The decision of October 5, 1972, B-176229, distinguished Mr. Gray's case from the Merovka case as follows:

"The instant case is clearly distinguishable from the Merovka case. In the instant case it appears from the record

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before us that Mr. Gray was attempting to enforce an order of the Governor of the Pueblo of Zuni, who--according to informal advice from a representative of the Department of the Interior-- is an elected tribal official who receives no salary from the Federal Government and who is not a Federal employee. Also we were informally advised that the primary function of a Federal Officer-In-Charge on an Indian Reservation is to sign documents that are required by law to be signed by a Federal official and that a Federal Officer-In-Charge has no police functions. In fact the record indicates that the Zuni Tribe has its own law enforcement officers. We were further advised that a Federal Officer-In-Charge is not subject to the orders of a tribal official. Moreover, we found nothing in the record before us to support the statement of the Acting Assistant Area Director for Administration that Mr. Gray was following the orders of his superior. Further, there is nothing in the record to indicate that Mr. Gray's liability arose from actions taken in accordance with Bureau of Indian Affairs' policy or that he relied on legal advice from Federal officials."

Your letter of October 17, 1972, contends that on the basis of the Memorandum of Agreement between the Bureau of Indian Affairs and the Pueblo of Zuni, the Governor of the Pueblo of Zuni (who had given the order that legal aid attorneys were not allowed in the Tribal Administration Building, which order Mr. Gray allegedly was attempting to enforce when he committed the assault and battery which gave rise to the judgment against him) actually is the superior of Mr. Gray and that, hence, Mr. Gray is entitled to reimbursement. However, the question of whether the Governor of the Pueblo was Mr. Gray's superior, as will be noted from the portion of our decision quoted above, was only one of several points differentiating the instant case from the Norovka case. Even assuming that the Governor is Mr. Gray's superior under said Memorandum of Agreement--which is not here decided--it is apparent that law enforcement is not a part of Mr. Gray's duties and, hence, he was not acting in the line of his duty when he attempted to eject the persons from the building. Also, an order that certain persons are not allowed in the building does not constitute a direction to Mr. Gray to commit assault and battery in an attempt to eject such persons. Moreover, there is still no indication that Mr. Gray acted in accordance with Bureau of Indian Affairs' policy, was attempting to carry out the activities of the Bureau, or that he relied for his actions on legal advice from Federal officials upon whose advice he was entitled to rely. Hence, the circumstances in Mr. Gray's case are still clearly

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distinguishable from the Herovka case and we see no valid reason for reimbursing Mr. Gray. Cf. 31 Comp. Gen. 246; B-52378, July 31, 1946; B-102829, May 8, 1951.

In view of the above, our decision of October 5, 1972, B-176229, denying reimbursement to Mr. Gray for the amount here in question, is sustained.

Sincerely yours,

Paul G. Donblin

Comptroller General
For the of the United States