

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



Legal Counsel Division



MEMORANDUM

TO: Nadine Chandler Wilburn
Chief Counsel
Personnel, Labor, and Employment Division

FROM: Janet M. Robins 
Deputy Attorney General
Legal Counsel Division

DATE: May 22, 2015

SUBJECT: Request for Legal Advice Concerning Whether OAG May Use
Appropriated Funds to Purchase and Distribute OAG T-Shirts
(AL-15-338)

This memorandum responds to your email request of May 21, 2015 for legal advice concerning whether the Office of the Attorney General (“OAG”) may use appropriated funds to: 1) purchase t-shirts or polo shirts with the OAG logo for Community Outreach staff to wear at public events, and 2) distribute these shirts to the general public. The following analysis reflects our assessment of the legal issues your inquiry presents.

QUESTION 1: May OAG purchase t-shirts or polo shirts with the OAG logo for Community Outreach staff to wear at public events?

ANSWER 1: Yes. A reasonable argument can be made that purchasing shirts for this purpose satisfies the “necessary expense” doctrine.

The question of whether OAG may purchase t-shirts or polo shirts with the OAG logo for employees to wear at community outreach events turns on whether the purchase of these shirts can be construed as a “necessary expense”. Principles of federal appropriations law govern the expenditure of District funds,¹ and these principles provide that appropriated funds may only be used for the purposes for which they were appropriated, with the

¹ Section 446 of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 801, D.C. Official Code § 1-204.46 (2006 Repl.), provides that, with limited exceptions relating primarily to the Water and Sewer Authority and borrowed funds, “no amount may be obligated or expended by any officer or employee of the District of Columbia unless such amount has been approved by Act of Congress, and then only according to such Act.” Because District funds are appropriated by Congress, principles of federal appropriations law apply to their expenditure.

purpose determined by the language and (sometimes) the legislative history of the relevant appropriations act. See U.S. Government Accountability Office, Principles of Federal Appropriations Law at 4-6-7, 4-9-13 (Third Edition – Volume I) (January 2004) (Federal Appropriations). Where the purpose of an appropriation is stated generally, an expenditure of appropriated funds will be authorized if it falls within the “necessary expense” doctrine, which requires that the expense be necessarily incident to accomplishing the objective of the appropriation, not otherwise prohibited by law, and not otherwise provided for. *Id.* at 4-19-30.

It is well-established that, in the absence of specific statutory authority, appropriated funds may not be used to provide personal gifts to employees, potential employees, or members of the public. *Id.* at 4-155-59. Ashtrays, key chains, candy, T-shirts, pens, and a variety of other items given away as morale boosters, recruitment devices, awards to employee conference attendees, and public promotional items have all been found to be personal gifts that were not sufficiently related to the achievement of a purpose authorized by the underlying agency appropriation to satisfy the necessary expense doctrine.² Exceptions to this rule have been found where the distribution of the item served a specific agency function, such as where the item distributed had little intrinsic value but conveyed a message to employees that was important in supporting the mission of the organization.³ Thus, if the item provided has little value and the distribution itself serves a legitimate agency function that goes beyond merely benefiting the employee, the agency’s use of appropriated funds to support its distribution may be justified.

Whether the t-shirts or polo shirts that OAG proposes to purchase and provide to staff constitute personal gifts or are necessary to achieve a legitimate agency objective depends on what OAG will accomplish by their distribution. The shirts have more than nominal value, and it would appear that generally giving them away to employees to boost morale or encourage a commitment to the Office would place them in the category of personal gifts. See 70 Comp. Gen. 248 (1991); GAO Decision B-201488 (February 25, 1981).

² See GAO Decision B-247563.3 (1996)(shoelaces, pens, and scissors distributed to potential employees did not serve a valid recruiting function); GAO Decision B-257488 (1995) (appropriated funds could not be used to distribute mugs, pens, and other inexpensive mementos to federal employees attending a conference); 70 Comp. Gen. 248 (1991)(appropriated funds could not be used to award a T-Shirt to employees making donations in the Combined Federal Campaign); 57 Comp. Gen. 385 (1978) (novelty candy conference give-aways were personal gifts); GAO Decision B-192423 (1978) (promotional buttons distributed to the public in support of program were personal gifts); 54 Comp. Gen. 976 (1975)(key chains given away at conference as promotional items were gifts for which agency could not use appropriated funds); 53 Comp Gen. 770 (1973)(promotional ashtrays given to federal employees at inter-agency conference were not a necessary expense).

³ For example, in GAO Decision B-257488 (1995), the Comptroller General found that the Food and Drug Administration could not use appropriated funds to distribute mugs, pens, and other items as “awards” to employees attending a conference, but could use appropriated funds to distribute buttons saying “No Red Tape” to employees to support the agency’s management objective of providing good customer service. Similarly, relying on this decision, GAO itself has distributed mugs printed with its logo and core values to new employees as part of a campaign to inculcate these values in its workforce. See GAO Non-Decision Letter B-287241 (2001)(additional material expressing GAO’s core values, such as post-it notes, letterhead, etc. had previously been distributed to all employees).

Using the shirts to identify staff at public events differs, however, from simply distributing the shirts to OAG staff. The Attorney General is responsible for serving the public interest, and one of OAG's important functions is to protect District residents from fraudulent and predatory practices by unscrupulous individuals and companies. One of the ways that OAG interacts with District residents is by participating in community events where residents can raise issues and employees can inform the public about OAG activities and services on their behalf. Making OAG staff visible and accessible to members of the public at these events is therefore necessarily incident to a legitimate agency function, and providing staff who attend these events with an identifying shirt is a reasonable method for accomplishing this objective.

Appropriated funds can be used to supply t-shirts or polo shirts to OAG staff participating in public events. However, because the permissibility of these purchases is based on its connection with this specific activity, OAG should only purchase the shirts for staff who will be involved in these activities.

QUESTION 2: Can OAG use appropriated funds to purchase t-shirts or polo shirts with the OAG logo for distribution to members of the public at community events?

ANSWER 2: No. Appropriated funds may not be used for personal gifts for employees or the general public without specific statutory authorization.

As discussed in response to Question 1, appropriated funds cannot be used to distribute personal gifts to either employees or the general public without specific statutory authorization. Such authorization would have to be contained in federal law to create an exception to applicable principles of federal appropriations law, and no such statute applies to the District. In addition, the Comptroller General has held at least twice that it is unlawful to use appropriated funds to distribute articles of clothing to members of the public, even where this is done as a recruitment device or to create an *esprit du corps* among volunteers. See GAO Decision B-201488 (February 25, 1981); GAO Decision B-260260 (December 28, 1995). In each case, the Comptroller General found that the items were personal gifts and had no direct connection to the purposes of the appropriation. These and other opinions prohibit OAG's use of appropriated funds in this manner.

QUESTION 3: What can be done to authorize OAG to distribute the shirts to additional staff and members of the public?

ANSWER 3: A federal law would have to be enacted authorizing an exception to the federal prohibition.

As noted above, specific statutory authorization would be needed to support the distribution of t-shirts and polo shirts more generally to staff and members of the public.

I hope these comments are useful to you. If you have any questions about this memorandum, please contact Laurie A. Ensworth, Senior Assistant Attorney General, Legal Counsel Division, at 724-5537, or me at 724-5524.

JMR/lae