



DEPARTMENT OF THE ARMY  
OFFICE OF THE GENERAL COUNSEL  
104 ARMY PENTAGON  
WASHINGTON DC 20310-0104



May 13, 2001

MEMORANDUM FOR DEPUTY ASSISTANT SECRETARY OF THE ARMY  
(FINANCIAL OPERATIONS), 109 ARMY PENTAGON,  
WASHINGTON DC 20310-0109

SUBJECT: Alleged Antideficiency Act Violation Case # 00-06

This office has reviewed your memorandum, dated 10 April 2001, subject as above. Supported by the facts that the commander in question purchased water based upon his perception that the water was non-potable, rather than by an objective testing of the water, as is the requirement, you determined that no violation of the Antideficiency Act occurred. Despite our meeting with you and your staff last year to apprise you of the underlying standards associated with this subject, we lacked an opportunity to review your memorandum before its dispatch. Had we reviewed your memorandum, we would have objected to it. We believe that the investigation indicates that the facts are other than you suggest, yet even those facts that you offer as the basis for your decision are unsympathetic to your conclusion. Based upon our review of the law and whatever of the factual bases you prefer, your memorandum is in error.

Controlling legal authority on this issue is clear and unequivocal. Appropriated funds are unavailable to pay for the personal items of government employees within their official work sites. Bottled water is considered a personal expense item of employees. The Comptroller General has held in numerous decisions that if there is an adequate supply of potable drinking water for agency employees, the purchase of drinking water with appropriated funds by an agency is unauthorized in the absence of a specific statutory provision.

As stated in your memorandum, the exception to the rule, which allows appropriated funds to be used for the purchase of water, is based on the water being found non-potable due to objective testing. You concede in this case that there was no testing to substantiate that the water was non-potable.

Accordingly, based on the facts as stated, the purchase of water with appropriated funds was unauthorized and improper. As you are aware, a violation of 31 U.S.C. 1301(a) leads to a violation of the Antideficiency Act, 31 U.S.C. 1341, unless proper funds were available at the time of the erroneous obligation, proper funds were available continuously from the time of the erroneous obligation, and proper funds were available for the agency to correct the erroneous obligation. Since proper funds were never available for this purpose, an Antideficiency Act violation appears unavoidable in this case.



Although the two subjects of your determination, potable water and the dollar amounts obligated, are insignificant when compared to the greater operations of the Army, the ill effects of your determination are potentially profound and inimical to the interests of the Army. Without question, a determination that a violation of the Antideficiency Act has occurred in a seemingly minor matter seems akin to killing a mouse with a bear trap. Yet, by disregarding the standards that clearly apply, we undermine the values that are traditional to the Army. The law gives us no authority to disregard what we view as trivial. Moreover, such an approach is ultimately destructive because we substitute our notions of what is important for the rule of law that each of us who serves the United States has given an oath to uphold. We await your action.



Matt Reres

Deputy General Counsel  
(Ethics & Fiscal)

Copy Furnished: Under Secretary Defense (Comptroller/Chief Financial Officer)