



DEPARTMENT OF DEFENSE
OFFICE OF GENERAL COUNSEL
1600 DEFENSE PENTAGON
WASHINGTON, DC 20301-1600

24 August 2000

MEMORANDUM FOR DEPUTY ASSISTANT SECRETARY OF DEFENSE
(READINESS, TRAINING & MOBILIZATION)

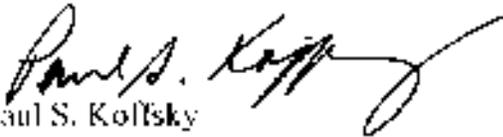
SUBJECT: Use of Innovative Readiness Training Funding

This replies to your memorandum requesting a legal opinion regarding the use of Innovative Readiness Training (IRT) funding to support IRT staff. I have no legal objection to funds that have been made available for support of the IRT program being used for the pay and allowances of IRT program managers and individual IRT project staff. The Deputy General Counsel (Fiscal) concurs with this opinion.

Section 8079 of the FY 2000 Appropriations Act and section 8075 of the FY 2001 Appropriations Act contain the applicable legislation. The two sections use identical language in authorizing the transfer of a certain amount (\$10,000,000 in FY 2000; \$30,000,000 in FY 2001) of appropriations made under the heading "Operation and Maintenance, Defense-Wide" to appropriations for the pay of military personnel. The transferred funds may "be used in support of such personnel in connection with support and services for eligible organizations and activities outside the Department of Defense pursuant to section 2012 of title 10, United States Code."

Use of these funds to support the IRT program is thus contingent upon compliance with the requirements of section 2012. Your memorandum indicates that your process for commands requesting pay and allowance funds requires that they validate and confirm the requisite compliance with section 2012.

Please let me know if you have any further questions. My action officer is Jim Schwenk, 697-9343.


Paul S. Kofsky
Deputy General Counsel
(Personnel & Health Policy)



OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
1500 DEFENSE PENTAGON
WASHINGTON, DC 20301-1500

RESERVE AFFAIRS

27 JUN 2000

MEMORANDUM FOR GENERAL COUNSEL, DEPARTMENT OF DEFENSE
ATTENTION: MR. JIM SMYSER

SUBJECT: Request for Review of Current Policy and Process of Obligating, Expending, and Use of Appropriated Funds for Personnel in Support of the Innovative Readiness Training (IRT) Program as IRT Program Managers and Project Staff Personnel
The Innovative Readiness Training Program, as authorized by section 2012 of title 10, United States Code, authorizes units or members of the armed forces to provide support and services to nondefense organizations. The law also requires that assistance:

- o be incidental to training,
- o not adversely affect the quality of training,
- o not result in a significant increase in the cost of the training,
- o meet valid training requirements and
- o of individual members' be directly related to their specific military specialties.

In addition, each year in the Defense Appropriations Act, there is general provision language that authorizes the Department to reprogram operation and maintenance dollars into reserve pay and allowances in support of the IRT program. The general provision states: "During the current fiscal year, no more than \$10,000,000 of appropriations made in this Act under the heading "Operation and Maintenance, Defense-Wide" may be transferred to appropriations available for the pay of military personnel, to be merged with, and to be available for the same time period as the appropriations to which transferred, to be used in support of such personnel in connection with support and services for eligible organizations and activities outside the Department of Defense pursuant to section 2012 of title 10, United States Code."

Since the inception of the IRT program, the policy of this office has been to approve the use of IRT dollars to fund critical command level program managers, as well as IRT project staff personnel necessary and appropriate in furthering the statutory requirements and goals of the IRT program. During the Government Accounting Office (GAO) audit in February 1998, GAO evaluators required a clarification for the use of IRT pay and allowance dollars in support of Headquarters, Air Force Reserve Command (HQAFRC). In a memorandum dated February 4, 1998, the GAO evaluators were informed that IRT pay and allowances funds were used to support HQAFRC to provide IRT opportunities for Air Force Reservists and to manage FY97 projects that encompassed four states as part of Operation TRANSAM, an IRT project (Atch 1). This policy regarding the use of IRT program funds for personnel expenses necessary to carry out the program or purpose authorized by the appropriations continues to be held.

As a result of the 1998 GAO audit, program procedural changes were issued (Atch 2) to address GAO recommendations to more accurately define responsibilities and authority. This office required justification for all FY00 IRT project submissions requesting IRT pay and

allowance funds for project staff personnel. On February 9, 2000, I received a memorandum from Major General Rees, Vice Chief of the National Guard Bureau, requesting IRT pay and allowance funds for project staff personnel. In his memo he stated that a legal review of the use of active duty for special work soldiers as staff personnel for multi-year IRT projects is appropriate and complies with all applicable laws and regulations (Atch 3). I approved Major General Rees' request to use FY00 IRT funds for IRT project staff personnel supporting Operation Alaskan Road, Task Force Grizzly, and Benedum Airport in accordance with our current policy, his endorsement, his written approval that the staff was receiving training within their Mission Essential Task Listing (METL), and his confirmation that there was no significant increase to the cost of that training.

In a meeting held May 25-26, 2000, with senior leaders involved in the IRT project, Operation Alaskan Road, the Alaskan Command (ALCOM) requested approval to use IRT dollars to fund for five IRT project staff personnel positions to support Operation Alaskan Road from FYOI through completion of the IRT project (Atch 4).

As previously mentioned, our current process for commands requesting pay and allowance funds (regardless of the amount of days a person will participate in the training) requires they validate that the training is within the unit/individual Mission Essential Task Listing, and confirm there are no significant increases in cost of the training.

As explained during the GAO audit, pay and allowance expenditure for personnel is authorized because the personnel are necessary in carrying out an authorized function. I request your legal review on this policy of providing IRT funds to support IRT project staff. I request that you complete the review by July 29, 2000. My point of contact is Colonel Diana Fleek at 703-693-8618.



James E. Andrews
Major General, USAF
Deputy Assistant Secretary of Defense for Reserve Affairs
(Readiness, Training, & Mobilization)