

OpJAGAF 2018/6, 25 July 2018, DOMICILE-TO-DUTY: “PLACE OF EMPLOYMENT”

This is in response to your question whether the entire installation represents a senior commander’s “place of employment” for purposes of the domicile-to-duty (DTD) transportation limitations of 31 U.S.C. §1344 and AFI 24-301, *Vehicle Operations* when that senior leader has ultimate responsibility for the safety and security of a particular installation, lives on that installation, and has been authorized use of a command-and-control vehicle (CACV). For the reasons explained below, we believe the phrase “place of employment” is limited to the building in which that senior leader maintains his or her assigned and primary physical office.

Factual Background

For purposes of this opinion, you have presented the following scenario. Maj Gen [A] resides in senior officer housing on [B] Air Force Base – a base with various operational wings, some falling under Maj Gen [A]’s command, and an “administrative” wing with an O-6 “installation commander” who reports directly to Maj Gen [A]. Both the O-6 Commander and Maj Gen [A] have been authorized use of CACVs. The O-6 Commander’s primary office is located in Building [Y] on the west side of the installation; Maj Gen [A]’s primary office, where he maintains an office and where his staff works, is located in Building [Z] on the east side of the installation. Maj Gen [A]’s residence is closer to Building [Y] and he has been assigned a reserve parking spot both at Building [Y] and [Z]. Building [Z] is 15 miles from Building [Y] and 16 miles from his residence.

The question you ask is whether Maj Gen [A] can park his CACV in his reserved space in front of Building [Y] and then drive or walk to his residence from there rather than leave the CACV parked in his reserved space in front of Building [Z] (where his office is located) and drive home from there. The purpose of leaving his CACV parked nearer his residence in front of Building [Y] is to ensure expedited access to it in case of an emergency on the installation to which it would be appropriate for him to personally respond (e.g. the Command Post in Building [Y]) or to get to his secure communication capability in Building [Z]. Because of the layout of [B] Air Force Base, and ongoing construction projects, traveling from his residence to his primary office in Building [Z] can take Maj Gen [A] extended periods of time; during an emergency, travel by personal vehicle is difficult at best. During the duty day, Maj Gen [A]’s duty responsibilities take him to locations throughout the installation, to include repeated visits to offices in Building [Y].

Standards

Government motor vehicles [GMVs] are for official use only and driving them from home to work is not considered “official use.” Circumventing this restriction by using a GMV for part of the route from home to work or parking a GMV closer to a residence to facilitate partial DTD transportation is likewise not deemed “official use.”

More specifically, use of government vehicles for transportation between a person’s residence and place of employment (DTD or home-to-work transportation) is governed by 31 U.S.C. §1344. The

statute severely restricts who may be authorized DTD transportation and when heads of agency can issue such authorizations. Only certain positions are statutorily authorized such transportation.¹ However, the head of an agency may authorize DTD transportation for a non-listed person after making a determination “that highly unusual circumstances present [1] a clear and present danger, [2] that an emergency exists, or [3] that other compelling operational considerations make such transportation essential to the conduct of official business.”² A member’s comfort and/or convenience is not sufficient justification for authorizing DTD transportation.³

DoDM 4500.36, *Acquisition, Management, and Use of DoD Non-Tactical Vehicles*, 7 July 2015, and AFI 24-301_AFGM2017-1, *Vehicle Operations*, 11 May 17, primarily implement 31 U.S.C. §1344 for GMV use by Air Force personnel. “DoD [GMVs] will not be authorized for transporting DoD or other personnel over all or any part of the route between their domicile and places of employment”⁴ Additionally, GMVs are not to be parked “at any location that facilitates partial domicile-to-duty transportation.”⁵ The use of GMV is “restricted to official purposes only” and operators of GMVs have a concurrent duty to use them “for official use only.”⁶ When questions arise about the official use of a [GMV], they will be resolved in favor of strict compliance.”⁷

In the Air Force, only the Secretary of the Air Force (SecAF) and Chief of Staff of the Air Force are authorized DTD transportation under 31 U.S.C. §1344.⁸ SecAF is “head of agency” for the Air Force and holds the non-delegable power to authorize DTD transportation for the three bases detailed in §1344--clear and present danger; emergency, and other compelling operational considerations (this last basis is defined as those “circumstances with an element of importance which are essential to the successful accomplishment of the Air Force mission or are necessary for the Air Force’s efficient operation”).⁹ Even then, approval is limited to 15 days, with a process to extend for two 90-day periods if the initial justification persists.¹⁰ That authorization must be in writing.¹¹

¹ 31 U.S.C. §1344(b)(1)-(8).

² 31 U.S.C. § 1344(b)(9); 42 CFR 102-5.30 defines each of these terms.

³ 31 U.S.C. § 1344(e)(1); *see also* AFI 24-301, para 3.1.3. (“GMVs will not be provided solely or principally to enhance the comfort or convenience of the member(s).”), para 3.1.4. (“Transportation by a GMV shall not be provided when the justification is based on reasons of rank, position, prestige or personal convenience.”), para 3.36 (“Vehicle and vehicle support will not be based solely on grade, prestige or personal convenience.”), and para 4.4.2. (“The comfort and convenience of an official will not be considered justification for the approval of DTD transportation.”)

⁴ DoDM 4500.36, Enc; 5, para 2; AFI 24-301, para 3.1.5.

⁵ AFI 24-301, para 3.41.1.

⁶ DoDM 4500.36, Enc; 5, para 1.a and 1.a.(8)(c)(1); AFI 24-301, para 3.1.

⁷ DoDM 4500.36, Enc; 5, para 1.a(2); AFI 24-301, para 24-301, para 3.1.6. (“When questions arise about the official use of a GMV, they will be resolved in favor of strict compliance with statutory provisions and this guidance.”).

⁸ 31 U.S.C. §1344(b)(5); AFI 24-301, para 4.1.

⁹ AFI 24-301, para 4.2.1. and 4.3. Requests for DTD transportation must contain “a compelling operational narrative description of the type of work being performed;” “a comprehensive description of the requestors DTD transportation internal or external DTD transportation controls,” and information demonstrating that “compelling operational considerations” render DTD transportation “essential for the conduct of official business.” DoDM 4500.36, ¶2.c.5(f).

¹⁰ AFI 24-301, para 4.3.3.

¹¹ AFI 24-301, para 4.3.

Analysis

The argument is that Maj Gen [A]’s “place of employment” in essence is the entire “working” portion of the installation, to include Building [Y]. As he is always on duty, and may be required to respond to an after-hours official event, parking his CACV/GMV at an “official” duty location is parking it at his “place of employment.”

The legal authorities, however, do not support this always-on-duty-on-the-installation argument. Maj Gen [A]’s primary/physical office is located in Building [Z]. Currently, his custom and practice has been to drive from his residence to Building [Z] in his personal vehicle to start the duty day, and then reverse the process at the end of the duty day. Though during the duty day there are times Maj Gen [A] departs Building [Z] for official (in his CACV) and unofficial (in his personal vehicle) purposes either on or off the installation, he always returns there to conduct his primary business. His staff works in a suite of offices in Building [Z], his mailing address for professional correspondence is Building [Z], his primary telephone number listed in various personnel accounting systems and the Global Address List rings into his office in Building [Z]. Thus, as a matter of custom and practice, Maj Gen [A] treats Building [Z] as his “place of employment.”

Second, when attending to personal errands or personal business on the installation, Maj Gen [A] is not conducting “official business” even though he is on the installation and such trips take place during the duty day. Thus, there would have to be exceptions to the always-on-duty-on-the-installation argument (*e.g.*, AFI 24-301, Sections 3E and 3K for mere attendance at events and ceremonies and conducting personal business). DTD generally is another such limitation that is expressly detailed at various points in AFI 24-301.¹² More than that, even though Maj Gen [A] is authorized use of a CACV, which essentially is a mobile command post,¹³ Maj Gen [A] still has to comply with the DTD requirements like any authorized user of any other CACV. As there are locations on the installation that Maj Gen [A] would not be authorized to drive his CACV (*e.g.*, personal errands to shopping area), it makes little sense to suggest the entire installation is his “place of employment.”

Third, the natural extension of the always-on-duty-on-the-installation argument is that Maj Gen [A] would be authorized to drive his CACV as soon as he stepped out of the door of his residence on the installation; that he could park his CACV in front of his residence and still be in compliance with the DTD rules. In fact, the argument would apply equally to a senior commander who lived off of “his” installation or if Maj Gen [A] himself lived off the installation--they are still “in charge” wherever they are and “on duty” as soon as they step into their CACV, wherever it is parked, even in front of their home off the installation. This would be an absurd reading of the DTD restrictions, one without question contrary to the law, but a reading that is inherent in this always-on-duty-on-the-installation argument. In construing statutory and administrative schemes, one of the fundamental tenets of interpretation is to avoid interpretations that lead to absurd results.¹⁴

¹² See AFI 24-301, Chapter 4.

¹³ A CACV is a “[r]adio telecommunications-equipped, emergency configured non-tactical GMVs ... provided on a 24-hour-a-day basis ...” AFI 24-301, para 3.12.

¹⁴ *United States v. Turkette*, 452 U.S. 576, 580 (1981).

Fourth, though the always-on-duty-on-the-installation argument could find some support in the definition of “place of employment” under the AFI, that support evaporates on closer look. The definition under the AFI is broad:

Any place within the accepted commuting area where the person performs his/her business, trade, or occupation, even if the person is there only a short period of time. The term includes, but is not limited to, an official duty station, home base, headquarters or any place where the person is assigned to work including locations where meetings, conferences and other official functions take place (see 41 CFR 101-6.400[f]).¹⁵

The CFR definition is more specific: “*Work* means any place within the accepted commuting area, as determined by the Federal agency for the locality involved, where an employee performs his/her official duties.”¹⁶ But to read these definitions of “place of employment” in this situation that broadly is to suggest that Maj Gen [A] has no domicile because the location of his domicile is part of his “place of employment.” But the AFI defines domicile as “[a] place of residence, regardless of where located”¹⁷ Another fundamental tenet of construction requires construing statutory and administrative schemes as a whole, and reading sections together so that no part is rendered meaningless if it can be harmonized with the remainder.¹⁸ To do that here, the location of Maj Gen [A]’s domicile and place of employment must be different. Here, his “domicile” is his residence on the west side of the installation and his “place of employment” is Building [Z] on the east side of the installation.

And fifth, and most importantly, to the extent that there is actually some ambiguity in what “place of employment” means, AFI 24-301, para 3.1.6. makes clear that such questions “will be resolved in favor of strict compliance with statutory provisions and this guidance,” and recommends referring such questions to the Vehicle Operations Element of LRS and the servicing legal office. Strictly construed, Maj Gen [A]’s “place of employment” (to which he travels from his domicile on a day-to-day basis) is Building [Z] on the east side of the installation.

Conclusion

For purposes of 31 U.S.C. §1344 and AFI 24-301, a member’s “place of employment” is limited to the building in which that member maintains his or her assigned and primary physical office. While that determination is a factual one that usually should be straightforward, in close cases the phrase “place of residence” should be strictly construed and in actuality or by perception should not be deemed a location that simply is more convenient for the member or which facilitates partial DTD transportation.

¹⁵ AFI 24-301, Atch 1 (Terms).

¹⁶ 42 CFR §102-5.30. In 2011, 41 CFR §101-6.400 was replaced by the Financial Management Regulation, 42 CFR, Part 102-5 (*Home-To-Work Transportation*). The new reference for 41 CFR §101-6.400(f) is 42 CFR 102 Part 5.

¹⁷ AFI 24-301, Atch 1 (Terms).

¹⁸ *Richards v. United States*, 369 U.S. 1, 11 (1962).

If Maj Gen [A] believes mission requirements demand creation of this parking scheme, then the request should be submitted to SecAF as head of agency for approval pursuant to AFI 24-301, para 4.2.1. and 4.3, and should describe the “circumstances with an element of importance which are essential to the successful accomplishment of the Air Force mission or are necessary for the Air Force’s efficient operation.” Maj Gen [A] should not use this parking scheme until SecAF has approved it in writing.

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