**DEPARTMENT OF THE AIR FORCE**
**HEADQUARTERS UNITED STATES AIR FORCE**
**WASHINGTON, DC**

02 Dec 1996

MEMORANDUM FOR AF/SGJ

FROM: AF/JAG

SUBJECT: Use of Appropriated Funds in Support of the Air Force Health and Wellness Centers (HAWCs)

This is in response to your request for our opinion on whether or not appropriated funds may be used to purchase "incentive items" in support of Air Force HAWCs. The goal of HAWCs is to integrate wellness education programs, encourage self-improvement behaviors and enhance the readiness of the active duty population. You plan to purchase incentive items (*e.g.*, mugs, t-shirts, and water bottles) to provide a motivational pathway for lifestyle change. For the reasons discussed below, we believe if proper justification exists, appropriated funds may properly be used to purchase these items.

Pursuant to 31 U.S.C. 1301(a), appropriated funds may be used only for authorized purposes. However, under the "necessary expense rule," Congress does not have to specify every item or expenditure in an appropriation act. Instead, "an expenditure is permissible if it is reasonably necessary in carrying out an authorized function or will contribute materially to the effective accomplishment of that function..." *Internal Revenue Serv. Fed. Credit Union--Provision of Automatic Teller Machine,* 66 Comp. Gen. 356 (1987). The determination that a particular expense is necessary for an authorized purpose is, in the first instance, a matter of agency discretion. *Matter of: Cash Prize Drawing by National Oceanic and Atmospheric Administration,* 70 Comp. Gen. 720 (1991). Accordingly, when the Comptroller General considers whether an expense is necessary, they determine whether it falls within the agency's legitimate range of discretion, or whether its relationship to an authorized purpose or function is so attenuated as to take it beyond that range. *Id.*

Pursuant to 10 U.S.C. 8013(c)(2), the Secretary of the Air Force (SecAF) is responsible to the Secretary of Defense for "the formulation of policies and programs by the Department of the Air Force that are fully consistent with...policies established by...the Department of Defense." Department of Defense Directive (DoDD) 1010.10 establishes a health promotion policy within the DoD to improve and maintain military readiness and the quality of life of DoD personnel and other beneficiaries. The directive further requires the SecAF to (a) develop a comprehensive health promotion program; and, (b) establish and operate an integrated, coordinated and comprehensive health promotion program as prescribed by the DoDD. See DoDD 1010.10, paragraph E.4. Air Force implementation of DoD's guidance is contained in Air Force Policy Directive 40-1, Health Promotion, and Air Force Instruction (AFI) 40-101, *Health Promotion Programs.*

Under the "necessary expense rule" set out above, any expense which is reasonably necessary to accomplish and implement DoD's policy on health promotion would constitute a permissible expendi-ture of appropriated funds. Although the necessary expense rule may justify expenses which are

not specifically provided for, it does not support expenditures that are prohibited by a provision of law or legal principle. *Matter of: Cash Prize...,supra.* Such expenditures do not fall within the agency's legitimate range of discretion. *Matter of: IRS Purchase of T-Shirts,* 70 Comp. Gen. 248 (1991). Consequently, the Comptroller General has consistently held that agencies may not use appropriated funds to purchase "personal gifts." *See, e.g.,* 57 Comp. Gen. 385 (1978); 54 Comp. Gen. 976 (1975). A particular item will be characterized as a personal gift if there is no connection between the item at issue and the purpose of the appropriation to be charged. *See, e.g.,* B-0201488, Feb 25, 1981.

According to SGPO's staff summary sheet of 16 September 1996, the goal of the HAWC is to integrate wellness education programs, encourage self-improvement behaviors, and ultimately enhance the readiness of the active duty population. These goals appear to fall within the broad policy guidance contained in the provisions of DoDD 1010.10. SGOP believes that incentives would enhance the value of the HAWC programs. If adequate justification exists under the necessary expense rule to support a conclusion that the proposed expenditures for "incentive items" are reasonably necessary to implement DoD's health promotion policy, then we would have no legal objection to the use of appropriated funds to purchase these items. However, our opinion in no way implies that any and all expenditures made in the name of the HAWCs are permissible in every case. Instead, each expenditure must be examined on a case-by-case basis to ensure that adequate justification exists to authorize the use of appropriated funds.

We note that AFI 65-601, *Budget Guidance and Procedures,* paragraph 4.29.3.1, provides guidance on the use of appropriated funds to purchase promotional or incentive gifts and awards. We believe our opinion is consistent with this guidance.

In your request for our opinion, you also recommend that AFI 65-601 be amended to (a) include HAWCs in paragraph 4.29.3.2 which contains a list of Air Force programs which are specifically exempted from certain restrictions associated with promotional or incentive gifts and awards; and, (b) include a provision concerning healthy cooking demonstrations into paragraph 4.28.1. Because your proposals represent matters of policy, and not law, we have no legal objection to the amendments.

Our point of contact is Major Thomas Hasty, DSN 224-4075.

/signed/
HARLAN G. WILDER
Chief, General Law Division
Office of The Judge Advocate General