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B-163375, Oct 22, 1971, 51 Comp Gen 224

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BOARDS, COMMITTEES, AND COMMISSION - COMPENSATION - AGGREGATE LIMITATION THE MEMBERS OF THE NATIONAL ADVISORY COMMITTEE ESTABLISHED BY SECTION 7(A) OF THE OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970, WHICH PROVIDES FOR MEMBERS TO BE COMPENSATED IN ACCORDANCE WITH 5 U.S.C. 3109, MAY NOT BE PAID SALARIES IN EXCESS OF THE RATES PRESCRIBED FOR GRADE GS-15 SINCE SECTION 3109 LIMITS PAYMENT TO EXPERTS AND CONSULTANTS TO THE PER DIEM EQUIVALENT OF THE HIGHEST RATE PAYABLE UNDER THE GENERAL SCHEDULE SALARY RATES ESTABLISHED FOR FEDERAL EMPLOYEES. THE EXPERTS AND CONSULTANTS OF THE ADVISORY COMMITTEES, APPOINTED UNDER SECTION 7(B) TO ASSIST IN STANDARD SETTING FUNCTIONS, FOR WHOM SECTION 7(C)(2) PRESCRIBES GRADE GS- 18, MAY NOT BE PAID IN EXCESS OF GRADE GS-15, UNLESS THEY CAN QUALIFY UNDER THE RULE IN 43 COMP. GEN. 509, TO THE EFFECT THAT AN EXCEPTION TO THE GRADE GS-15 LIMITATION MAY BE MADE ONLY WHEN THE LIMITATION ON THE NUMBER OF POSITIONS AUTHORIZED FOR GRADE GS 18 IS REMOVED.

TO THE SECRETARY OF LABOR, OCTOBER 22, 1971:

THIS REFERS TO LETTER OF SEPTEMBER 1, 1971, FROM THE ASSISTANT SECRETARY OF LABOR, REQUESTING A DECISION FROM OUR OFFICE AS TO THE LEVEL OF COMPENSATION FOR MEMBERS OF THE NATIONAL ADVISORY COMMITTEE ON OCCUPATIONAL SAFETY AND HEALTH.

THE OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970, PUBLIC LAW 91-596, 84 STAT. 1590, ENACTED DECEMBER 29, 1970, 29 U.S.C. 656, PROVIDES IN PERTINENT PART AS FOLLOWS:

SEC.7.(A)(1) THERE IS HEREBY ESTABLISHED A NATIONAL ADVISORY COMMITTEE ON OCCUPATIONAL SAFETY AND HEALTH CONSISTING OF TWELVE MEMBERS APPOINTED BY THE SECRETARY, FOUR OF WHOM ARE TO BE DESIGNATED BY THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE, WITHOUT REGARD TO THE PROVISIONS OF TITLE 5, UNITED STATES CODE, GOVERNING APPOINTMENTS IN THE COMPETITIVE SERVICE, AND COMPOSED OF REPRESENTATIVES OF MANAGEMENT, LABOR, OCCUPATIONAL SAFETY AND OCCUPATIONAL HEALTH PROFESSIONS, AND OF THE PUBLIC. THE SECRETARY SHALL DESIGNATE ONE OF THE PUBLIC MEMBERS AS CHAIRMAN. THE MEMBERS SHALL BE SELECTED UPON THE BASIS OF THEIR EXPERIENCE AND COMPETENCE IN THE FILED OF OCCUPATIONAL SAFETY AND HEALTH.

(3) THE MEMBERS OF THE COMMITTEE SHALL BE COMPENSATED IN ACCORDANCE WITH THE PROVISIONS OF SECTION 3109 OF TITLE 5, UNITED STATES CODE.

(B) AN ADVISORY COMMITTEE MAY BE APPOINTED BY THE SECRETARY TO ASSIST HIM IN HIS STANDARD-SETTING FUNCTIONS *** PERSONS APPOINTED TO ADVISORY COMMITTEES FROM PRIVATE LIFE SHALL BE COMPENSATED IN THE SAME MANNER AS CONSULTANTS OR EXPERTS UNDER SECTION 3109 OF TITLE 5, UNITED STATES CODE.

(C) IN CARRYING OUT HIS RESPONSIBILITIES UNDER THIS ACT, THE SECRETARY IS AUTHORIZED TO -

(2) EMPLOY EXPERTS AND CONSULTANTS OR ORGANIZATIONS THEREOF AS AUTHORIZED BY SECTION 3109 OF TITLE 5, U.S.C. EXCEPT THAT CONTRACTS FOR SUCH EMPLOYMENT MAY BE RENEWED ANNUALLY; COMPENSATE INDIVIDUALS SO EMPLOYED AT RATES NOT IN EXCESS OF THE RATE SPECIFIED AT THE TIME OF SERVICE FOR GRADE GS-18 UNDER SECTION 5332 OF TITLE 5, U.S.C. INCLUDING TRAVEL TIME, AND ALLOW THEM WHILE AWAY FROM THEIR HOMES OR REGULAR PLACES OF BUSINESS, TRAVEL EXPENSES (INCLUDING PER DIEM IN LIEU OF SUBSISTENCE) AS AUTHORIZED BY SECTION 5703 OF TITLE 5, U.S.C. FOR PERSONS IN THE GOVERNMENT SERVICE EMPLOYED INTERMITTENTLY, WHILE SO EMPLOYED.

THE ASSISTANT SECRETARY OF LABOR STATES IN PART THAT -

INASMUCH AS CONGRESS EXPRESSLY PROVIDED THAT COMPENSATION BE PAID AT THE GS-18 LEVEL FOR EXPERTS AND CONSULTANTS, WE BELIEVE THAT CONGRESS INTENDED TO PROVIDE THE SAME GS-18 LEVEL OF COMPENSATION FOR ADVISORY COMMITTEE MEMBERS; AND WE WISH TO PAY MEMBERS AT THE GS-18 RATE. TO CONCLUDE OTHERWISE WOULD MEAN, UNFORTUNATELY, THAT MEMBERS OF THE NATIONAL ADVISORY COMMITTEE WHO SERVE AS EXPERTS AND CONSULTANTS WOULD BE COMPENSATED AT A LOWER RATE THAN THOSE INDIVIDUALS HIRED AS EXPERTS AND CONSULTANTS UNDER SECTION 7(C) OF THE ACT.

A DETERMINATION IS REQUESTED AS TO WHETHER MEMBERS OF THE NATIONAL ADVISORY COMMITTEE MAY BE PAID AT THE GS-18 RATE.

SUBSECTIONS 7(A)(3) AND 7(B) CITED ABOVE REFER TO 5 U.S.C. 3109 FOR FIXING THE COMPENSATION OF THE MEMBERS OF ADVISORY COMMITTEES. UNDER 5 U.S.C. 3109 FEDERAL AGENCIES MAY, WHEN SPECIFICALLY AUTHORIZED IN AN APPROPRIATION OR OTHER STATUTE, EMPLOY EXPERTS OR CONSULTANTS OR ORGANIZATIONS THEREOF TEMPORARILY (1 YEAR OR LESS) OR INTERMITTENTLY WITHOUT REGARD TO CIVIL SERVICE CLASSIFICATION LAWS. EXPERTS OR CONSULTANTS HIRED PURSUANT TO THIS STATUTE AS OFFICERS OR EMPLOYEES OF THE UNITED STATES MAY NOT, HOWEVER, BE PAID IN EXCESS OF THE PER DIEM EQUIVALENT OF THE HIGHEST RATE PAYABLE UNDER THE GENERAL SCHEDULE SALARY RATES ESTABLISHED FOR FEDERAL EMPLOYEES UNLESS OTHER RATES ARE SPECIFICALLY PROVIDED IN THE APPROPRIATION OR OTHER LAW.

THIS OFFICE HAS RULED THAT UNDER 5 U.S.C. 3109 AN EXPERT OR CONSULTANT ORDINARILY MAY NOT BE PAID A RATE IN EXCESS OF THE HIGHEST RATE PAYABLE FOR GS-15 OF THE GENERAL SCHEDULE, WHICH AT PRESENT WOULD BE $31,523 PER ANNUM. 29 COMP. GEN. 267 (1949); 43 ID. 509 (1964). AN EXCEPTION TO THIS RULE WAS MADE IN THE CASE OF INDIVIDUALS TO BE PLACED IN "PROFESSIONAL ENGINEERING POSITIONS PRIMARILY CONCERNED WITH RESEARCH AND DEVELOPMENT AND PROFESSIONAL POSITIONS IN THE PHYSICAL AND NATURAL SCIENCES AND MEDICINE *** ." UNDER OUR DECISION IN 43 COMP. GEN. 509 SUCH INDIVIDUALS APPOINTED AS EXPERTS AND CONSULTANTS MAY BE AT RATES NOT IN EXCESS OF GRADE GS-18 OF THE GENERAL SCHEDULE. THE BASIS FOR THIS WAS THE REMOVAL OF THE LIMITATION ON THE NUMBER OF POSITIONS THAT COULD BE PLACED IN THE NAMED CATEGORIES.

IT MAY BE THAT SOME MEMBERS OF ADVISORY COMMITTEES APPOINTED BY THE SECRETARY OF LABOR COULD QUALIFY FOR THE SALARY RATE APPLICABLE TO GRADE GS-18 OF THE GENERAL SCHEDULE IN ACCORDANCE WITH THE DECISION IN 43 COMP. GEN. 509 (1964). HOWEVER, FOR THOSE MEMBERS OF SUCH ADVISORY COMMITTEES WHO CANNOT SO QUALIFY AS WELL AS MEMBERS OF THE NATIONAL ADVISORY COMMITTEE, WE SEE NO BASIS FOR PAYMENT OF SALARIES IN EXCESS OF THE RATE FOR GRADE GS-15 OF THE GENERAL SCHEDULE. THIS IS SO BECAUSE THE LANGUAGE OF THE STATUTE IS CLEAR AND THE LEGISLATIVE HISTORY

CONTAINS NO FIRM INDICATION THAT SUCH LANGUAGE DOES NOT EXPRESS THE TRUE INTENT OF THE LEGISLATORS.

THE QUESTIONS PRESENTED ARE ANSWERED ACCORDINGLY.