



Comptroller General  
of the United States

Washington, D.C. 20548

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B-222334.4

April 4, 1989

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The Honorable J. J. Pickle  
Chairman, Subcommittee  
on Oversight  
Committee on Ways and Means  
House of Representatives

Dear Mr. Chairman:

In your letter of October 18, 1988, you asked that we review certain pension and compensation-related matters involving upper level employees of the Tennessee Valley Authority (TVA). Our report which will respond to the several questions posed in your letter will be issued shortly.

As also requested, this letter sets forth our legal opinion on the authority of TVA to make payments to its employees which might exceed the statutory limitation of Level IV of the Executive Schedule (currently \$80,700) on the salary of TVA employees.<sup>1/</sup> For the reasons set forth below, it is our opinion that certain payments which are clearly intended to circumvent the salary limitation are improper.<sup>2/</sup>

BACKGROUND

TVA's Methods of Compensating Top Managers

In addition to the salary for certain top management positions, the TVA Board of Directors has authorized the creation of (1) the Merit Incentive Supplemental Retirement Income Plan (MISRIP), (2) the Relocation Incentive Plan, and (3) the Executive and Senior Manager Performance Bonus Plan.

Briefly stated, the MISRIP is a deferred compensation plan under which an employee receives certain credits while

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<sup>1/</sup> 16 U.S.C. § 831b (1982).

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employed by TVA which become payable upon separation or retirement. No taxes are due until the amounts credited are paid to the employee, but the amounts credited are available for loans to the employee. Under the Relocation Incentive Plan, a newly-hired or transferred TVA employee receives a lump-sum payment as an inducement to relocate and accept a top TVA position. It is our understanding that such payments are in addition to the reimbursement of normal relocation expenses. Finally, TVA has recently announced a new performance bonus plan under which about 150 managers and executives will be eligible for bonuses not-to-exceed 30 percent of their annual salary.

The following are examples of payments to employees whose base salary was in excess of \$70,000 per year:

--a Senior Vice-President received a \$100,000 Relocation Incentive payment and a \$40,000 MISRIP credit in 1988;

--a Vice President received a \$48,000 Relocation Incentive payment in 1987 and a \$30,000 MISRIP credit in 1988;

--a Site Director received a \$48,000 Relocation Incentive payment in 1987 and a \$36,000 MISRIP credit in 1988;

--a Task Force Manager received a \$48,000 Relocation Incentive payment in 1985, a \$17,000 MISRIP credit in 1986, and a \$47,000 MISRIP credit in 1988;

--a Plant Manager received a \$48,000 Relocation Incentive payment in 1987 and a \$43,080 MISRIP credit in 1988; and

--the Inspector General received MISRIP credits of \$33,500 in 1986, 1987, and 1988, along with a Relocation Incentive payment of \$22,000 in 1986.<sup>3/</sup>

#### TVA Comments

In response to our request for comments on this inquiry, the General Counsel of TVA, by letter dated February 22, 1989, advised our Office that the above-described compensation arrangements are "fully within TVA's legal authority." The letter states that TVA has broad authority which is

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<sup>3/</sup> See B-222334, supra, for a further discussion of these payments to the Inspector General.

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analogous to that conferred upon a private corporation to fix the compensation of its employees, and the letter goes on to distinguish "compensation" from "salary," the latter of which is specifically limited by statute. The TVA General Counsel argues that our Office has specifically recognized and accepted that these payments are not part of the salary of a TVA employee.<sup>4/</sup> In addition, the letter asserts that the MISRIP credit is an unfunded promise to pay which is not taxable when credits are made and which, therefore, cannot be considered part of the employee's salary. Finally, the letter argues that the relocation payments and performance bonuses, which are one-time, lump-sum payments, are elements of compensation and are clearly not treated as salary for the purposes of the TVA Act.

#### OPINION

We have addressed some of these issues on two prior occasions in 1981 and 1986, and we find nothing in the TVA arguments which persuades us to change our opinion. The MISRIP and Relocation Incentive "compensation" plans represent a clear and direct circumvention of the salary limitation imposed by the Congress on the salary of TVA employees. That limitation is contained in 16 U.S.C. § 831b, and it states that no employee of TVA shall receive a salary in excess of that received by members of the TVA Board of Directors, currently level IV of the Executive Schedule which is paid \$80,700 per year. 5 U.S.C. § 5315 (Supp. IV 1986). This salary limitation will have no meaning if TVA continues to circumvent the limitation by characterizing these payments as "compensation."

In 1981, we considered a proposal by TVA to make payments over a period of 3 years to certain top executives who agreed to remain with TVA.<sup>5/</sup> In support of its proposal, TVA argued the distinction between "salary" and "compensation" and argued that such payments were not covered by the statutory salary limitation. We disagreed and held that the proposed retention payments were clearly designed to set a higher rate of compensation for TVA's top executives in contravention of the statutory salary limitation.

In that same opinion we recognized that overtime compensation, occasional bonuses based on job performance or special circumstances, retirement fund contributions, and miscellaneous fringe benefits were not part of "salary" and

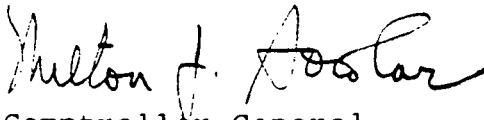
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<sup>4/</sup> B-205284, Nov. 16, 1981.

<sup>5/</sup> B-205284, supra.

We trust that this is responsive to your request for our legal opinion on these matters. We will delay distribution of this letter for 30 days unless we receive further instructions from your office.

Sincerely yours,

*for*   
Comptroller General  
of the United States

therefore were properly considered "compensation." However, we specifically held that retention payments of \$36,000 per year were designed to set a higher rate of basic pay for TVA's top executives and must be considered part of their "salary." B-205284, supra.

In 1986, we were asked about certain payments to top TVA executives, specifically MISRIP credits and a Relocation Incentive payment to the TVA Inspector General. We held that, to the extent that such payments or credits would exceed the statutory ceiling on salary, they were without legal authority. B-222334, supra. To our knowledge, there have been no significant changes to the MISRIP or Relocation Incentive plans since we issued our opinion in 1986 which would warrant a different conclusion today.

With regard to TVA's performance bonus plan, we note that in a March 1989 announcement, TVA stated the plan would be similar in concept to the Senior Executive Service (SES) bonus plan in existence in many federal agencies. TVA News Release dated March 15, 1989. We recognized in our 1981 opinion that occasional bonuses based on job performance or special circumstances were not subject to the salary limitation. Therefore, if TVA makes payments under a performance bonus plan modeled after the federal SES plan, we would have no objection to such payments.

However, to the extent that TVA uses the plan to circumvent the salary limit in the manner it has used the MISRIP and Relocation Incentive plans for that purpose, we would object to such payments for the reasons set forth above.

As we noted in 1981 and again in 1986, TVA may well be experiencing difficulties in recruiting and retaining top executives due to the salary limitations imposed by the statutory ceiling. We have recognized these problems in many federal agencies, and we have referred to those problems in recent reports. See our Transition Series Report on The Public Service, GAO/OCG-89-2TR (Nov. 1988). If TVA is convinced of the need to raise its salary levels in order to recruit and retain top executives, we believe that TVA should bring that matter to the attention of the Congress for amendment or repeal of 16 U.S.C. § 831b.

GAO

# Release of GAO Legal Decision or Opinion

545110-138430

**Subject:** Review of certain pension & compensation-related  
matters involving upper level employees of TVA

**Date:** 4/6/89  
**No.**

**B-Number:** B-222334.4

**Date:** 4/4/89

**Addressee:** Chairman J. J. Pickle, Subcom. on Oversight, H. Com. on Ways & Means

The above legal decision or opinion has been released as follows:

☒ To anyone requesting a copy.

☐ To the individuals listed below only (This is not a blanket release).

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**Authorization for Release:**

OCR - per Helen Hsing

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**APR 18 1989**

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*Barbara C. Scott  
for Faye Mayo*

Research Assistant  
Office of Congressional Relations

OFFICE OF THE GENERAL COUNSEL  
**DECISION DISTRIBUTION FORM**

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The Honorable J.J. Pickle  
 Chairman, Subcommittee on  
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 Committee on Ways and Means  
 United States House of  
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Mr. Volpe, OGC

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