

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

60652

FILE: B-157936
MATTER OF:

DATE: MAR 18 1976

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Intergovernmental Personnel Act - Federal
Employee Pay Limitation

DIGEST:

Federal employee pay limitation imposed by 5 U.S.C. § 5308 (1970) is not applicable to reimbursements to State and local governments for "pay" of employees detailed to Federal executive agencies under Intergovernmental Personnel Act, 5 U.S.C. § 3371, et seq. (1970). Reimbursement for such details is made under 5 U.S.C. § 3374(c) and not under statutory pay system to which the limitation applies. Such reimbursement is not pay to a Federal employee, but is repayment to State or local agency for cost of participation in program.

The Assistant Administrator for Planning and Management, Environmental Protection Agency (EPA), by letter dated January 7, 1976, has requested our decision whether EPA may make an agreement with a State or local government to reimburse the pay of State or local government personnel assigned by detail, as distinguished from appointment, to a Federal executive agency under the Intergovernmental Personnel Act (IPA), 5 U.S.C. § 3371, et seq. (1970), as added by Pub. L. 91-648, in excess of the current Federal employees' pay limitation of \$37,800.

The Federal employees' pay limitation was enacted as part of the pay comparability system incorporated in subchapter I of chapter 53, title 5, United States Code, by the Federal Pay Comparability Act of 1970, Pub. L. 91-656, governing the compensation of Federal employees under statutory pay systems. The limitation section, codified at 5 U.S.C. § 5308 (1970), provides that "[p]ay may not be paid, by reason of any provision of this subchapter, at a rate in excess of the rate of basic pay for level V of the Executive Schedule," presently \$37,800.

Title IV of the IPA, 5 U.S.C. §§ 3371-3376 (1970), provides for the assignment of State or local government employees to positions with the Federal Government either by appointment or by detail. We understand that those State or local employees

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assigned by "appointment" generally are deemed employees of the Federal agency, whereas those who are "detailed" remain employees of the State or local government and are not counted against the Federal agency's manpower ceiling. See 54 Comp. Gen. 210 (1974). Employees appointed under 5 U.S.C. § 3374(a)(1) (1970) are entitled to pay in accordance with chapter 51 and subchapter III, chapter 53 of title 5, United States Code.

Section 3374(c) of title 5, United States Code, providing for the assignment by detail of State and local government employees to executive agencies, provides in part:

"(c) During the period of assignment, a State or local government employee on detail to an executive agency--

"(1) is not entitled to pay from the agency;

* * * * *

* * * A detail of a State or local government employee to an executive agency may be made with or without reimbursement by the executive agency for the pay, or a part thereof, of the employee during the period of assignment."

Reimbursement made to a State or local government for the pay of an employee detailed to a Federal executive agency is not "pay" to a Federal employee arising under a statutory pay system, but rather it is a repayment to the State or local agency of one of the costs of participation in the program. Accordingly, the Federal employee pay limitation imposed by 5 U.S.C. § 5306, supra, is not applicable to payments made to State or local governments for the pay of personnel detailed to Federal executive agencies and the Federal agency may agree to make such reimbursement in excess of the Federal employee pay limitation. The limitation, however, does apply to an employee appointed under the provisions of 5 U.S.C. § 3374(a)(1) (1970).

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Comptroller General
of the United States