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**DECISION**



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

**FILE: B-187905**

**DATE: January 3, 1977**

**MATTER OF: Compensation of Members of Regional  
Fishery Management Councils**

**DIGEST: Section 302(d) of Pub. L. No. 94-265  
provides per diem compensation to  
voting members of Regional Fishery  
Management Councils who "are not em-  
ployed by" Federal, State, or local  
Governments. Council members  
excepted from compensation are those  
who receive compensation from any  
such government for the same period  
that he performs duties as a Council  
member.**

By letter dated November 28, 1976, Mr. Joseph F. Giza, an authorized certifying officer of the National Oceanic and Atmospheric Administration (NOAA), U. S. Department of Commerce, requests an advance decision concerning whether certain persons are entitled to compensation as voting members of the Regional Fishery Management Councils established under the Fishery Conservation and Management Act of 1976, Pub. L. No. 94-265, § 302, 90 Stat. 331, 347 (April 13, 1976).

Section 302(a) of the Act provides for eight Regional Fishery Management Councils for the several coastal fishing areas under the jurisdiction of the United States. The eight Councils have a total of 108 voting members. Section 302(f)(7) of the Act requires the Secretary of Commerce or his designee to pay compensation and expenses to the Council members.

Section 302(d) of the Act provides that all Council members shall be reimbursed for actual expenses incurred in performing their duties and that voting members shall be compensated on a daily basis as follows:

"The voting members of each Council, who are not employed by the Federal Government or any State or local government, shall receive compensation at the daily rate for GS-18 of the General Schedule when engaged in the actual performance of duties for such Council. \* \* \*  
(Emphasis added.)

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Mr. Giza has submitted for our decision the cases of eleven Council members whose entitlement to the compensation described above is questioned because of their affiliation with State or local Governments. The Council members in question fall into the following categories: 1. State or local employees whose employment is not directly concerned with fishery management; 2. members of the faculty of a State university; 3. part-time State wildlife or fishery commissioners who may or may not receive some form of compensation for their services; 4. State legislators.

Clearly the definition of the words "employed by" as used in section 302(d) is determinative. Once a legal standard defining persons employed by Federal, State, or local Government is established, the facts of each individual's case may be compared with that standard to determine whether he is entitled to receive compensation as a voting member of a Regional Fishery Management Council.

We have found very little in the way of legislative history to aid in the interpretation of the term "employed by" in section 302(d). For example, the conference committee states that "voting members of the Councils who are not government employees shall be compensated at the GS-18 rate \* \* \*." However, the conference committee does not define the phrase "employed by" Federal, State, or local Governments. S. Rept. No. 711, 94th Cong., 2d Sess. 51 (1976).

We note that the Fishery Conservation and Management Act of 1976, codified at 16 U.S.C. § 1301 et seq., confers considerable duties and responsibilities upon the eight Regional Councils. Title III of the Act establishes a national fishery management program for the conservation and management of this country's off-shore fishing resources. Section 301 further sets forth certain national standards which are to be applied and implemented by the new Regional Councils and by the Secretary of Commerce. Under section 302 each Council is directed to prepare a fishing management plan for the stocks of fish and fishing for such stocks within its geographical area of authority. The provisions of each such plan are described in detail in section 303 of the Act, and the Secretary of Commerce is directed by section 304 to review and approve or disapprove each fishery management plan submitted to him.

In developing fishery management plans and amendments and administering other provisions of the statute, each Council is

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required by section 302 of the Act to conduct public hearings and meetings and to make decisions by majority vote. Each Council is authorized to obtain staff and administrative support and services. Each is further directed to establish a scientific and statistical committee and other advisory panels as necessary and to obtain maximum public input.

It is apparent from the foregoing description of the duties and requirements imposed on the Regional Councils that they are expected by Congress, within their own regions, to carry out an important role in managing and conserving the fishing resources of the United States. It is further apparent that every voting member of the Councils may expend a significant amount of time and effort in performing their duties under the Act. In other words, a Council member is not fulfilling a purely advisory role or a limited one, but instead is charged with considerable responsibility and duties.

Congress provided that each of the 108 voting members of the several Councils (aside from those covered by the exception to be discussed below) would be paid, when actually performing Council duties, at the daily rate for grade GS-18 of the General Schedule, the highest rate paid to career Federal employees, and now equivalent to \$152.32 per day.

Although the statutory language of section 302(d) of the Act, which excludes those Council members "employed by the Federal Government or any State or local government" from receiving compensation for their services, could be interpreted broadly so as to cover any person officially affiliated with any such government, we do not think that the Congress intended to make such a broad exception. As noted above, Congress assigned a heavy responsibility to the Regional Councils and provided for a high daily rate of compensation for the voting members of the Councils. In this context, we believe that the exception made in the Act to the payment of compensation to voting members was intended only to prevent any member from being paid twice for the periods services are performed under the Act. We do not believe that Congress intended to require any person to serve without compensation solely because he or she is affiliated in some capacity with a governmental body. Instead, we believe the exception was only intended to prevent the receipt of dual compensation for the period of services to a Council.

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Therefore, a person "employed by the Federal Government or any State or local government" within the purview of section 302(d) of Public Law 94-265, is one who receives compensation from any such government for the period he performs duties as a council member. The term does not include any person who does not receive compensation from such a government for performing duties as a Council member.

There remains only the necessity to apply this standard to the individual examples submitted to us by the certifying officer in order to determine whether each is entitled to compensation under section 302(d). Each of the four categories of Council members is discussed above.

1. State or Local Employees Whose Employment is not Directly Related to Fishery Management.

First, we shall consider the cases of two Council members who are government employees, but whose employment is not directly related to fishery management. Mr. Vernon J. Smith, a member of the Pacific Council, is the Supervising Electrician in the Buildings Operations Division of the General Services Agency of Santa Clara County, California. Mr. Smith does not deny the fact that he is employed by a local Government, but states that the job is totally unrelated to the work of the Council and that the county will not pay him for the time away from his job. Applying the standard set out above to Mr. Smith, he is entitled to receive compensation for his time when engaged in the actual performance of duties for the Council because the county does not compensate him for the period of his work on the Council.

Mr. Jose A. Suarez-Caabro, a member of the Caribbean Council, is employed by the Department of Agriculture, Commonwealth of Puerto Rico (under section 3(21) of Pub. L. No. 94-265, a State for purposes of section 302(d)), but he is not the official representative or designee of that Department on the Council. His appointment is as a public-at-large member. He states the following:

"I feel that the Commonwealth nominated me as a public-at-large member with the full understanding that I would be away from my job on Council business as much as 20 percent of the time. The Commonwealth has chosen to continue my salary

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while on Council business, but, this should in no way preclude compensation from the Council since I am a member on the basis of my representation of the public interest and not on the basis of my official position with the Government of the Commonwealth \* \* \*."

Mr. Suarez is not entitled to compensation under section 302(d) for the period of his Council work, since he is receiving compensation from the State for the same period. Even though he is not an official representative of his department, his salary from the State is being continued while he is on Council business, and he would be paid twice if he were also compensated under section 302(d).

## 2. Faculty Members of State Universities

Second, we shall examine the entitlement to compensation of Council members who are faculty members of State universities. Mr. L. Eugene Cronin, a member of the Mid-Atlantic Council, is a research professor at the University of Maryland. Mr. James A. Crutchfield, a member of the Pacific Council, is a professor at the University of Washington. Mr. J. L. McHugh, a member of the Mid-Atlantic Council, is a Professor of Marine Resources at the State University of New York. Finally, Mr. Donald L. McKernan, a member of the Pacific Council, is Director of the Institute for Marine Studies at the University of Washington.

We find persuasive the arguments that the prohibition should not be applied to faculty members of State universities, even though we recognize that, for many purposes, they fall within the legal standard of government employees. See e. g., Regents of University System of Georgia v. Blanton, 176 S. E. 673 (1934); Chapman v. Gerard, 341 F. Supp. at 1174.

Professor McHugh states the argument against holding that faculty members are "employed by" the state for purposes of section 302(d). He says that (1) faculty members are permitted to augment their income by consulting, provided it does not interfere with their regular duties, and (2) teaching faculty are paid only for 9 months and must find other income in summer. He adds that service on the Council is time consuming, both for travel and attendance at meetings and for adequate preparation. The service leaves less time for other activities and, hence, means reduced income. He concludes as follows:

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"It appears obvious that payment of compensation to Council members who qualify is intended to compensate for lost time and income. For the reasons already given I believe that I am in that category, as may be other university faculty members who serve on the Councils. We are not conventional state officials, who receive full-time compensation for their regular duties, and for whom service on the Councils is clearly an important part of those duties."

Professor Crutchfield supports this view. He states that "[t]he council appointment will not diminish in any way my other University responsibilities, since it is entirely separate from those activities." Professor Cronin states that faculty members at his school are permitted to engage in consulting activities which are not detrimental to university responsibilities to a maximum of 20 percent of their time on an annual basis.

Since these faculty members who serve on Regional Councils are expected to supplement their incomes from outside activities and since their work for the Councils is not a part of their regular duties, they are not being compensated by the state for the period of their work on the Council and, hence, are entitled to compensation under section 302(d) of the Act.

### 3. Part-time State Wildlife, Parks, or Fishery Commissioners

Third, we shall review the case of part-time State wildlife, parks, or fishery commissioners who may or may not receive some form of compensation for their services. Mr. John M. Green, a member of the Gulf Council, is a member of the Texas Parks and Wildlife Commission, for which he is paid expenses. Mr. J. Pearce Johnson, a member of the Gulf Council, is chairman of the Texas Parks and Wildlife Commission, for which he receives expenses and per diem pay of \$100 per day with a maximum of \$5,000 per year. Mr. Lee Wulff, a member of the New England Council, serves without pay as chairman of the New Hampshire Fish and Game Commission. Since Messrs. Johnson and Wulff receive no compensation for their services to their States, they are entitled to the compensation provided in section 302. Mr. Johnson is likewise entitled to compensation for his services as a Council member, except that he may not receive pay for work of the Council for the same period he receives compensation from the State.

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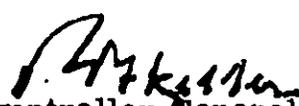
4. Members of State Legislatures

Finally, we address the question of State legislators. Mr. Wadsworth Y. H. Yee, a member of the Western Pacific Council, is a State Senator of the State of Hawaii. Mr. John A. Martinis, a member of the Pacific Council, is a State Representative of the State of Washington. Senator Yee advises that in Hawaii the legislative sessions run for only 60 days each year. Except for the period during which the legislators are compensated by the state, they may receive compensation under section 302(d) for their services as Council members.

\* \* \* \* \*

Payments of compensation in the eleven individual cases submitted may be certified in accordance with this decision.

Deputy

  
Comptroller General -  
of the United States