

PLM-1

**DECISION**



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

9335

FILE: B-192415

DATE: March 1, 1979

MATTER OF: ~~Lyle Kalish~~ Interest Reimbursement

*[Request for Interest On Employer's Contribution to Retirement Account]*

**DIGEST:** Interest accrued on state retirement contribution after state employee, who had been temporarily assigned to Federal Home Loan Bank Board under Intergovernmental Personnel Act of 1970, returned to employment with California State University. Interest is payable only when provided for in contract or when specifically directed by statute. Board did not agree to pay interest, and 5 U.S.C. § 3374(e) authorizes but does not require Federal executive agency to pay employer's state retirement contribution covering period of Federal assignment. In absence of agreement, Board is not obligated to pay the interest charge.

This responds to a request for decision from Ms. Fredda T. Walker, authorized certifying officer of the Federal Home Loan Bank Board, concerning the claim of Mr. Lyle Kalish for interest on the employer's contribution to Mr. Kalish's retirement account with the State of California Public Employees' Retirement System.

The issue is whether the Board may legally pay the interest. The Intergovernmental Personnel Act of 1970 in 5 U.S.C. § 3374(e) (1976) provides that a Federal executive agency which appoints a state or local government employee under the Act may pay the employer's contribution to his retirement plan if the state or local government fails to pay it for the period of the Federal assignment. The statute is silent as to the payment of interest on such contributions.

Mr. Kalish, Assistant Professor of Economics at California State University, was appointed under 5 U.S.C. § 3374(a)(1) to serve as a Board employee between August 4, 1976, and July 30, 1977. When Mr. Kalish was first appointed, the Board asked the University what the amount of the employer's share of retirement contribution was. The University informed the Board that the Board could not pay the employer's contribution until Mr. Kalish returned to the University. In accordance with sections 20930(i) and 20932 of the California Government Code, Mr. Kalish could elect to obtain state retirement

~~003924~~

*del*

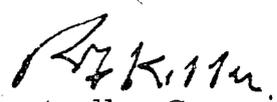
B-192415

credit for his Federal service with the Board only upon resumption of his employment with the University and upon payment of the employee's and the state employer's retirement contributions accruing during his Federal service. Calculations of the contributions are based on the salary, and the rate of salary contributions, in effect when Mr. Kalish returned to the University. Under section 20932 of the Code, interest is payable on the contributions from the date Mr. Kalish returned to the University until the end of the month the contributions are finally paid.

Mr. Kalish terminated his appointment with the Board on July 30, 1977, and resumed his University employment on September 1, 1977. The California Public Employees' Retirement System did not inform Mr. Kalish of the retirement contributions and the interest accruing thereon until January 4, 1978. The Board subsequently paid the employer's contribution of \$2,741.75 to the California Public Employees' Retirement System. However, it declined to pay the interest accruing on this amount from the time Mr. Kalish returned to the University. The accrued interest through April 30, 1978, was \$125.87.

Interest can be recovered against the United States only if provided for by contract or when allowance of interest is specifically directed by statute. B-189181, June 20, 1978; 53 Comp. Gen. 824 (1974); and 45 Comp. Gen. 169 (1965). If there is a lawful contract for interest payment, a statute authorizing it is not required. 51 Comp. Gen. 251 (1971); and United States v. Thayer-West Point Hotel Co., 329 U.S. 585, 590 (1947). In the present case, Ms. Walker informally advised us that the Board did not agree to pay the interest in question. Further, 5 U.S.C. § 3374(e) provides only that the Federal executive agency may pay the state or local government employer's contributions "covering the State or local government employee's period of [Federal] assignment, or any part thereof." This provision does not specifically direct that interest be paid for the period after Mr. Kalish terminated his appointment and returned to his state employment.

Accordingly, since the interest payment by the Board is not provided for by agreement and is not specifically directed by statute, Mr. Kalish's claim for interest may not be allowed.

  
Deputy Comptroller General  
of the United States