

DECISION



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

FILE: B-193584

DATE: May 1, 1984

MATTER OF: Land Commissioners

DIGEST:

Land commissioners appointed by the Federal District Courts pursuant to Rule 71A(h) of the Federal Rules of Civil Procedure and paid at daily rates not to exceed the highest rate payable under the General Schedule are not limited in the amount they may be paid on a biweekly basis. They are, however, subject to the maximum annual limitation which prohibits payment of compensation in excess of that allowable in level V of the Executive Schedule.

This decision concerns the maximum amounts of compensation which may be paid to land commissioners appointed by the Federal District Courts pursuant to Rule 71A(h) of the Federal Rules of Civil Procedure in land condemnation cases.¹ Specifically, the issues presented are (1) whether a land commissioner is limited to the maximum biweekly rate of pay available under the General Schedule, 5 U.S.C. § 5332, determined by the application of the computational principles of 5 U.S.C. § 5504(b); and (2) whether the aggregate annual pay of a land commissioner is limited to the maximum annual rate available under the General Schedule. We conclude that land commissioners are not limited to the maximum biweekly rates of pay available under the General Schedule, but they are subject to the maximum limitation based upon the pay payable in level V of the Executive Schedule, under 5 U.S.C. § 5316, which is also the highest rate payable under the General Schedule.

Land commissioners are paid on an hourly or per diem basis only for time they work. They are not regular full-time employees. Effective October 1, 1977, administrative responsibility for compensating the land commissioners was

¹This matter was presented for an advance decision by letter dated September 27, 1983, from the Director of the Administrative Office of the United States Courts.

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transferred from the Department of Justice to the Administrative Office of the United States Courts. The Judicial Appropriation Acts for the fiscal years ending September 30, 1978, 1979, 1980, and 1984² all state:

"* * * that the compensation of land commissioners shall not exceed the daily equivalent of the highest rate payable under section 5332 of title 5, United States Code."
[Emphasis added.]

The continuing resolutions for the fiscal years ending September 30, 1981, 1982, and 1983 refer to bills containing identical language. See, e.g., Pub. L. 97-276, 96 Stat. 1186 (1982) referring to S. 2956 and H.R. 6957.

In our decision Matter of Land Commissioners, B-193584, January 23, 1979, we stated that under the quoted compensation limitation in the Judicial Appropriations Act, land commissioners may be paid at a rate not to exceed the daily equivalent of a GS-18. In that decision we concluded that the Administrative Office may legally pay land commissioners any hourly rate that it deems appropriate, as long as the daily maximum is not exceeded. In so concluding we stated that the computational principles outlined at 5 U.S.C. § 5504(b) need not be applied in determining the hourly rate to be paid to land commissioners. However, the method of computation prescribed in subsection 5504(b) was used to determine the maximum daily rate which could be paid.

Section 5504(a), title 5, United States Code, states that "the pay period for an employee covers two administrative workweeks." When section 5504(a) is read in conjunction with the computational principles of section 5504(b) it becomes clear that employees, as defined under 5 U.S.C. § 5504(a) are to be paid based upon an 80-hour biweekly figure. See Matter of Hass, 58 Comp. Gen. 90 (1978). Since, however, in defining "employee" 5 U.S.C. § 5504(a)

²Pub. L. No. 95-86, Title IV, 91 Stat. 419, 435 (1977); Pub. L. No. 95-431, Title IV, 92 Stat. 1021, 1037 (1978); Pub. L. No. 96-68, Title IV, 93 Stat. 416, 429 (1979); and Pub. L. No. 98-166, Title IV, 97 Stat. 1071, 1100 (1983), respectively.

does not include employees in or under the judicial branch, that section does not establish a required biweekly pay period for the land commissioners who are in the judicial branch. Since we are not aware of any other statute which requires that land commissioners be paid on a biweekly basis, the biweekly conversion principle of 5 U.S.C. § 5504(b) need not be applied. Land commissioners, therefore, may be paid for more than 80 hours or for more than 10 days during any two-week period. To that extent they differ from the experts or consultants considered in the Hass case who were covered by 5 U.S.C. § 5504(a) and were held to be subject to the biweekly pay period.

We recognize that the maximum daily rate which may be paid land commissioners is computed using the method prescribed in 5 U.S.C. § 5504(b) even though we have found that provision not to be applicable to their pay. However, since we find no other provision of law which prescribes the method of determining the daily pay rate of land commissioners, the method otherwise used to determine daily rates for General Schedule employees was considered to be appropriate.

The general pay limitation of 5 U.S.C. § 5308 provides: "Pay may not be paid, by reason of any provision of this subchapter [subchapter I, chapter 53], at a rate in excess of the rate of basic pay for level V of the Executive Schedule."

Generally any pay set by administrative action is subject to adjustment under 5 U.S.C. § 5307, which is a part of subchapter I of chapter 53, title 5, and such pay is therefore subject to the provisions of 5 U.S.C. § 5308. Matter of Hass, cited above. In a somewhat similar situation we have held that the salary limitations provided in 28 U.S.C. §§ 634(a) and 1863(b)(1) for part-time magistrates and citizen jury commissioners (judicial branch officers) may be adjusted administratively under 5 U.S.C. § 5307 to provide them with cost-of-living increases comparable to other employees. 55 Comp. Gen. 1077 (1976). However, the Director of the Administrative Office of the United States Courts argues that land commissioners' pay is not set or adjusted under chapter 53 provisions but is set by the appointing court pursuant to Rule 71A(h) and the Director's authority under 28 U.S.C. § 604(a)(5), to fix the compensation of

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court employees not otherwise fixed by law, subject only to the daily limitation prescribed in the appropriations acts.

We note, however, that the pay of part-time magistrates and citizen jury commissioners is also set by administrative action subject to a maximum limitation prescribed by law. In that case 5 U.S.C. § 5307 was relied upon to permit an upward adjustment in that maximum pay which could be allowed. Since the maximums involved were stated in terms of dollars not related to amounts payable under the General Schedule that provision was the authority for adjusting the maximum rates involved.

In the case of land commissioners the maximum rate is fixed in terms of the General Schedules and, therefore, the special provisions in section 5307 are not necessary to an increase in the maximum which may be paid. Even though the provisions of 5 U.S.C. § 5307 may not be necessary to increase the maximum which may be paid land commissioners following an upward adjustment in the maximum pay under the General Schedule, the maximum is raised pursuant to a general increase in pay under 5 U.S.C. § 5305. As in the case of other employees whose pay is set by administrative action and is not mandatorily adjusted under section 5307, the fact that an increase in the maximum pay which may be set by administrative action results from an adjustment under 5 U.S.C. § 5305, is considered to make section 5308 applicable.

Conclusion

We find that compensation for land commissioners appointed pursuant to Rule 71A(h) of the Federal Rules of Civil Procedure must be limited to a rate not to exceed the daily equivalent of a GS-18 but need not be limited on a biweekly basis. However, we find that the annual limit on pay as provided in 5 U.S.C. § 5308 is applicable so as to limit the total yearly compensation of land commissioners to that payable in level V of the Executive Schedule.


Acting Comptroller General
of the United States