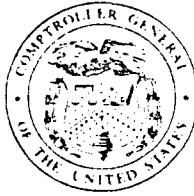


DECISION

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

61413
98809

FILE: B-120604

DATE: AUG 30 1976

MATTER OF: Library of Congress - Pay computation

DIGEST:

1. Deputy Librarian of Congress and Director of Congressional Research Service, whose compensation was computed and paid on biweekly pay period basis, received 27 payments in calendar year 1973. Although they were paid total in excess of their annual salary rates, they were properly paid since their compensation was correctly computed and paid under 5 U.S.C. 5504 and an employee may receive 27 compensation payments in calendar year under that statute.
2. Compensation of Librarian of Congress was computed and paid on biweekly basis under 5 U.S.C. 5504. Payment in excess of Librarian's annual pay rate in 1973 was overpayment since Librarian is head of agency and his compensation must be computed on monthly basis as provided under 5 U.S.C. 5505. However, overpayment is waived under provisions of 5 U.S.C. 5584.

This decision is issued in response to a letter dated May 25, 1976, from Mr. Donald C. Curran, the Assistant Librarian of Congress, concerning the computation of pay for certain Library of Congress personnel in the calendar year 1973. Mr. Curran specifically asks whether the Librarian of Congress, the Deputy Librarian of Congress, and the Director of the Congressional Research Service (CRS) were overpaid that year because there was an extra pay period. If so, Mr. Curran requests that the overpayments to those individuals be waived under 5 U.S.C. 5584.

The Library of Congress normally pays its employees for 26 biweekly pay periods in a calendar year. However, due to the fact that a calendar year consists of 52 weeks and 1 or 2 days employees are paid 27 times in certain years. Hence, in calendar year 1973, employees received 27 salary payments, the total of which was, therefore, higher than their regular annual rate of pay.

The statutory provisions setting the per annum rates for the Librarian, the Deputy Librarian, and the Director of the CRS for 1973 read as follows:

"The compensation of the Librarian of Congress shall be at the rate of \$38,000 per annum." 2 U.S.C. 136a (1970).

"The compensation of the Deputy Librarian of Congress shall be at the rate of \$36,000 per annum." 2 U.S.C. 136a-1 (1970).

"After consultation with the Joint Committee on the Library, the Librarian of Congress shall appoint the Director of the Congressional Research Service. The basic pay of the Director shall be at a per annum rate equal to the rate of basic pay provided for Level V of the Executive Schedule contained in Section 5316 of Title 5." 2 U.S.C. 166(c)(1) (1970).

In 1973 the annual rate of basic pay for Level V of the Executive Schedule was \$36,000.

Because of the additional salary payment that year, the Librarian, the Deputy Librarian, and the Director of the CRS were paid \$39,463.20, \$37,389.60 and \$37,389.60, respectively.

Section 5504 of title 5, United States Code (1970), states in pertinent part the following regarding the method to be used to calculate the compensation for "employees" as defined therein:

"(a) The pay period for an employee covers two administrative workweeks. For the purpose of this subsection, 'employee' means--

* * * * *

(2) an employee in or under the Library of Congress * * *

* * * * *

but does not include--

* * * * *

(B) an employee or individual excluded from the definition of employee in section 5541(2) of this title.

"(b) For pay computation purposes affecting an employee, the annual rate of basic pay established by or under statute is deemed payment for employment during 52 basic administrative workweeks of 40 hours. When it is necessary for computation of pay under this subsection to convert an annual rate of basic pay to a basic hourly, daily, weekly, or biweekly rate, the following rules govern:

(1) To derive an hourly rate, divide the annual rate by 2,080.

(2) To derive a daily rate, multiply the hourly rate by the number of daily hours of service required.

(3) To derive a weekly or biweekly rate, multiply the hourly rate by 40 or 80, as the case may be.

Rates are computed to the nearest cent, counting one-half and over as a whole cent. For the purpose of this subsection, 'employee' means--

* * * * *

(C) an employee in or under * * * the Library of Congress, for whom a basic administrative workweek is established under section 5101(a)(5) of this title,

* * * * *

but does not include an employee or individual excluded from the definition of employee in section 5541(2) of this title."

Under the compensation method prescribed above the hourly, weekly, or biweekly rate of compensation is fixed by the employee's per annum rate, but the actual compensation received in a calendar year is not necessarily equal to the employee's annual compensation rate. This is so since the actual amount paid is determined by the computation rules on a biweekly pay period basis instead of on a calendar year basis. Therefore, when an employee's compensation is for computation in accordance with section 5504, it

is proper for him to receive 27 compensation periods in a calendar year.

However, section 5504 excludes from its scope any individual excluded from the definition of "employee" under 5 U.S.C. 5541(2) (1970). That definition applies to personnel in the Library of Congress as follows:

"employee" means--

* * * * *

(C) an employee in or under * * *
the Library of Congress * * *

but does not include--

* * * * *

(ii) the head of an agency other than
the government of the District of
Columbia * * *."

Because heads of agencies are excluded from the provisions of 5 U.S.C. 5504, we have long held that 5 U.S.C. 5505 governs the computation of their salaries. 47 Comp. Gen. 485 (1968).

Section 5505 which prescribes the pay computation rules for those individuals whose compensation is not governed by the provisions of section 5504, reads as follows:

"The pay period for an individual in the service of the United States whose pay is monthly or annual covers one calendar month, and the following rules for division of time and computation of pay for services performed govern:--

(1) A month's pay is one-twelfth of a year's pay.

(2) A day's pay is one-thirtieth of a month's pay.

(3) The 31st day of a calendar month is ignored in computing pay, except that one day's pay is forfeited for one day's unauthorized absence on the 31st day of a calendar month.

(4) For each day of the month elapsing before entering the service, one day's pay is deducted from the first month's pay of the individual.

This section does not apply to an employee whose pay is computed under section 5504(b) of this title."

The actual pay received by an individual whose pay is computed in accordance with the above should, in a calendar year, equal his annual pay rate because the computation is made on the basis of a calendar year rather than on the biweekly pay computation method prescribed by section 5504. While an individual paid under this section should ordinarily be paid on a monthly basis, an agency may pay him on a semi-monthly basis as long as the actual rate is calculated on the monthly basis. 47 Comp. Gen. 405 (1948). However, we find no authority to pay such individuals biweekly. Accordingly, if an individual paid under section 5505 is paid compensation for a calendar year which exceeds 12 times his monthly rate, then he is overpaid.

Therefore, whether the Librarian, the Deputy Librarian, and the Director of the GDS were overpaid due to the additional payover in 1973 depends on whether these individuals are "employees" within the purview of the 5 U.S.C. 5504 or are agency heads whose compensation is governed by the monthly salary limitations in 5 U.S.C. 5505.

The Library of Congress is defined as an "agency" for purposes of pay administration in 5 U.S.C. 5541 (1973). Section 136, title 2 of the United States Code (Supp. III, 1973), establishes the Librarian as the administrative head of the Library of Congress as follows:

"The Librarian of Congress shall be appointed by the President, by and with the advice and consent of the Senate. He shall make rules and regulations for the government of the Library."

Since the Librarian is a head of an agency his compensation is for computation under 5 U.S.C. 5505. 47 Comp. Gen. 405, *supra*. In accordance with 5 U.S.C. 5505, the annual compensation of the Librarian, as the head of his agency, may not exceed 12 times his monthly rate, which should have been \$3,166.67 based on the per annum rate of \$38,000 in 1973. Accordingly, the Librarian of Congress was overpaid \$1,463.16 in the calendar year 1973.

Both the Deputy Librarian and the Director of the Congressional Research Service are appointed by the Librarian and their authority is established as subordinate to his throughout Chapter 5, title 2 of the United States Code (1970). Although 2 U.S.C. 166 (1970) states that the Congressional Research Service is to be maintained in the Library of Congress as a separate department with the "maximum practicable administrative independence consistent with * * * /its/ objectives," the Librarian still retains ultimate authority by virtue of the requirement that he assist in the performance of the CRS's objectives and his power to appoint and dismiss employees of the CRS under 2 U.S.C. 166(c). Since neither the Deputy Librarian nor the Director of the CRS can be considered a "head of an agency," and are not excluded from the definition of an "employee" in 5 U.S.C. 5504 or by any other applicable provision, their compensation must be in accordance with the computation method prescribed therein. Therefore, they were entitled to the 27 biweekly compensation payments received in 1973 and were not overpaid.

Our authority to waive collection of the overpayment to the Librarian of Congress under 5 U.S.C. 5534 (Supp. IV, 1974), is contingent on whether the conditions for a waiver of a claim of the United States arising out of an erroneous payment of pay or allowances exist. Section 91.5(c), title 4 of the Code of Federal Regulations (1975), states, in pertinent part, that claims may be waived whenever:

"Collection action under the claim would be against equity and good conscience and not in the best interests of the United States. Generally these criteria will be met by a finding that the erroneous payment of pay or allowances occurred through administrative error and that there is no indication of fraud, misrepresentation, fault or lack of good faith on the part of the employee or member or any other person having an interest in obtaining a waiver of the claim. Any significant unexplained increase in pay or allowances which would require a reasonable person to make inquiry concerning the correctness of his pay or allowances, ordinarily would preclude a waiver when the employee or member fails to bring the matter to the attention of appropriate officials."

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There is nothing in the record indicating fraud or lack of diligence on the Librarian's part in this matter. Moreover, under the circumstances we cannot conclude that a reasonable individual, even if charged with the knowledge and responsibility of the Librarian of Congress, would suspect that his salary alone should be computed on a monthly basis rather than a biweekly basis. Accordingly, we hereby waive the collection of the \$1,462.16 overpaid to the Librarian of Congress in 1973.

R. F. KEMMER

ACR Comptroller General
of the United States