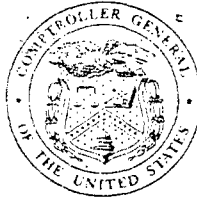


DECISION



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

FILE: B-193587

DATE: April 2, 1979

MATTER OF: United States Metric Board [Waiver of Compensation]

DIGEST: Some members of the United States Metric Board desire to waive their compensation while other members desire to accept it but return it as a gift to the Board. Here the statute authorizes payment of Board members at a rate not to exceed the daily rate currently being paid grade 18 of the General Schedule. Such pay is not considered salary fixed by or pursuant to statute which would preclude waiver. Also, since statute authorizes acceptance of gifts and donations, members may make gifts of their salary to the agency. However, the members would be liable for the income tax on such salary and would be entitled only to the limited deduction for charitable contributions prescribed by the IRS.

By letter of November 17, 1978, Mr. Malcolm E. O'Hagan, Executive Director, United States Metric Board (Board), requested our opinion concerning the legality of members of the Board waiving their compensation or in some cases accepting their compensation and then returning it as a gift to the Board.

Our Office has consistently held on the basis of court decision that it is contrary to public policy for an appointee to a position in the Federal Government to waive his ordinary right to compensation or to accept something less when the salary for his position is fixed by or pursuant to legislative authority. 54 Comp. Gen. 393 (1974); 27 id. 194 (1947); 26 id. 956 (1947); Glavey v. United States, 182 U.S. 595 (1900); Miller v. United States, 103 F. 413 (S.D. N.Y. 1900). In Miller, the court held such waiver to be against public policy since the willingness of one person to waive his compensation would exclude from competition all other candidates who were not willing or unable to take the position for less than the salary fixed by Congress. In addition, the United States Supreme Court, in Glavey, stated the opinion that if waiver of compensation fixed by Congress were permitted, "salaries for public officers would be under the control of the Executive Department of the Government."

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<sup>B</sup> Waiver of compensation, however, has been permitted in certain circumstances. <sup>C</sup> In 27 Comp. Gen. 194 (1947) we held that the ~~person~~ <sup>waivee as individual</sup> occupying a position could waive his right to all or part of the compensation if there was some applicable provision of law authorizing the acceptance of services without compensation. In that case the law permitting the employment of experts and consultants on a temporary or intermittent basis provided that such employment should be without regard to civil service and classification laws and fixed only the maximum rate of compensation that could be paid.

<sup>C</sup> The issue, therefore, is whether the Metric Conversion Act of 1975 (15 U.S.C. 205a-k (1976)) provides authority to permit waiver of compensation by members appointed to the Board. <sup>D</sup> Section 205g of title 15, United States Code, authorizes the Board to accept gifts and personal services. Section 205g reads as follows:

"The Board may accept, hold, administer and utilize gifts, donations and bequests of property, both real and personal, and personal services, for the purpose of aiding or facilitating the work of the Board."

Compensation for members of the Board is authorized by 15 U.S.C. 205h. That section is in pertinent part, as follows:

"Members of the Board who are not in the regular full-time employ of the United States shall, while attending meetings or conferences of the Board or while otherwise engaged in the business of the Board, be entitled to receive compensation at a rate not to exceed the daily rate currently being paid grade 18 of the General Schedule (under section 5332 of Title 5), including traveltime." (Emphasis supplied).

In addition, members of the Board are allowed travel expenses including per diem in lieu of subsistence under 5 U.S.C. 5703. The section is specific in stating that payments are not to render members of the Board employees or officials of the United States for any purpose.

In the above waiver situations the controlling factor is whether the salary to be waived is set by or pursuant to statute, i.e., set by Congress. Every salary of anyone who is paid by the Government in a sense is set pursuant to statute. This is so since the Government may

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not make any payment without statutory authorization. As indicated above, our cases do not preclude waiver in all cases. In the present situation, the language of 15 U.S.C. 205h <sup>reads as follows</sup> sets a maximum rate of compensation entitlement for Board members. Where the statutory authorization of the salary of an individual who is to render services to the United States merely sets a maximum limit for that salary, then the salary of that individual is not considered to be fixed pursuant to statute within the meaning of our cases. Therefore, assuming other conditions are satisfied, such individuals may waive their salaries. Also, we do not read section 205h as fixing the compensation which each Board member must be paid. Accordingly, Board members may agree to serve without compensation and thereafter they would be estopped from asserting any valid claim for compensation on account of the service performed. Compare 57 Comp. Gen. 423 (1977); 54 Comp. Gen. 393 (1974).

The Executive Director's letter also inquires whether members of the Board may accept compensation and then return it as a gift to the Board. Since ~~15 U.S.C. 205g~~ <sup>authorizes the Board to accept gifts and donations</sup> there is nothing to prevent members of the Board from making gifts of some or all of the salary to the Board. <sup>or pursuant to regulation may</sup> These gifts are allowable as long as they are made for the purpose of aiding or facilitating the work of the Board. 15 U.S.C. 205g. Of course, the members will be liable for the income tax on their salary and will be entitled only to the limited deduction for charitable contributions prescribed by the Internal Revenue Service.



Deputy Comptroller General  
of the United States