



DECISION

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

[Applicability of Federal Physicians Comparability Allowance to Canal Zone Government Physicians] **9370**

FILE: B-193910

DATE: March 8, 1979

MATTER OF: Physicians Comparability Pay - Canal Zone Government Physicians

DIGEST: The Federal Physicians Comparability Allowance Act applies to physicians employed by the Canal Zone Government under C. Z. Code title 2, § 101. The ambiguity created by the Act's language extending its application to both the Canal Zone Government and the Panama Canal Company but referencing only C. Z. Code title 2, § 121 applicable to the Panama Canal Company may be resolved by reading into the statute a reference to section 101 in view of the Act's legislative history indicating an intent to include Canal Zone Government physicians.

The Governor of the Canal Zone has requested a decision as to whether the Federal Physicians Comparability Allowance Act of 1978, Pub. L. No. 95-603, 95th Cong., 2d Sess., 92 Stat. 3018, applies to physicians employed by the Canal Zone Government.

The Act amends title 5 of the United States Code by adding a new section 5948 to permit Federal agencies to grant additional compensation in the nature of a comparability allowance to Government physicians employed in categories of positions in which there is a significant recruitment and retention problem. Subsection 5948(g)(1) defines the term "Government physician" as including:

"* * * any individual employed as a physician who is paid under--

* * * * *

"(F) section 121 of title 2 of the Canal Zone Code, relating to the Canal Zone Government and the Panama Canal Company * * *."

The Governor points out that subsection 5948(g)(1)(F) is ambiguous in that section 121 of title 2 of the Canal Zone Code applies only to the Panama Canal Company. Authority to appoint and compensate employees of the Canal Zone Government is

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contained in section 101 of that title. In suggesting that reference to section 101 was inadvertently omitted, he refers to the explicit reference in subsection 5948(g)(1)(F) to the Canal Zone Government and to the fact that the Panama Canal Company employs only one regular full-time physician, whereas the Canal Zone Government employs 83 such physicians. He suggests that the words "section 101 or" may be read into subsection 5948(g)(1)(F) immediately preceding the words "section 121 of title 2" to avoid inconsistency with the legislative intent.

The rule of statutory construction on which the Governor relies is discussed at section 47.38, Sutherland Statutory Construction, as follows:

"Words may be supplied in a statute in order to give it effect, or to avoid repugnancy or inconsistency with the legislative intention where omission is due to inadvertence, mistake, accident, or clerical error, where omission makes the statute absurd, meaningless, irrational, or unreasonable, where legislative intent is clearly indicated by the context or other parts of the statute, where it is necessary that omissions be supplied to prevent unconstitutionality, where the omitted word was incorporated in the original act as shown by the enrolled bill, where the omitted words are indicated by the caption or title of the statute, where words are obviously or manifestly omitted."

We are in agreement with the Governor's view that omission of reference to section 101 in 5 U.S.C. § 5948(g)(1)(F) was a matter of inadvertence. On August 30, 1976, this Office issued a report entitled "Recruiting and Retaining Federal Physicians and Dentists: Problems, Progress, and Actions Needed for the Future." Among the problems identified in that report was the fact that under Pub. L. No. 93-274, enacted May 6, 1974, physicians in the uniformed services were eligible to receive "variable incentive pay" up to \$13,500 per year not available to General Schedule physicians. That report did not differentiate between physicians employed by the Canal Zone Government and the Panama Canal Company, but referred in more general terms to the 84 physicians employed by the Panama Canal Zone. The Federal Physicians Comparability Allowance Act of 1978 was intended to equalize the compensation of uniformed and General

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Schedule physicians. See 124 Cong. Rec. S8399-8401 (daily ed. May 25, 1978) and S. Rep. No. 95-864, 95th Cong., 2d Sess. (1978).

As initially introduced on March 14, 1977, S. 990, 95th Cong., 1st Sess., did not contain the particular language enacted as subsection 5948(g)(1)(F), but listed under the term "Government physician" any individual employed as a physician who is paid under:

"(C) pay scales or rate systems established for physicians employed by

* * * * *

"(ii) the Canal Zone Government or the Panama Canal Company* * *."

In introducing S. 990 Senator Mathias explained that the bill would authorize additional pay for approximately 1,950 physicians employed by 25 specific agencies, including the "Canal Zone." See 123 Cong. Rec. S4086 (daily ed. March 14, 1977). Thus, as originally drafted, S. 990 was intended to apply to physicians employed by the Canal Zone Government as well as the Panama Canal Company.

On May 15, 1978, S. 990, 95th Cong., 2d Sess., was reported with an amendment that included the enacted language of subsection 5948(g)(1)(F). The primary change accomplished by that amendment made the bill applicable only to those physicians in categories identified as having recruitment and retention problems. See 124 Cong. Rec. S8400 (daily ed. May 25, 1978). There is no indication in the legislative history that the amendment was otherwise intended to narrow the class of physicians eligible for comparability pay.

We are of the view that omission in subsection 5948(g)(1)(F) of specific reference to section 101 of title 2 of the Canal Zone Code was a mere oversight. Since the legislative history of Pub. L. No. 95-603 indicates an intent to extend comparability pay to those physicians not entitled to variable incentive pay, including physicians employed by the Canal Zone Government, we are in

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agreement with the Governor's view that a reference to section 101 may be read into the statute to resolve the ambiguity created by its omission and to give the statute its intended effect.


Deputy Comptroller General
of the United States