

DECISION



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

FILE: B-207515

DATE: October 5, 1982

MATTER OF: Advisory Committee on Reactor Safeguards - Nuclear
Regulatory Commission

DIGEST: Members of the Advisory Committee on Reactor Safeguards, Nuclear Regulatory Commission, a Committee established by the Atomic Energy Act, are appointed pursuant to said statute. The Nuclear Regulatory Commission is therefore without authority to enter into employment contracts with Committee members granting them monetary benefits beyond those provided by existing law and regulations.

This action is in response to a letter dated May 11, 1982, from the Nuclear Regulatory Commission inquiring whether the services of members of its Advisory Committee on Reactor Safeguards may be obtained under a contract or purchase order for personal services in order to allow them to receive employee benefits in addition to those currently provided under the Atomic Energy Act and the Federal Advisory Committee Act. We conclude that it may not be done.

The Advisory Committee on Reactor Safeguards was established by Section 29 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2039, to "review safety studies and facilities license applications * * * advise the Commission with regard to hazards of proposed or existing reactor facilities * * * and perform such other duties as the Commission may request." Section 2039 additionally provides for the appointment of Committee members to 4-year statutory terms of office by the Commission, and directs that the Committee members "shall receive a per diem compensation for each day spent in meetings or conferences, or other works of the Committee, and * * * shall receive their necessary traveling or other expenses while engaged in the works of the Committee." Members are compensated for each day worked under the authority of the Federal Advisory Committee Act, 5 U.S.C. Appendix I, Section 7, at a rate not to exceed the daily equivalent of a GS-18. The Atomic Energy Act and the Federal Advisory Committee Act currently do not contain any provision granting the Commission general authority to otherwise fix the Committee members' emoluments, nor do those laws contain any provision specifically granting the Committee members any direct entitlement to additional compensation or benefits in the form of paid leaves of absence, insurance coverage, retirement plan contributions, etc.

Over the years since it was established, the Committee's duties have evolved to a point that members perform Committee work intermittently on an average of 124 days per year. About two-thirds of the members' work is scheduled in advance. The proposed new appointment procedure

is aimed at providing members, whose volume of work approaches or exceeds that of regular part-time Government employees, with some of the benefits provided to part-time Government employees, but not currently available to Committee members. These benefits include death and disability compensation, life and health insurance, sick and annual leave, and retirement benefits. However, doubt has arisen concerning the legality of the proposal to appoint the members and grant them pay and these other benefits through employment contracts.

The Advisory Committee on Reactor Safeguards is established by statute, and its members are appointed in the Federal service pursuant to statute. The relationship between the Federal Government and its officers and employees is not a contractual relationship. Since Federal officers and employees are appointed and serve only in accordance with applicable statutes and regulations, the ordinary principles of contract law do not apply. Matter of Elder and Owen, 56 Comp. Gen. 85 (1976). Members of the Committee are entitled to the benefits provided by law. These benefits may not be increased by contract or other means not specifically authorized by law. Thus, any purported contract which the Nuclear Regulatory Commission might negotiate with members of the Advisory Committee on Reactor Safeguards to provide for their compensation would be without legal effect. Federal Crop Ins. Corp. v. Merrill 332 U.S. 380 (1947). See also 63 Am. Jur. 2d Public Officers and Employees 10 and 360-361 (1972); 67 C.J.S. Officers 219 (1978); Dianish v. United States, 183 Ct. Cl. 702, 705-705 (1968).

Accordingly, we could not approve payments for the additional employee benefits contemplated under the proposed appointment procedures.

for *Harry R. Cline*
Comptroller General
of the United States