



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

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B-201129

November 25, 1980

The Honorable Howard W. Cannon  
Chairman, Committee on Commerce,  
Science and Transportation  
United States Senate

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SEN 06200

Dear Mr. Chairman:

Your letter of October 29, 1980, raises questions concerning appointments to the Railroad Accounting Principles Board established by Title III of the Staggers Rail Act of 1980, Pub. L. 96-448. The six Board members, to be appointed by the Comptroller General as chairman, are required by 49 U.S.C. 11161(a)(3), as added by that act, to be "well qualified for such position by virtue of experience in or knowledge of rate regulation, accounting or cost determinations." Given this requirement, and because the law requires five of the six Board members to be appointed from sectors of the transportation industry and from specified professions, you note the possibility that persons actively engaged in Interstate Commerce Commission (ICC) rate proceedings may be recommended for appointment. You ask whether such an appointment would pose conflicts of interest problems, either now or after such person has served on the Board.

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At the outset, we must point out that the Attorney General has responsibility for enforcing the provisions of Title 18 of the U.S. Code pertaining to conflicts of interest and that the views of this Office are advisory only.

Subsection 11161(a)(1) of Title 49, as added by the Staggers Rail Act of 1980, establishes the Railroad Accounting Principles Board "within and responsible to the legislative branch of the Federal Government." Because the Board is within the legislative branch, its members would not appear to be subject to several of the more significant conflicts of interest provisions contained in Chapter 11 of Title 18 of the U.S. Code or to the Standards of Ethical Conduct for Government Officers and Employees, Executive Order 11222. They would possibly be subject to conflicts of interest restrictions promulgated within the legislative branch for application to its officers and employees.

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Perhaps the most significant provision which Board members would not be subject to is 18 U.S.C. 207. As amended by the Ethics in Government Act of 1978, Pub. L. 95-521, section 207 contains the "post employment conflicts of interest" provisions that restrict former employees in their dealings with the Government after their employment has terminated. Since Board members would not be subject to these restrictions, they and the firms or companies with which they are affiliated would not be restricted by law as to future dealings with or proceedings before the ICC or any other government agency. Similarly, it would appear that they would not be subject to 18 U.S.C. 208 which restricts personnel, while within the executive branch, from participating in actions affecting their personal financial interests and they would not seem to be subject to the prohibitions on supplementation of salary set forth in 18 U.S.C. 209.

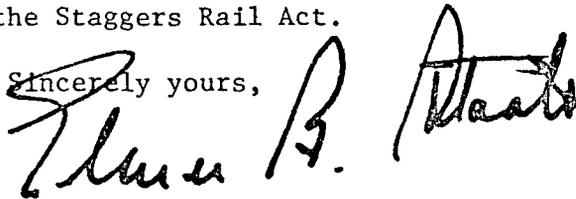
While serving on the Railroad Accounting Principles Board, its members will be subject to 18 U.S.C. 203 and 205. These statutes apply to officers and employees of the legislative as well as the executive and judicial branches of the Government. Essentially, they restrict regular officers and employees (as distinguished from special Government employees) from receiving compensation in connection with or representing anyone else in "any proceeding, application, request for ruling or other determination \* \* \* or other particular matter in which the United States is a party or has a substantial interest before any department, agency \* \* \*." These restrictions, which apply to a specific case or matter as opposed to a general area of activity, would generally appear to preclude the members themselves from accepting compensation in connection with or engaging in proceedings before the ICC during the periods of their appointments.

However, if the members' services will not be needed for more than 130 days per year, their activities while serving on the Board will be subject instead to the more limited restrictions set forth in sections 203 and 205 for application to special Government employees. Section 202 of Title 18 of the U.S. Code defines the term "special Government employee" to include an officer or employee of the legislative branch who is appointed to perform services for not to exceed 130 days during any period of 365 consecutive days. Subsection 203(c) and the third full paragraph of section 205 restrict the activities of a special Government employee only in relation to a "particular matter involving a specific party or parties (1) in which he has at any time participated personally and substantially as a Government employee or special Government employee, through decision, approval, disapproval, recommendation,

the rendering of advice, investigation or otherwise or (2) which is pending in the department or agency of the Government in which he is serving." Also, those sections exclude from otherwise applicable restrictions those employed for 60 days or less. As a practical matter, these provisions would not seem to significantly restrict the outside activities of members who are special Government employees. For a matter to be subject to these limitations, it must involve a specific party or parties. Since the Board's mandate is to develop industry accounting principles, its proceedings and determinations, presumably, will not involve specific parties in a sense that would restrict its members from activities before the ICC or other Government agencies.

There are no Federal conflict of interest restrictions, as such, that would preclude appointments being made to the Board from among sectors of the industry, firms or individuals actively engaged in dealings with or before the ICC. In fact, it may well be that prior participation in ICC rate proceedings is precisely the type of experience that might render an individual qualified for appointment under 49 U.S.C. 11161(a)(3). Certainly there may be reasons why a particular individual should not be appointed to the Board and these reasons may or may not relate to prior dealings before the ICC. This, however, is a matter that calls for an exercise of judgment on my part as the appointing official. Be assured that I intend to carefully consider the background and qualifications of the candidates for Board membership and to appoint a board whose composition reflects the balance of interests contemplated by the Staggers Rail Act.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Thomas B. Heath". The signature is written in a cursive style with a large initial "T" and "H".

Comptroller General  
of the United States