



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

NOV. 16 1981

B-205284

The Honorable John J. Duncan
House of Representatives

Dear Mr. Duncan:

We refer to your letter dated October 9, 1981, concerning the plan adopted by the Tennessee Valley Authority (TVA) on October 7, 1981, to provide certain cash payments to its top management officials in addition to their regular salaries. You say that this plan appears to be in conflict with the TVA Act, and you have therefore asked that we conduct a study on the legality of the plan.

Enclosed is a copy of our advisory opinion in which we concluded that the plan improperly contravenes the TVA Act.

Essentially, section 3 of the TVA Act, 16 U.S.C. 831b, prohibits TVA employees from receiving a "salary" in excess of that received by members of the TVA Board of Directors, but it also authorizes the Board to otherwise fix the employees' "compensation." Members of the TVA Board of Directors under the terms of 5 U.S.C. 5315 hold positions at level IV of the Executive Schedule, and their salary or "basic pay" is therefore limited to \$52,750 per annum. Thus, the salaries of TVA's top executives, managers, and engineers are also limited to \$52,750 per annum.

The TVA Board of Directors adopted a resolution at their October 7 meeting approving a plan to pay up to 75 TVA executives a yearly amount of up to \$36,000 in addition to their regular salaries. Those executives would thus receive more yearly pay under the plan than the annual salary or "basic pay" prescribed by law for members of the TVA Board of Directors.

TVA officials have suggested that the additional pay would constitute "compensation" but not "salary" under the terms of section 3 of the TVA Act, and that the new pay plan is therefore legally permissible. Since 1955 the TVA has construed the word "salary" as used in section 3 of the

TVA Act as meaning an employee's "basic compensation," or "annual rate of compensation," not including overtime compensation, occasional bonuses, retirement fund contributions, and miscellaneous fringe benefits. We agree with that construction of the statute. However, the new pay plan was clearly designed to circumvent the statutory limitation on salary, and in our view the additional pay would constitute a part of an executive's basic "annual rate of compensation," i.e., his "salary." It is therefore our opinion that the new pay plan improperly contravenes the salary limitations imposed by section 3 of the TVA Act.

While it is our opinion that the new pay plan adopted by the TVA is not authorized by law, TVA contends it is experiencing difficulties in recruiting and retaining top executive talent due to the existing salary limitations imposed by statute. Due to what has commonly come to be known as Federal executive "pay compression," the purchasing power of level IV executive pay has decreased by about 40 percent since 1969 as the result of high levels of inflation during the intervening years. This has caused personnel recruitment and retention problems throughout the Federal Government. Our July 31, 1980 report, "Federal Executive Pay Compression Worsens" (FPCD-80-72), discusses this problem more fully. In that report we recommended the Congress take action to correct the "pay compression" problem that exists generally throughout the Federal establishment. We suggest this general problem be taken into account in any specific remedial legislative action taken with respect to the TVA's new pay plan.

In your letter of October 9 and a subsequent letter dated October 16 you also posed a number of specific factual questions about some of the details of the pay plan and the effects it would have on TVA's ratepayers. Members of our Energy and Minerals Division have provided your staff with the answers to those questions.

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We trust this will serve the purpose of your inquiry.

Sincerely yours,

Signed Charles A. Bowsher

Comptroller General
of the United States

Enclosure