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

H-157936

November 23, 1973

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Mr. Robert H. Hampton, Chairman
United States Civil Service Commission

Dear Mr. Hampton:

This refers further to your letter of August 13, 1973, reference GC:LEG 1, wherein you request our opinion concerning the reimbursements to a State or local government authorized by Title IV of the Intergovernmental Personnel Act (IPA), 5 U.S.C. § 3374(c).

You state that IPA permits an employee of a State or local government to be assigned to an executive agency either pursuant to an appointment or by means of a detail. This law provides that the executive agency may reimburse the State or local government for the pay, or a part thereof, of the employee during the period he was detailed to the agency. You further state that the provisions authorizing an executive agency to reimburse "for the pay" of the employee appears in 5 U.S.C. § 3374 for the first time, to your knowledge, and were not a part of prior laws providing for the interchange of personnel with States.

You are of the opinion that the statutory scheme authorizes the payment of all salary expenses normally associated with an employee and that the fringe benefits an employer pays on behalf of his employee may be included in the reimbursement a Federal agency makes for a detailee assigned to it. The following question is submitted for our consideration:

"May the sums of money paid by an Executive agency to a State or local government under the authority of 5 U.S.C.A. §3374(a) include reimbursement for the employee's fringe benefits such as retirement, life, health insurance and costs for negotiating the assignment agreement (required under 5 CFR 334.105) and preparing the payroll records and the assignment report (required under 5 CFR 334.106)?"

Subsection 3374(c) of title 5, United States Code, providing for assignments from State or local governments to an executive agency provides in part as follows:

"(c) During the period of assignment, a State or local government employes on detail to an executive agency—

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"(1) is not entitled to pay from the agency;

* * * * *

* * * A detail of a State or local government employee to an executive agency may be made with or without reimbursement by the executive agency for the pay, or part thereof, of the employee during the period of assignment."
(Underscoring added.)

Our examination of the legislative history indicates that pay is referred to as the salary of a State or local detailee. H. Rept. No. 91-1733, 91st Cong., 2d sess., page 19; S. Rept. No. 91-489, 91st Cong., 1st sess., page 19. In this connection we have previously held that the words "pay," "salary," and "compensation" generally are considered synonymous in the construction of personnel statutes. 10 Comp. Gen. 302 (1931).

The word "pay" used in such legislation as the comparability provision of the Classification Act of 1949, now codified in 5 U.S.C. 5101 et seq., and in applicable regulations does not necessarily cover the whole ambit of employment costs. In general the term is used in personnel statutes to refer to wages, salary, overtime and holiday pay, periodic within-grade advancements and other pay granted directly to the Federal employees. With respect to fringe benefits, such as retirement, insurance and health benefits, the Federal employees receive such benefits under various acts of Congress rather than the Federal Pay Comparability System. See, for example, chapter 83 of title 5, United States Code.

We found no indication in the legislative history that the Congress intended that the word "pay" as used in 5 U.S.C. 3374(c) was to include benefits, such as retirement, life, health insurance, etc., which, as stated above, are not generally encompassed in pay statutes. Moreover, we note that 3374(a) expressly provides that, under the conditions enumerated therein, executive agencies may make contributions to State and local retirement, life insurance and health benefit plans applicable to employees appointed to executive agency positions pursuant to 3374(a). It is significant that no similar authority is included in the law which would permit contributions in the case of State or local employees detailed to executive agency positions under 3374(c).

In view of such fact and in the absence of any clear indication of a legislative intent to the contrary we would not be warranted in ascribing

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to the term "pay" as used in 3374(c) any meaning different from that intended by the Congress in enacting the various pay legislation contained in title 5 of the United States Code. Accordingly, it is our view that executive agencies may not make reimbursement to State and local governments covering the various fringe benefits enumerated in your letter which the State or local government provides for employees detailed to Federal positions under 3374(c). Regarding costs for negotiating the assignment agreement and preparing the payroll records and the assignment report, we agree with your analysis that such expenses are overhead items rather than salary items.

In view of the above your question is answered in the negative.

Sincerely yours,

R.F.KELLER

(Deputy) Comptroller General
of the United States

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