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

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APR 25 1966

B-158954

Dear Senator Proxmire:

In your letter of April 12, 1966, you have posed the following inquiries:

"Is it within the administrative discretion of an agency of the United States Government to require a regularly scheduled night shift employee who is entitled to court leave on account of jury service to:

"(1) - Work any part of his shift prior to jury service or suffer a charge against his annual leave?

e.g. - His shift hours are 12 midnight to 3:00 a.m., January 15. Jury service to be performed on January 15, the same day.

"(2) - Work any part of his following shift when he has been excused from jury duty for a substantial part of a day, but required to report and/or serve the following day or suffer a charge against his annual leave?

e.g. - Excused for substantial part of January 15 from jury duty. His following shift hours are 12 midnight to 3:00 a.m. January 16. Required to perform jury duty on January 16 the same day.

"Is it not correct to state that such an employee must be granted court leave for his entire shift hours on all days during which he is required to perform jury duty regardless of the number of hours of jury duty involved?

"Would the answers to the above examples be any different if the hours of the night shift worker were 4 P.M. to 12:30 A.M. instead of 12 midnight to 3:00 A.M.?

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"Is there or can there be any validity to interpretations of Civilian Personnel regulations which are in conflict with the Federal Personnel Manual?"

With respect to absence because of jury service the act of June 29, 1940, 54 Stat. 689, 5 U.S.C. 30a provides:

"The compensation of any employee of the United States or of the District of Columbia who may be called upon for jury service in any State court or court of the United States shall not be diminished during the term of such jury service by reason of such absence, except as provided in section 30p of this title, nor shall such period of service be deducted from the time allowed for any leave of absence authorized by law."

Under that act this Office has determined that any permanent federal employee under proper summons from a State or Federal court to serve on a jury may be granted court leave for the entire period on which he is required to report to the court until he is dismissed by the court regardless of the number of hours per day or days per week he is required to serve. 20 Comp. Gen. 131.

However, the term of that service does not include time during which an employee is excused or dismissed by the court for an indefinite period subject to call by the court or in those cases where no hardship would result for a definite period of one day or a substantial portion of one day. 26 Comp. Gen. 413.

It was not intended for an employee to be required to return to work for short periods of less than one day if for instance he is engaged in night work and to do so would deprive him of his rest. Ibid.

To answer your first query it would appear to work a hardship to require a regularly scheduled night shift employee to work his 12 midnight to 8:00 A.M. shift or part of such shift on January 15 prior to reporting for jury service on that date.

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With respect to your second query it would appear to work a hardship to require a worker who was excused from a substantial part of his jury duty on January 15 to work his 12 midnight to 8:00 A.M. shift on January 16 prior to reporting on jury duty on that date.

As to query number three it would seem that a night shift employee (12 midnight to 8:00 A.M.) should be excused for his entire shift on any day prior to being required to perform jury duty.

In answer to query number four since the requirements of jury duty would appear to be such as would ordinarily interfere with the rest of a worker on a 4:00 P.M. to 12:30 A.M. shift it would not appear reasonable to require him to work any part of his shift on any day after he performs jury duty. However, it is not considered that his working a 4:00 P.M. to 12:30 A.M. shift on January 15-16 would interfere with his reporting for jury duty at 9:30 A.M. on January 16.

Our views covering the foregoing specific inquiries involve matters of judgment and what is reasonable under the circumstances. It may be that a particular situation because of unusual circumstances would require a different answer.

Concerning your fifth query it may be said that ordinarily the regulations of the Civil Service Commission appearing in the Federal Personnel Manual are controlling in respect of the subject matters for which that agency has been authorized to regulate. However, we point out that the Civil Service Commission has not been authorized to issue regulations under the statute quoted above. The material appearing in the Federal Personnel Manual under the heading "Jury Service" is--as indicated herein--merely for purposes of information. We understand that most agencies issue their own regulations which, of course, should conform with law and our decisions, and otherwise be fair and reasonable in application to the particular circumstances involved.

Sincerely yours,

FRANK H. WEITZEL

Assistant

Comptroller General  
of the United States

The Honorable Winston L. Prater  
United States Senate

**Court**

FRANK H. WEITZ

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