

J. Dupton, Rm. 1016E-2



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Interpretation of the Technology Assessment Act
Regarding Compensation of OTA Employees

File: B-177806

Date: March 20, 1987

DIGEST

Under the Technology Assessment Act, 2 U.S.C. § 471, et seq., the Office of Technology Assessment (OTA) is permitted to establish salary and compensation levels for staff employees without regard to the classification laws in chapter 51 of title 5. The Director, OTA may appoint and fix compensation of employees in accordance with the law and regulations governing appointment and compensation of congressional staff employees.

DECISION

This is in response to a January 14, 1987, letter from the Director, Office of Technology Assessment (OTA), an arm of the Congress, requesting that this Office issue a formal opinion regarding the compensation of OTA employees under the Technology Assessment Act of 1972, Pub. L. No. 92-484, October 13, 1972, 86 Stat. 797. In 1974, OTA sought and received our informal opinion concerning this and other issues. This decision formalizes that opinion with regard to OTA's authority to fix the compensation of its employees.

The specific issue that OTA has asked us to address is whether it has authority under 2 U.S.C. § 475(f) to fix the compensation of all OTA employees with the exception of the Director and Deputy Director, whose salaries are established under 2 U.S.C. § 474, and the members of the Technology Assessment Council whose compensation is established under 2 U.S.C. § 476.

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Section 475(f) provides as follows:

"(f) Appointment and compensation of personnel

"The Director shall, in accordance with such policies as the Board shall prescribe, appoint and fix the compensation of such personnel as may be necessary to carry out the provisions of this chapter."

OTA construed this provision as authorizing the Director to establish salaries and compensation for OTA staff employees without regard to the General Schedule (5 U.S.C. § 5332) or other standard compensation levels for Federal Government employees or the classification provisions of chapter 51 of title 5, United States Code. We concurred in this construction as explained below. However, we did not concur in OTA's initial interpretation of the statute as permitting it to establish salary and compensation levels for staff employees without regard to those established by the Congress or either House thereof.

The Joint Explanatory Statement of the Committee of Conference contained in H.R. Rep. No. 92-1436, 92d Cong., 2d Sess. 10 (1972) clearly expressed congressional intent with regard to section 475(f) as follows:

"The House bill provided that OTA employees be subject to the provisions of Title 5 of the United States Code governing appointments in the competitive service, classification, and pay rates. The Senate amendment deleted this section on the grounds that these provisions of the Code do not apply to employees of the Congress. The House conferees concurred in this view. The intent of the conference is to have OTA staff considered as Congressional staff."

Moreover, the congressional intent that OTA employees are congressional staff is consistent with the contemporaneous administrative interpretation of OTA officials made by Senator Edward M. Kennedy, then Chairman, Technology Assessment Board and former Congressman Charles A. Mosher, then Vice Chairman, Technology

Assessment Board, in a letter dated January 23, 1974, to the Chairman of the United States Civil Service Commission setting forth the view of the Board on the status of OTA employees under the provisions of the Technology Assessment Act of 1972. That letter says:

"There is no disagreement as to the basic congressional character of the OTA, nor is there any question about Congress' intent as expressed in the legislation and the Conference Report that OTA staff be 'considered as Congressional staff.'"

This legislative history and contemporaneous administrative interpretation indicates that OTA staff personnel were not to be subject to the provisions of title 5 of the United States Code as pertains to appointment and classification of employees. Rather, OTA employees were to be considered as congressional staff and therefore subject to the provisions of title 2 of the United States Code and implementing regulations promulgated by both Houses governing the appointment and classification of this class of employees. Hence, the Director, OTA may appoint and fix the compensation of OTA staff employees in accordance with policies prescribed by the Technology Assessment Board as governed by the limitations contained in title 2 of the United States Code and implementing regulations pertaining to the appointment and classification of congressional staff employees. In this connection, we suggest that OTA elect to be bound either by the Senate or House regulations governing compensation and allowances of congressional staff employees in order to facilitate a simple, uniform and fair system of administration of personnel matters.

for 
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