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IN REPLY
REFER TO: B-198472 (MRV)

May 21, 1980

The Honorable Jim Sasser
Chairman, Subcommittee on
Intergovernmental Relations
Committee on Governmental Affairs
United States Senate

Dear Mr. Chairman:

This is in response to your letter of March 28, 1980, addressed to Daniel P. Leary, Associate Director, Claims Division, on behalf of Mr. Robert Cunningham concerning the payment of holiday pay to part-time employees. The question arose in connection with the observance of the Labor Day holiday at the Army Commissary, Fort Campbell, Kentucky. From the information provided in the enclosures with your letter we offer the following comments on this matter.

In accordance with Army regulations the Army Commissary designated Tuesday, September 4, 1979, as the "in lieu of" holiday for full-time Commissary employees with a Tuesday through Saturday tour of duty. In order to avoid the payment of holiday pay to these full-time employees the Army closed the Commissary on Tuesday. However, the Army advised part-time employees that they could either take annual leave or leave without pay on Tuesday or work that day and be compensated at their basic rates of pay. When a part-time employee filed a grievance seeking holiday premium pay for working on Tuesday, the Army denied the grievance on the basis that part-time employees were not entitled to a day in lieu of a holiday which did not fall within their basic workweek and they could be paid holiday premium pay only for work performed on a legal holiday or a day on which the holiday is legally observed.

The first question to be addressed is the Army's selection of a day in lieu of a holiday where the Labor Day holiday fell on a nonworkday for these employees. Under the provisions of 5 U.S.C. § 6103(b)(2) (1976), where Monday is the declared holiday and it is also the regular nonworkday of an employee with a Tuesday through Saturday workweek, then the Saturday immediately preceding the holiday is normally the employee's legal holiday. See 44 Comp. Gen. 803 (1965); and B-192104, September 1, 1978. However, under the provisions of 5 U.S.C. § 6101(a)(3)(E), an agency may provide that when a holiday falls on Monday, Saturday will be a workday and Tuesday will be the nonworkday

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in lieu of the Monday holiday. See B-154063, November 20, 1964, in which we construed the provisions of the statute from which 5 U.S.C. § 6101(a) was derived. In that decision we held that it was a valid exercise of administrative discretion to designate one other workday as the nonworkday of all employees in a unit in lieu of Saturday. Thus, the Army's regulation providing for the observance of Monday holidays on a Sunday-Monday-Tuesday basis appears consistent with the statutes and our decisions.

The second question to be addressed is the entitlement of part-time employees to a day in lieu of a holiday which does not fall within their basic workweek. As we held in B-192104, supra, the term "basic workweek" as it appears in 5 U.S.C. § 6103(b)(2) as well as Executive Order No. 10358, superseded by Executive Order No. 11582, applies only to full-time employees and not part-time employees. See also 32 Comp. Gen. 378 (1953). Thus, we have held that part-time employees are not entitled to a day in lieu of a holiday which falls on their nonworkday. 32 Comp. Gen. 378, supra, and B-192104, supra.

With regard to the payment of holiday premium pay, we have held that part-time employees are entitled to compensation for a holiday which falls within their regularly scheduled workweek. 32 Comp. Gen. 304 (1952). Therefore, if the part-time employees performed work on such a holiday, they would be entitled to holiday premium pay for such work. See 5 U.S.C. § 5546(b) (1976). However, since part-time employees are not entitled to a day in lieu of a holiday which falls on a nonworkday, they are not entitled to holiday premium pay for work performed that day.

Finally, we note that the Army closed the Commissary on Tuesday but required the part-time employees to either work that day (presumably on administrative duties) or take annual leave or leave without pay. As we held in B-192104, supra, an agency may close an office or facility for administrative reasons but not dismiss the employees without charge to leave where those employees were not entitled to a holiday.

Accordingly, we find that the Army regulations and the decision of the Army in this grievance are consistent with applicable laws, Executive Orders, and decisions of our Office. We have enclosed copies of the decisions cited above, and we trust this information

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is responsive to your inquiry. A similar letter is being sent to the Honorable Gladys Noon Spellman, U.S. House of Representatives.

Sincerely yours,

Milton J. Forster

For the Comptroller General
of the United States

Enclosures