



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

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B-203961 (RCP)

JUL 9 1981

The Honorable Mark O. Hatfield
Chairman, Committee on Appropriations
United States Senate

Dear Mr. Chairman:

We refer to your letter dated July 7, 1981, in which you ask our opinion concerning the rate of compensation allowed by section 4(a)(3) of Pub. L. No. 96-501, 94 Stat. 2697, December 5, 1980 (the Pacific Northwest Electric Power Planning and Conservation Act) for officers of the Pacific Northwest Electric Power and Conservation Planning Council.

Section 4(a)(3) of the Act provides as follows in regard to personnel and compensation standards for members and officers of the Council:

"(3) * * * The members and officers and employees of the Council shall not be deemed to be officers or employees of the United States for any purpose. The Council shall appoint, fix compensation, and assign and delegate duties to such executive and additional personnel as the Council deems necessary to fulfill its functions under this Act * * *. The compensation of the members shall be fixed by State law. The Compensation of the members and officers shall not exceed the rate prescribed for Federal officers and positions at step 1 of level GS-18 of the General Schedule."

You point out that the rate shown for GS-18 of the General Schedule is \$71,734 in accordance with Executive Order 12248, October 16, 1980, 45 F.R. 69199, 69201, October 20, 1980. In our opinion, however, the provisions

*[Rate of Compensation for Officers of The Pacific Northwest Electric
Power and Conservation Planning Council]*

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of section 4(a)(3) of the Act do not authorize or permit the actual payment of salary to a member of the Council in excess of the limitation on the rate payable for step 1, GS-18, which at present is limited to \$50,112.50 by section 5308 of title 5, United States Code and section 401 of Pub. L. No. 97-12, June 5, 1981, (Supplemental Appropriation and Rescission Act, 1981).

Pay rates for the statutory pay systems, including the General Schedule, are fixed and adjusted under the pay comparability provisions contained at chapter 53, subchapter I, of title 5, United States Code. Section 5308 limits the amount of compensation that employees may receive as follows:

"Pay may not be paid, by reason of any provision of this subchapter, at a rate in excess of the rate of basic pay for level V of the Executive Schedule."

In our decision 56 Comp. Gen. 375 (1977) we recognized that the limitation of section 5308 extends to individuals whose rates of pay are derived from the General Schedule. In that case the pertinent section of the Farm Credit Act provided that the compensation of Deputy Governors "shall not exceed the maximum scheduled rate of the General Schedule." In holding that the pay of Deputy Governors is within the purview of 5 U.S.C. § 5308, we stated as follows:

"* * * Clearly it is 'by reason of any provision of this subchapter' that the amounts in the General Schedule in excess of executive level V are derived, and by the express language of the section they may not be paid to anyone whose rate of pay is derived from the General Schedule. The amounts in excess of Executive level V are denoted by an asterisk in Executive Order 11941, October 1, 1976, and footnoted by an express reference to 5 U.S.C. 5308 limiting basic pay to \$39,600, the current rate for level V of Executive Schedule. Such amounts are, in effect, nothing more than projections of what the pay rates would be were it not for the limitation."

We believe the rationale of that decision applies here.

Currently, level V of the Executive Schedule is limited to \$50,112.50, by section 401 of Pub. L. No. 97-12, June 5, 1981 (Supplemental Appropriations and Rescission Act, 1981) which states that:

"SEC. 401. Clause (c) of section 101 and clause (c) of section 102 of the joint resolution of December 16, 1980 (Public Law 96-536), are hereby amended by striking out 'June 5, 1981' and inserting in lieu thereof 'September 30, 1981'."

In turn, section 101(c) of Pub. L. No. 96-536, December 16, 1980 (H.J. Res. 644) - the current continuing resolution authorizing expenditures - provides:

"* * * the provisions of section 306(a), (b) and (d) of H.R. 7593 (providing salary pay cap limitations for executive, legislative, and judicial employees and officials) shall apply to any appropriation, fund, or authority made available for the period October 1, 1980, through June 5, 1981, by this or any other Act."

H.R. 7593 is the Legislative Branch Appropriation Act, 1981, as passed by the House of Representatives on July 21, 1980. Section 306 provides:

"(a) No part of the funds appropriated for the fiscal year ending September 30, 1981, by this Act or any other Act may be used to pay the salary or pay of any individual in any office or position in the legislative, executive, or judicial branch, or in the government of the District of Columbia, at a rate which exceeds the rate (or maximum rate, if higher) of salary or basic pay payable for such office or position for September 30, 1980, if the rate of salary or basic pay for that office or position is--

"(1) fixed at a rate which is equal to or greater than the rate of basic pay for level V of the Executive Schedule under section 5316 of title 5, United States Code, or--

"(2) limited to a maximum rate which is equal to or greater than the rate of basic pay for such

level V (or to a percentage of such a maximum rate) by reason of section 5308 of title V, United States Code, or any other provision of law or congressional resolution.

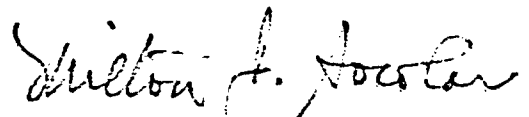
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"(d) For purposes of administering any provision of law, rule, or regulation * * * which imposes any requirement or limitation, on the basis of a rate of salary or basic pay, the rate of salary or basic pay payable after application of this section shall be treated as the rate of salary or basic pay."

The amounts in excess of Executive level V are denoted by an asterisk in Executive Order 12248, October 16, 1980, and footnoted by an express reference to 5 U.S.C. § 5308 limiting basic pay to \$50,112.50, the current rate for level V of the Executive Schedule.

Accordingly, since 5 U.S.C. § 5308 limits the compensation payable under step 1 of level 18 of the General Schedule to the rate for level V of the Executive Schedule, and since section 4(a)(3) of Pub. L. No. 96-501 provides that compensation for members of the Pacific Northwest Electric Power and Conservation Planning Council will not exceed the rate prescribed for Federal officers and positions at step 1 of level 18 of the General Schedule, we find that the Council members may not be paid at a rate in excess of \$50,112.50, notwithstanding the fact that they are not deemed to be Federal employees and that subchapter I of chapter 53, title 5, United States Code, may not otherwise be applicable to them.

Sincerely yours,



Acting Comptroller General
of the United States