

DECISION



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

Gait
PCM-II
33306

FILE: B-219496

DATE: January 22, 1986

MATTER OF: Texas State Court Juror Fees

DIGEST:

1. A statute of the State of Texas in effect between August 1979 and April 1985 authorized a "per diem" for the "pay of jurors." As the original construction of that statute, the Comptroller General's holding in July 1984 that jury fees payable under the statute constituted compensation for services rather than reimbursement of expenses is applicable retroactively to the date the statute first went into effect. The failure of Veterans Administration employees between 1979 and 1985 to account for such fees under 5 U.S.C. § 5515 resulted in an overpayment of compensation. Their indebtedness, however, may be considered for waiver under 5 U.S.C. § 5584.
2. In April 1985 the laws of the State of Texas were amended to provide for a daily allowance ranging from \$6 to \$30 "as reimbursement for travel and other expenses" of jurors. Since the express intent of this statute is merely to reimburse jurors for their out-of-pocket expenses, and the amounts authorized do not appear unreasonable or excessive for that purpose, amounts paid under this amended statute need not be regarded as compensation for jury service and Federal employees have no duty to account for them.

The issues presented in this matter concern employees of the Veterans Administration who have received fees for performing jury service with the courts of the State of

034343

Texas.^{1/} We conclude that employees who received jury fees prior to April 11, 1985, are indebted to the United States on account of the fees to the extent that the fees have not previously been credited against their pay, but that their indebtedness may be considered for waiver. We further conclude that employees who have received jury fees since April 11, 1985, do not have a duty to account for them because of a change in the laws of the State of Texas which took effect on that date.

Background

The Federal laws governing the conditions of employment of persons appointed to civil service positions with agencies of the United States Government make provision for paid leaves of absence for those summoned to serve as jurors or witnesses in State court proceedings.^{2/} They provide, however, that amounts received by employees for jury service during those periods of court leave "shall be credited against pay."^{3/}

We have long held that under these provisions of Federal law, employees of the United States Government engaged in jury duty while on court leave must account for fees received as compensation for jury service. However, we have recognized a distinction between fees received as compensation for jury service and amounts that represent reimbursement of traveling and other out-of-pocket expenses incurred in the performance of jury service. The latter are not to be credited against an employee's pay while on court leave. In the absence of evidence that the amounts paid were intended by the State to represent reimbursement of expenses, we have held that jury fees are to be regarded as compensation for jury service rather than as reimbursement of the travel and other expenses involved in undertaking that service. We have also held, however, that if the express intent of the applicable State law is merely to

^{1/} This action is in response to a request for a decision received from the Office of General Counsel of the Veterans Administration.

^{2/} 5 U.S.C. § 6322.

^{3/} 5 U.S.C. § 5515.

reimburse jurors for out-of-pocket expenses, and if the amount provided for that purpose does not seem unreasonable, we will not object to treating the amount received by the jurors as an expense allowance rather than as compensation in the nature of salary.^{4/}

Prior to August 1979 the statute of the State of Texas which authorized "Pay of Jurors" provided for monetary "compensation" for jury service. In August 1979 the Texas statute was amended to substitute the term "per diem" for the term "compensation." In July 1984 we held that despite this change in terminology, Federal employees continued to have a duty to account for fees they received as "pay" for jury duty in Texas during periods of court leave. This holding was based on the fact that the statute, as amended, did not expressly indicate that the fees were intended as an expense allowance.^{5/}

Veterans Administration officials indicate that until they learned of our July 1984 decision concerning the 1979 version of the Texas jury fee statute, they had not required agency employees to account for the "per diem" they received under that law, and as a result the employees were allowed to retain those payments. The officials question whether those employees who received jury fees prior to the time of our July 1984 decision have a duty to remit the payments they received and, if so, whether they are indebted to the United States in the amounts received.

In addition, the Veterans Administration officials note that on April 11, 1985, the Texas Revised Statutes were amended to read as follows with respect to jury fees:

"Article 2122. REIMBURSEMENT OF
EXPENSES OF JURORS.

(a) Each grand juror and each petit juror in
a civil or criminal case in a district or

^{4/} See, e.g., 52 Comp. Gen. 325, 326 (1972); William A. Lamb, B-183711, August 23, 1977; and James F. Murdock, B-192043, August 11, 1978.

^{5/} Texas State Court Juror Fees, B-214863, July 23, 1984; Glenell V. Hines, B-214558, July 23, 1984.

criminal district court, county court, county court at law, or justice court is entitled to receive as reimbursement for travel and other expenses an amount not less than \$6 nor more than \$30 for each day or fraction of a day that he serves as a juror. The commissioners court of each county shall determine annually, within the minimum and maximum prescribed in this subsection, the amount of the daily reimbursement of expenses for jurors, which shall be paid out of the jury fund of the county. A person who responds to the process of a court, but who is excused from petit jury service by the court for any cause after being tested on voir dire, is entitled to receive as reimbursement for travel and other expenses an amount not less than \$6 nor more than \$30 for each day or fraction of a day that he attends court in response to such process."

The officials question whether agency employees may retain jury fees received under the present law.

Jury Fees Received Prior to April 11, 1985

As indicated, in July 1984 we held that jury fees received by Federal employees under the August 1979 version of the Texas jury fee statute were to be regarded as pay or compensation for their services as jurors rather than as an expense allowance, so that the amounts received were to be credited against their Federal pay.^{6/} This was the first occasion we had considered the effect of that statute, and decisions of our Office involving the original construction of a statute apply retroactively to the date that the statute first went into effect.^{7/} Hence, we conclude that employees on court leave who received jury fees under that statute from the time it took effect in August 1979 to the date of its amendment on April 11, 1985, have a duty to account for the fees they received.

^{6/} Texas State Court Juror Fees, B-214863, supra; Glenell V. Hines, B-214558, supra.

^{7/} See 40 Comp. Gen. 14, 17-18 (1960); and 39 Comp. Gen. 455, 456 (1959).

Compensation for jury service received by Federal employees on court leave is to be "credited against pay," so that the employees' basic pay or salary must be reduced unless they voluntarily remit amounts representing the fees to their employing agency.^{8/} It follows that the employees in question are in debt as the result of the salary overpayments they received between August 1979 and April 1985 when appropriate deductions were not made from their pay on account of the jury fees.^{9/} It appears, however, that the debts involved may be considered under the Federal statute and regulations authorizing the waiver of overpayments of pay and allowances when there is no indication of fault on the employee's part, and it is otherwise shown that collection action "would be against equity and good conscience and not in the best interests of the United States."^{10/} Since we would not expect the amounts involved in any individual case to exceed \$500, this would appear to be a matter for consideration by the Veterans Administration, either on its own initiative or at the request of an individual debtor.^{11/}

Jury Fees Received Under Current Texas Law

The current Texas jury fee statute, quoted above, which was enacted on April 11, 1985, provides for a daily allowance ranging from \$6 to \$30 "as reimbursement for travel and other expenses." Hence, we find that the express intent of the current statute is merely to reimburse jurors for their out-of-pocket expenses. For this reason and because the amounts authorized do not appear unreasonable or excessive for that purpose, we conclude that Federal employees do not have a duty to account for jury fees under the current statute.

^{8/} See 43 Comp. Gen. 672 (1964); 41 Comp. Gen. 431, 433 (1962); and 20 Comp. Gen. 209 (1940).

^{9/} Collection of these debts is not barred by the passage of time. See 58 Comp. Gen. 501, 504-507 (1979).

^{10/} 5 U.S.C. § 5584, 4 C.F.R. Parts 91 and 92. --

^{11/} 4 C.F.R. § 91.4(b) and § 92.1.

B-219496

The questions presented are answered accordingly.

for *Sheldon J. Fowler*
Comptroller General
of the United States