

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548**FILE:** B-221416**DATE:** *March 12, 1986***MATTER OF:** Major General John L. France, Air
National Guard**DIGEST:**

A provision of the Department of Defense Appropriation Act, 1982, limited the combined military and civilian compensation of National Guard technicians to the rate payable for level V of the Executive Schedule. The full amount of a National Guard officer's combined civilian technician salary and military basic pay was subject to this limitation, even though the officer was on a detail to a state government under an arrangement providing for partial state reimbursement of his technician's salary, since during the detail he retained his federal civil service and military status, and his civilian salary and military basic pay remained obligations of appropriated federal funds.

The question presented in this matter is whether the full amount of a National Guard technician's combined civil service salary and military basic pay was subject to a statutory provision in effect between December 1981 and December 1982 which limited the combined federal military and civilian compensation of military Reserve technicians to the rate payable for level V of the Executive Schedule, even though he was assigned throughout that period to a state government under an arrangement calling for partial state reimbursement of his civilian salary.^{1/} We conclude that the full amount of his combined civilian salary and military basic pay was subject to the compensation limitation.

^{1/} This action is in response to a submission from the Directorate of Military Pay Operations, Air Force Accounting and Finance Center.

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Background

Persons employed in a civilian capacity by the Departments of the Army and the Air Force as technicians for the support of certain Reserve component programs are required to maintain a concurrent military status as reservists.^{2/} They receive salaries as full-time federal civilian employees and, in addition, they receive military pay and allowances for duty they perform under orders as military reservists. With respect to those persons, section 775 of the Department of Defense Appropriation Act, 1982, provided that:

"SEC. 775. None of the funds appropriated by this Act for the pay of Reserve and National Guard technicians based upon their employment as technicians and their performance of duty as members of the Reserve components of the Armed Forces shall be available to pay such technicians a combined compensation in excess of the rate payable for level V of the Executive Schedule: Provided, That for purpose of calculating such combined compensation, no military compensation other than basic pay will be included."^{3/}

This provision limiting the combined compensation of the technicians to the rate payable for employees at level V of the Executive Schedule became effective upon its enactment on December 29, 1981, and was continued in effect into the beginning of fiscal year 1983 on October 1, 1982, by operation of a continuing appropriations resolution.^{4/} Authority under that continuing resolution expired on December 17, 1982, and the Department of Defense Appropriation

^{2/} See, generally, 32 U.S.C. § 709; and 53 Comp. Gen. 493 (1974).

^{3/} Public Law 97-114, § 775, approved December 29, 1981, 95 Stat. 1565, 1590-91.

^{4/} Public Law 97-276, approved October 2, 1982, 96 Stat. 1186.

Act, 1983, enacted on December 21, 1982, contained no similar technician pay limitation.^{5/} Thus, the limitation operated to restrict the technicians' combined compensation to the level V rate for each of their federal biweekly pay periods between December 29, 1981, and December 17, 1982.^{6/}

Between December 1981 and December 1982 Major General John L. France, Colorado Air National Guard, held a federal civil service appointment as a National Guard technician, grade GS-15. The report forwarded by the Air Force Accounting and Finance Center in this matter indicates that during this period he was assigned to the State of Colorado under the authority of the Intergovernmental Personnel Act. A document designated as an "Assignment Agreement" under that Act stipulated that the type of assignment was a "detail from a Federal agency", and further stipulated that the State of Colorado "agrees to reimburse the Colorado Air National Guard in the amount of \$40,400 per annum to be applied toward the employee's normal General Schedule per annum Salary." The record indicates that General France was paid his GS-15 federal salary during this period for which the State of Colorado partially reimbursed the federal government, by making \$10,100 quarterly payments, to carry out the assignment agreement.

The accountable Air Force officials determined that the full amount of General France's GS-15 salary was subject to the limitation provided in section 775 of the Appropriation Act quoted above. General France disagreed with that determination, arguing that the amount of the salary reimbursements the State of Colorado made to the United States under the assignment agreement should have been excluded in computing his federal civil service salary for purposes of the pay limitation prescribed by section 775. The matter was referred to our Office for resolution.

^{5/} Public Law 97-377, approved December 21, 1982, 96 Stat. 1830, 1833.

^{6/} See Military Reserve Technicians' Pay, B-206699, November 25, 1985, 65 Comp. Gen. ____.

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Analysis and Conclusion

Title IV of the Intergovernmental Personnel Act,^{7/} as amended, 5 U.S.C. §§ 3371-3376, authorizes the temporary interchange of personnel between federal and state governments. 5 U.S.C. § 3372. Federal civil service employees detailed to a state government remain federal employees and are deemed by law to be on regular work assignments in their federal agencies. 5 U.S.C. § 3373(a).^{8/} The assignment of a federal employee on a detail to a state government may be made with or without reimbursement by the state government of the employee's salary during the assignment. 5 U.S.C. § 3373(b). If a state government agrees to reimburse all or a part of the detailed employee's salary, such reimbursement "shall be credited" by the employing federal agency to the federal appropriation used for paying the salary. 5 U.S.C. § 3373(b).^{9/}

In the present case, we find that under the provisions of the Intergovernmental Personnel Act described above, General France retained his status as a federal employee holding an appointment to the federal civil service position of National Guard technician, grade GS-15, during his detail with the State of Colorado. Moreover, we also find that the salary attached to his federal grade GS-15 position remained a matter of obligation of appropriated funds of the federal government, notwithstanding the agreement by the State of Colorado to provide partial reimbursement. That is, we do not find that the payments he received were converted to something other than a federal civil service salary by the requirement under the Act that such reimbursement be credited to federal appropriations. Hence, we conclude that the full amount of his grade GS-15 federal civil service salary, as well as the full amount of his military basic pay, were subject to the limitation in the quoted provision of the Department of Defense Appropriation Act, 1982.



Acting Comptroller General
of the United States

^{7/} Public Law 91-648, approved January 5, 1971, 84 Stat. 1909, 1920.

^{8/} See also H.R. Rep. No. 1733, 91st Cong., 2d Sess. 17-18, reprinted in 1970 U.S. Code Cong. & Ad. News 5879, 5896-5897.

^{9/} See also H.R. Rep. No. 1733, supra (footnote 8).