



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

AF/CP

Matter of: U.S. Sentencing Commission - Compensation of
Staff Director - Authority for Meritorious
Awards Program

File: B-227781

Date: September 11, 1987

DIGEST

1. Compensation of Staff Director, U.S. Sentencing Commission, is authorized to be fixed at a rate not to exceed the highest rate prescribed for grade 18 of the General Schedule pay rates. Such compensation may not exceed the rate for level V of the Executive Schedule, since the effect of 5 U.S.C. § 5308 is to limit the maximum scheduled rate of the General Schedule to the level V rate for anyone whose rate of pay is derived from the General Schedule. Higher amounts shown on the General Schedule are merely projections of what the rates would be without this limitation.

2. The U.S. Sentencing Commission does not have authority under its authorization or current appropriation acts to establish a meritorious awards program since such a program could not be considered a "necessary expense" in light of the fact that Congress in other acts has specifically legislated for meritorious award expenses, indicating that such expenditures should not be incurred except by its express authority.

DECISION

ISSUES

The issues in this decision are whether the salary for the grade GS-18 Staff Director of the United States Sentencing Commission is limited to the basic pay for level V of the Executive Schedule and whether the Sentencing Commission is authorized to pay performance bonuses and incentive awards to its staff in meritorious cases. We hold that, since the highest rate prescribed for grade GS-18 is limited under existing law to the rate for level V of the Executive Schedule, the Staff Director of the Sentencing Commission may not be compensated at a rate which exceeds the rate for level V of the Executive Schedule, currently \$72,500.

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66 Comp. Gen. 650

With regard to the payment of meritorious awards, we conclude that the Sentencing Commission does not have authority under either its authorization or current appropriation acts to establish a meritorious awards program for its employees since such a program could not be considered a "necessary expense" directly related to the purpose for which the Commission was created or the work it does.

BACKGROUND

Mr. John R. Steer, General Counsel of the United States Sentencing Commission (Commission), requested our opinion regarding the maximum base salary which the Commission may pay its Staff Director and whether the Commission is authorized to pay performance bonuses and incentive awards to staff in meritorious cases.

Regarding the first issue, Mr. Steer points out that the Commission is authorized to fix the salary of the Staff Director at a rate not to exceed the highest rate prescribed for grade 18 of the General Schedule pay rates. Since the officers and employees of the Commission are exempted from the provisions of part III of title 5 of the United States Code (with certain exceptions unrelated to this issue), Mr. Steer questions whether 5 U.S.C. § 5308, which limits the pay of most federal employees to the rate of basic pay for level V of the Executive Schedule, is applicable to the salary of the Staff Director. Mr. Steer notes that, from a practical standpoint, the Commission would prefer to offer a salary in excess of the Executive Schedule level V rate if necessary to attract and retain a highly qualified, experienced person as Staff Director.

Concerning meritorious awards, Mr. Steer indicates that the Commission is considering adopting a policy, modeled on policies in effect at the Administrative Office of United States Courts and the Office of Personnel Management, which would permit the payment of bonuses or awards in meritorious cases. While no provision of the Commission's enabling statute specifically authorizes or precludes such a program, Mr. Steer asks whether the Commission, pursuant to its general authority under 28 U.S.C. § 995(a)(1), may adopt a meritorious award policy and whether there are any limits to the amount of the bonuses or the number of deserving staff members who may receive them.

OPINION

Base Salary of Staff Director

The administration and operation of the Commission is governed by Title II of the Comprehensive Crime Control Act

of 1984, Public Law 98-473, October 12, 1984, as amended (28 U.S.C. §§ 991 et seq. (Supp. III 1985)). This legislation provides in pertinent part as follows:

"28 U.S.C. § 995. Powers of the Commission

"(a) The Commission, by vote of a majority of the members present and voting, shall have the power to - * * *.

"(2) appoint and fix the salary and duties of the Staff Director of the Sentencing Commission, who shall serve at the discretion of the Commission and who shall be compensated at a rate not to exceed the highest rate now or hereafter prescribed for grade 18 of the General Schedule pay rates (5 U.S.C. 5332) * * *.

"§ 996. Director and Staff

"(a) The Staff Director shall supervise the activities of persons employed by the Commission and perform other duties assigned to him by the Commission.

"(b) The Staff Director shall, subject to the approval of the Commission, appoint such officers and employees as are necessary in the execution of the functions of the Commission. The officers and employees of the Commission shall be exempt from the provisions of part III of title 5, United States Code, except the following chapters: 81 (Compensation for Work Injuries), 83 (Retirement), 85 (Unemployment Compensation), 87 (Life Insurance), 89 (Health Insurance), and 91 (Conflict of Interest)." (Emphasis added.)

The Commission argues that, since the officers and employees of the Commission are excluded from the coverage of chapter 53 of title 5, the Staff Director is exempt from the pay limitation contained therein, 5 U.S.C. § 5308, and that he may be compensated at the higher rate indicated for grade GS-18 (currently \$86,682) rather than the rate for level V of the Executive Schedule (currently \$72,500).

We do not agree that the Staff Director may be paid at a rate in excess of the rate now paid other grade GS-18 employees. Section 5308 of title 5, United States Code, provides:

"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." (Emphasis added.)

We considered the effect of this language on the compensation of employees exempted from subchapters I and III of chapter 53 of title 5 in Farm Credit Administration, 56 Comp. Gen. 375 (1977). That case concerned the level of pay appropriate for Deputy Governors of the Farm Credit Administration (FCA). The Farm Credit Act of 1971, Public Law 92-181, December 10, 1971 (12 U.S.C. §§ 2001 et seq. (Supp. V 1975)), provided in section 5.13 that the salary of the Deputy Governors "shall not exceed the maximum scheduled rate of the general schedule of the Classification Act of 1949, as amended." (12 U.S.C. § 2247). The FCA had argued that, since the Deputy Governors are excluded from the coverage of chapter 51 and subchapters I and III of Chapter 53 of title 5, United States Code, the Deputy Governors are likewise exempt from the pay limitation contained in 5 U.S.C. § 5308.

In discussing the applicability of 5 U.S.C. § 5308 to the Deputy Governors, we held as follows:

"Unlike the 'Udall Amendment' to the Legislative Branch Appropriation Act, 1977, title II, Public Law 94-440, approved October 1, 1976, 90 Stat. 1446, which does not prohibit the establishment of higher rates but merely prohibits the use of appropriated funds to pay a specified class at those higher rates, section 5308, in our view, imposes a limitation or ceiling on the rates themselves. 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 the Executive Schedule. Such amounts are, in effect, nothing more than projections of what the pay rates would be were it not for the limitation." 56 Comp. Gen. 375, 377.

Similarly, the amounts in the General Schedule currently in excess of Executive level V are denoted by an asterisk in Executive Order 12578, December 31, 1986, which states that "the rate of basic pay payable to employees at these rates

is limited to the rate payable for level V of the Executive Schedule * * *." Thus, the "prescribed" rate of pay for GS-18 is equal to Level V of the Executive Schedule, or \$72,500.

Accordingly, since 5 U.S.C. § 5308¹ limits the highest rate prescribed for grade GS-18 to the rate for level V of the Executive Schedule, and since 28 U.S.C. § 995(a)(2)[✓] provides that the salary rate of the Staff Director of the Sentencing Commission shall not exceed such rate, the Staff Director may not be paid at a rate in excess of \$72,500, notwithstanding the fact that chapter 53[✓] of title 5 may not otherwise be applicable to that position.

Meritorious Awards Program

Generally, agency awards programs operate by virtue of the authority provided in the Government Employees Incentive Awards Act, Title III of Public Law 83-763 (September 1, 1954), as amended, now codified at 5 U.S.C. chapter 45[✓] (1982).^{1/} The Act authorizes an agency to pay a cash award to an employee who "by his suggestion, invention, superior accomplishment, or other personal effort contributes to the efficiency, economy, or other improvement of Government operations or achieves a significant reduction in paper-work," or performs a special act or service in the public interest related to his official employment. 5 U.S.C. § 4503[✓]. Except in cases of efforts "highly exceptional or unusually outstanding," cash awards must not exceed \$10,000. 5 U.S.C. § 4502[✓]. Awards and related expenses under the Act are paid from appropriations available for the activity or activities benefitted. 5 U.S.C. § 4502(d)[✓]. The Office of Personnel Management is authorized to prescribe implementing regulations. 5 U.S.C. § 4506[✓].

For purposes of this authority, "agency" is defined as an executive agency and certain other named non-executive agencies. 5 U.S.C. § 4501(1)[✓]. The Administrative Office of the United States Courts is specifically named within the definition of "agency" at 5 U.S.C. § 4501(1)(B)[✓] and thus established its program under this authority. The Sentencing Commission, an independent commission within the judicial branch of the Government, would not be authorized to set up an awards program under this legislation since it is not specifically included in the statutory definition of "agency."

^{1/} This Act applies to civilian agencies and civilian employees of the various armed services. The Defense Department has very similar authority for military personnel. See 10 U.S.C. § 1124[✓] (1982).

Furthermore, there is no specific provision in the Commission's enabling legislation either precluding or providing for an awards program. See 28 U.S.C. §§ 991 et seq. The Commission proposes to establish this program pursuant to its general authority under 28 U.S.C. § 995 (a)(1) which provides as follows:

"(a) The Commission, by vote of a majority of the members present and voting, shall have the power to -

"(1) establish general policies and promulgate such rules and regulations for the Commission as are necessary to carry out the purposes of this chapter." (Emphasis added.)

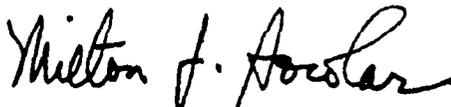
The Commission's current appropriations are contained in Public Law 99-591, 100 Stat. 3341, October 30, 1986, the Joint Resolution making continuing appropriations for fiscal year 1987, which provides at 100 Stat. 3363 for the Commission: "For the salaries and expenses necessary to carry out the provisions of chapter 58 of title 28, United States Code, \$5,800,000."

We must start with the proposition that except as otherwise provided by law, appropriations may be used only for the objects for which they were made. 31 U.S.C. § 1301(a). A well-established corollary to this rule is that an appropriation confers authority to incur expenses which are necessarily incident to achieving an authorized objective. 65 Comp. Gen. 800 (1986); 65 Comp. Gen. 797 (1986); 6 Comp. Gen. 619 (1927). In this context, we have construed the term "necessary expense" to be a "current or running expense of a miscellaneous character arising out of and directly related to the agency's work." 52 Comp. Gen. 504, 505 (1973).

As it is difficult to state precisely what is and is not a necessary expense, the role of agency discretion is important. However, we have recognized that there are some limits to the authority to incur such expenses. We have held that expenditures will not be allowed as "necessary expenses" if there is another appropriation which makes more specific provision for such an expenditure, if that expenditure is prohibited by law, or if it is manifestly evident from other acts that Congress has specifically legislated for certain expenses of the Government, creating the implication that such expenditures should not be incurred except by its express authority. 6 Comp. Gen. 619 (1927).

In this case, we do not believe that the expenses incurred in establishing and maintaining a meritorious awards program qualifies as a "necessary expense" in light of the fact that Congress has enacted specific legislation authorizing other agencies to establish such programs within prescribed limits and under regulations promulgated by the Office of Personnel Management. It appears from the legislative background of incentive awards programs in the federal government that Congress intended that such expenditures should not be incurred except by its express authority. See S. Rep. No. 2101, 82d Cong., 2d Sess. 3-6 (1952). For example, the cited report notes that when the Mead-Ramspeck Act of August 1, 1941 (Public Law 77-200) was passed, which authorized salary increases to certain Government employees for "meritorious service," this was the only type of award that could be given employees of agencies at that time without special legislation. S. Rep. No. 2101, at 4. 55 Stat 613

Accordingly, we do not believe the Sentencing Commission has authority under either its authorization or current appropriation acts to establish a meritorious awards program for its employees.

for 
 Comptroller General
 of the United States

1. CIVILIAN PERSONNEL
 - Compensation
 - Compensation restrictions
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2. APPROPRIATIONS/FINANCIAL MANAGEMENT
 - Appropriation Availability
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