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Office of the General Counsel

B-251181

January 22, 1993

Mr. Hugh L. Thompson, Jr.
Deputy Executive Director
for Nuclear Materials Safety,
Safeguards, and Operations Support
United States Nuclear Regulatory Commission
Washington, DC 20555

Dear Mr. Thompson:

This letter is in response to your letter dated October 26, 1992, with enclosures, involving a number of questions concerning the employment of individuals as members of the Nuclear Regulatory Commission's Advisory Committee on Reactor Safeguards (ACRS) and its Advisory Committee on Nuclear Waste (ACNW). However, because of the extremely limited period within which the employment question involving Mr. _____ must be answered, our response at this time concerns only his situation. We will respond in due course to the other questions raised by you.

Mr. _____ was an employee of the Nuclear Regulatory Commission (NRC) who retired as a Civil Service annuitant in February 1983 and was immediately appointed to a 4-year term as a member of the ACRS without a break in service. He subsequently has been reappointed to two successive 4-year terms, the most recent of which will expire on or about February 7, 1995. His appointments in that capacity have been as an intermittent employee.

Under the provisions of 5 U.S.C. § 8347(a) and (b) (1988), the Office of Personnel Management (OPM) has the full authority to administer the Civil Service Retirement System and to make all determinations regarding entitlements to annuities, including supplemental annuities.

B-207176, Jan. 6, 1983.

In this regard, correspondence enclosed as part of the record in Mr. _____ case shows that in 1986 and in 1987, the NRC and Mr. _____ requested a determination by OPM on the question whether Mr. _____ intermittent employment status as a reemployed annuitant was creditable for supplemental annuity purposes. The response by OPM to

both inquiries was to the effect that his service in an intermittent employment status does not qualify as service in a reemployment position in which he could complete a year of continuous full-time service or its equivalent under 5 U.S.C. § 8344(a) for supplemental annuity purposes.

Recognizing OPM's authority, you nonetheless seek our advice concerning the applicability of our decision in B-207515 to this situation. The question is whether NRC may convert his ACRS appointment as an intermittent employee to a temporary, regular part-time appointment, for the purpose of permitting him to have his ACRS service credited to his Civil Service Retirement System account so as to qualify him for a supplemental annuity under 5 U.S.C. § 8344(a) (1988).

Mr. _____ points out that, even though he has been classified as an intermittent employee by the NRC, as a member of the ACRS he serves well in excess of 130 days within a service year. Because of that, and the fact that his service is actually scheduled in advance, he claims that he is effectively employed as a regular part-time employee by the NRC. As a result, it is his view that there would be no barrier to the NRC reclassifying him from an intermittent employment status to a temporary, regular part-time employment status.

The ACRS was established by section 29 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2039 (1988). That section provides for the appointment by the NRC of Committee members to 4-year terms of office, and directs that the members "shall receive a per diem compensation for each day spent in meetings or conferences, or other work of the Committee, and . . . shall receive their necessary traveling or other expenses while engaged in the work of the Committee."

In our decision Advisory Committee on Reactor Safeguards, B-207515, Oct. 5, 1982, we considered the question of whether the NRC may enter into employment contracts with Committee members to grant them monetary benefits beyond those provided by the Atomic Energy Act and the Federal Advisory Committee Act.¹ The NRC proposed to do so to provide members, whose volume of work approaches or exceeds that of regular, part-time employees, with employment benefits not available to the members, such as retirement benefits.

We referred to the language of section 29 of the Atomic Energy Act specifying per diem compensation to Committee members for each day of work plus expenses and stated:

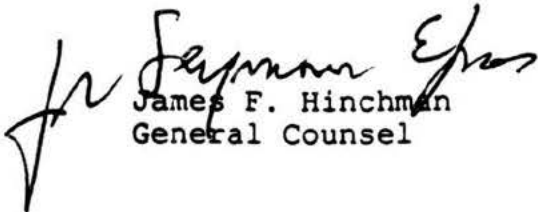
¹Title 5, Appendix, United States Code (1988).

". . . The Atomic Energy Act and the Federal Advisory Committee Act currently do not contain any provision granting the Commission general authority to otherwise fix the Committee members' emoluments, nor do those laws contain any provision specifically granting the Committee members any direct entitlement to additional compensation or benefits in the form of paid leaves of absence, insurance coverage, retirement plan contributions, etc."

In that decision, the issue was whether the NRC could provide additional employment benefits by contract. We concluded that since federal officers and employees are appointed and serve only in accordance with applicable statutes and regulations, members of the Committee are only entitled to the benefits provided by law; and thus benefits may not be increased by means not specifically authorized by law.

With regard to the current case, we believe that the answer must be the same. The statutory provision in section 29 for per diem compensation for each day of work shows that Congress did not intend the members to be regular, part-time employees. Therefore, in our opinion Mr. _____ may not have his appointment as an ACRS member reclassified from intermittent employment to regular part-time employment.

Sincerely yours,


James F. Hinchman
General Counsel

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DIGEST

Nuclear Regulatory Commission is advised of our opinion that a Civil Service retirement annuitant who is serving as a member of the Commission's Advisory Committee on Reactor Safeguards in an intermittent employment status may not have his employment status converted to a temporary, regular part-time employment status. Section 29 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2039 (1988), which governs his appointment and compensation entitlement does not grant the Commission authority to provide additional compensation or other benefits. Advisory Committee on Reactor Safeguards, B-207515, Oct. 5, 1982.