

6084

S. K. ...  
C. P. ...

**DECISION**



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

**FILE:** B-190466

**DATE:** April 19, 1978

**MATTER OF:** Agency for International Development -  
Waiver of Compensation Fixed by or  
Pursuant to Statute

**DIGEST:** Agency for International Development may not pay officers and employees less than the compensation for their positions set forth in the Executive Schedule, the General Schedule, and the Foreign Service Schedule. While 22 U.S.C. 2395(d) authorizes AID to accept gifts of services, it does not authorize the waiver of all or part of the compensation fixed by or pursuant to statute.

This is in response to a letter of October 11, 1977, from John J. Gilligan, Administrator, Agency for International Development, in which he requested our opinion on the following questions:

"(1) Does the Agency for International Development (AID) have authority, in conjunction with appointing a person to an Executive Level position on the staff of this Agency, to enter into a valid agreement with the appointee under which the appointee agrees to accept as full salary or compensation for services in such appointed position an amount which is less than the annual rate of basic pay established for that position by Title 5 of the U.S. Code?

"(2) Does AID have authority, in conjunction with appointing a person to a position on the staff of this Agency for which an annual rate of basic pay is established by Title 5 U.S.C. §5332 (General Schedule), Title 22 U.S.C. 8869 (Foreign Service Reserve Officers), or Title 22 U.S.C. 8870 (Foreign Service Staff Officers), to enter into a valid agreement with the appointee under which the appointee agrees to accept as full salary or compensation for services in such appointed position an amount which is less than the annual rate of basic pay established for that position by the pertinent foregoing statutory provision?

B-190466

"(3) With respect to a person who has already been appointed to a staff position in the agency for which Title 5 of the U.S. Code establishes an annual rate of basic pay under either the Executive Schedule or the General Schedule or for which Title 22 of the U.S. Code establishes an annual rate of basic pay under the salary schedules either for Foreign Service Reserve Officers or for Foreign Service Staff Officers, does AID have authority to enter into a valid agreement under which the occupant of the position agrees to receive as compensation for future services in such position an amount less than the annual rate of basic pay established for the position by the pertinent provision of Title 5 or of Title 22 of the U.S. Code?"

Our Office has consistently held on the basis of court decisions that it is contrary to public policy for an appointee to a position in the Federal Government to waive his ordinary right to compensation or to accept something less when the salary for his position is fixed by or pursuant to legislative authority. 54 Comp. Gen. 393 (1974); 27 id. 194 (1947); 26 id. 956 (1947); United States v. Jones, 100 F.2d 65 (8th Cir. 1938); Cochnowar v. United States, 248 U.S. 405, 407 (1919); Glavey v. United States, 182 U.S. 595 (1900); Miller v. United States, 103 F. 413 (S.D.N.Y. 1900).

In 27 Comp. Gen. 194 (1947) it was held that the person occupying a position could waive his right to all or part of the compensation if there was some applicable provision of law authorizing the acceptance of services without compensation or at a rate less than the rate for such position. In that case the law permitting the employment of experts and consultants on a temporary or intermittent basis provided that such employment should be without regard to civil service and classification laws and fixed only the maximum rate that could be paid.

B-190466

The Administrator's letter cites 22 U.S.C. 2395(d) (1970) and asks whether it is a provision of law authorizing the acceptance of services without compensation. Section 2395(d) provides as follows:

"The President may accept and use in furtherance of the purposes of this chapter, money, funds, property, and services of any kind made available by gift, devise, bequest, grant, or otherwise for such purpose."

Section 2403(k), title 22, United States Code, defines "services" as follows:

"Services' include any service, repair, training of personnel, or technical or other assistance or information used for the purposes of furnishing nonmilitary assistance."

The above definition is broad enough to cover personal services. The question, therefore, is whether the provisions of 22 U.S.C. 2395(d) authorize a full-time regular employee to be validly compensated at a rate less than the compensation rate for his position fixed by or pursuant to statute.

It has also been held that, in the absence of statutory authority to accept gifts, the acceptance of donations from private sources is an unlawful augmentation of appropriations. 49 Comp. Gen. 572 (1970); 46 *id.* 689 (1967); 36 *id.* 268 (1956). Section 2395(d), title 22, United States Code, authorizes the acceptance of gifts. Therefore, AID may accept services from private sources either gratuitously or at a fraction of their value. However, section 2395(d) does not authorize individuals to be appointed to regular positions having compensation rates fixed by or pursuant to statute at rates less than those specified. It, therefore, differs from the statute, which was the subject of 27 Comp. Gen. 194, *supra*, and accordingly is not a provision of law authorizing employees whose compensation is fixed by or pursuant to statute to waive any part of such compensation.

We have also considered the provisions of 22 U.S.C. 2384(b) (1970) which concerns the rates of compensation and duties of the 12 officers in the agency primarily responsible for administering the Foreign Assistance Act of 1961, *supra*. Section 2384(b) provides:

B-190466

"Within the limitations established by subsection (a) of this section, the President may fix the rate of compensation, and may designate the title of, any officer appointed pursuant to the authority contained in that subsection. The President may also fix the order of succession among the officers provided for in subsection (a) of this section in the event of the absence, death resignation, or disability of one or more of said officers."

The officers referred to in the above section are those who are appointed by the President with the advice and consent of the Senate. In addition to such officers we understand that AID has two officers who are not appointed by the President but whose positions have been assigned rates of pay in the Executive Schedule. The compensation rates of all of these positions are listed in 5 U.S.C. 5313-5316 and are, therefore, statutory rates of pay. Accordingly, the appointees to such positions may not waive part of their compensation and be estopped from later claiming and receiving the amounts waived.

We have also examined the provisions of 22 U.S.C. 2385(b) (1970) which provides in pertinent part:

"(b) Of the personnel employed in the United States to carry out part I or coordinate part I and part II, not to exceed one hundred and ten may be appointed, compensated, or removed without regard to the provisions of any law \* \* \*."

The AID regulations covering appointments under the above authority provide for each position to be evaluated and assigned an appropriate Administratively Determined (AD) grade. The AD grades assigned are based on the responsibilities, duties, and compensation rates of General Schedule grades. Each AD position is evaluated prior to the appointment of an individual to the position. The compensation of the appointee is made at any rate within the range of rates for the position which is filled depending on the appointee's qualifications. Also, each position may be reevaluated without reference to civil service laws whenever changed responsibilities and duties indicate the necessity therefor. However, although AID has broad discretion in evaluating and

B-190466

fixing the compensation of AD positions, the positions and their rates of compensation are fixed pursuant to statute. Therefore, the compensation for AD officers and employees may not be validly waived.

In view of the above it is our opinion that officers and employees who fall within the purview of questions 1, 2, and 3 may not be paid less than the fixed annual compensation for their positions.

*R. F. Keenan*  
Deputy Comptroller General  
of the United States