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DECISION

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

FILE: B-215834 **DATE:** January 28, 1985

MATTER OF: H. S. Shutleff

DIGEST:

A full-time teacher in the Department of Defense Overseas Dependents' Schools who is a member of the Advisory Council on Dependents' Education, Department of Education, is entitled to receive compensation incident to her attendance at a meeting of the Advisory Council during the summer school recess. Members of the Advisory Council "who are not in the regular full-time employ of the United States" are entitled to receive compensation incident to their attendance at council meeting. See 20 U.S.C. § 929(d). Full-time overseas teachers work only 190 days a school year during 21 biweekly pay periods and the legislative history of the statutory authority for the pay and personnel program for overseas teachers shows that such teachers were distinguished from "full-time employees." Accordingly, the overseas teachers are not to be regarded as "regular full-time" employees for purposes of 20 U.S.C. § 929(d).

The matter before us concerns whether a full-time teacher in the Department of Defense Overseas Dependents' Schools System who is a member of the Advisory Council on Dependents' Education, Department of Education, is entitled to receive compensation under 20 U.S.C. § 929(d) incident to her attendance at an Advisory Council meeting held during the school summer recess in June 1983.[1/] The Advisory Board member may be paid for her attendance at the meeting which was held during the school summer recess.

1/ The request for an advance decision was submitted by Mr. Lawrence D. Miller, Authorized Certifying Officer, Financial Management Service, U.S. Department of Education, Washington, D.C.

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In June 1983 four teachers who are employed in the Department of Defense Overseas Dependents' School System attended a meeting of the Advisory Council on Dependents' Education, Department of Education, in their capacity as members of the Advisory Council. This meeting was apparently held during the school summer recess. Ms. H. S. Shutleff, one of these four overseas teachers submitted a claim to the Department of Education for compensation incident to her attendance at that meeting.

The statutory authority for the Advisory Council is set forth at section 1411 of the Defense Dependents' Education Act of 1978, Title XIV of Public Law 95-561, November 1, 1978, 92 Stat. 2365, 2370, as amended, 20 U.S.C. § 929. That section provides, in part, that the Advisory Council shall consist of twelve individuals appointed by the Secretary of Education and that the Council shall meet at least four times each year. The Advisory Council's functions include such duties as recommending to the Director of Dependents Education general policies for operation of the Defense Dependents' Education System. See 20 U.S.C. § 929(c). Regarding compensation of the members of the Council, 20 U.S.C. § 929(d) provides:

> "Members of the Council who are not in the regular full-time employ of the United States shall, while attending meetings or conferences of the Council or otherwise engaged in the business of the Council, be entitled to receive compensation at the daily equivalent of the rate specified at the time of such service for grade GS-18 in section 5332 of title 5, including traveltime, and while so serving on the business of the Council away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for persons employed intermittently in the Government service."

The Department of Education has concluded that the provisions of 5 U.S.C. § 5533, which limit the compensation one individual may receive from employment in more than one Government position, are not applicable to compensation

received by teachers in the Overseas Schools during the summer recess. See 5 U.S.C. § 5533(d)(7)(D) and section 10(b) of the Defense Department Overseas Teachers Pay and Personnel Practices Act, Public Law 86-91, July 17, 1959, 73 Stat. 213, 217, as amended, 20 U.S.C. § 907. The latter statute provides that any teacher who is performing services as a teacher and agrees in writing to serve as a teacher in the following year shall not be subject to the dual compensation provisions of 5 U.S.C. § 5533 by reason of employment in another position in the recess period immediately preceding the next school year. This exemption is also reflected in 5 U.S.C. § 5533(d)(7)(D).

We agree with the Department of Education that, in view of the applicable provisions of law, the dual compensation limitation of 5 U.S.C. § 5533 does not restrict the pay teachers in the overseas schools may receive for services in another Government position during the period of the summer recess, provided that the teacher has agreed in writing to return the next school year.

Thus, Ms. Shutleff's entitlement to compensation under 20 U.S.C. § 929(d) depends on whether she is deemed to be "not in the regular full-time employ of the United States." There is nothing in either the language or the legislative history of 20 U.S.C. § 929 which defines the class of employees who are deemed to be "regular full-time employees." The provisions of law regarding the pay and personnel practices for teachers in the Overseas Schools is set forth at 29 U.S.C. §§ 901-907. (Defense Department Overseas Teachers Pay and Personnel Practices Act, as amended, supra.) Under 20 U.S.C. § 902 the Secretary of Defense issues regulations governing entitlement to and payment of compensation to teachers as well as regulations governing the length of the school year applicable to teaching positons. The salaries and personnel practices applicable to teachers in the overseas schools are set forth in Department of Defense (DOD) Directive No. 1400.13, July 8, 1976, paragraph IV A of which provides:

> "1. The 'school year' for educators will consist of 190 working days including not less than 175 days of classroom instruction. Included within the 190 workdays is the time required before and

after the dates school is in session when the services of all or a majority of educators are required to prepare for the opening and closing of school.

"2. As long as 190 working days are required and not less than 175 days of classroom instruction are provided, the school year calendar may be adjusted after the school year begins with no resultant change in school year salary. Should the school year be extended beyond 190 working days, the educators will be compensated at the appropriate daily rate as of the 191st working day. * * *"

Furthermore paragraph IV C2(e) of that Directive provides that "[t]he daily rate of compensation for an educator will be the appropriate school year salary divided by 190." In addition, paragraph IV C2(f) provides that the "biweekly basepay will be the appropriate school year salary divided by the number of pay periods, normally 21, in the school year. * * *"

Thus, full-time teachers generally work 190 days a year and are paid over the course of 21 biweekly pay periods. This worktime of overseas school teachers contrasts with that of most full-time federal employees who have 260 workdays a year and whose work year consists of 26 biweekly work periods. See 5 U.S.C. § 5504. The legislative history of the Defense Department Overseas Teachers Pay and Personnel Practices Act, supra, shows that the current system for paying teachers in the overseas schools was established because teachers were not regarded as being full-time employees. In support of the need for a new pay and personnel system for these teachers the report of the House Committee on Post Office and Civil Service contained the following statement:

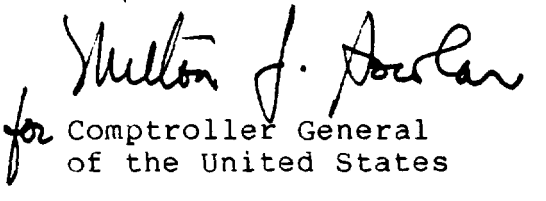
"Practically all of the problems that exist under the present system of employment and pay for overseas teachers stem from the fact that they are employed under civil service laws, rules, and regulations designed for full-time employees. The application of these laws to positions which operate only 9

> or 10 months of the year has caused hardship, misunderstanding, and confusion and has contributed to turnover in employment."

H.R. Rep. No. 357, 86th Cong. 1st Sess. 2 (1959). Also, see S. Rep. No. 141, 86th Cong. 1st Sess. 2 (1959).

In view of the fact that full-time teachers in the overseas schools generally work a maximum of 190 days a year during 21 biweekly pay periods and since the legislative history of the act which forms the basis of the pay and personnel practices applicable to these teachers shows that they were not considered "full-time" Government employees, we believe that teachers in the overseas schools should not be considered as "regular full-time" employees for the purpose of 20 U.S.C. § 929(d). Thus, teachers in the overseas schools who are members of the Advisory Council are entitled to receive compensation under 20 U.S.C. § 929(d) for their attendance at Advisory Council meetings held during their summer school recess.

In accordance with the above, if otherwise proper, Ms. Shutleff may be compensated under 20 U.S.C. § 929(d) incident to her attendance at the June 1983 meeting of the Advisory Council.



for Comptroller General
of the United States