



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

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SEP 7 1973

U-178097

Mr. Everett H. P. Folber
Deputy Administrator, Management
Agricultural Stabilization and
Conservation Service
United States Department of Agriculture

Dear Mr. Folber:

We refer to your letter of February 22, 1973, by which you ask whether it would be proper to pay Mr. S. Ellsworth Wickle, a civil service retirement annuitant, for certain temporary services he performed for the Perkins Agricultural Stabilization and Conservation County Committee.

You indicate that on June 29, 1972, Mr. Wickle was employed by the county committee for a period which was expected to extend over 3 or 4 weeks with pay at the rate of \$3.13 per hour. However, after Mr. Wickle had worked a total of 76 hours it was determined that the provisions of 5 U.S.C. 8344 with respect to the reemployment of civil service annuitants were applicable in the situation. Under that provision of law and the implementing Civil Service Regulations an amount equal to the annuity allocable to the actual period of reemployment must be deducted from the pay in the position occupied by the reemployed annuitant. The amount of Mr. Wickle's annuity allocable to the period of his reemployment was in excess of his pay for that period and accordingly he was not paid for the 76 hours of work he performed. The question presented is whether there is any authority to pay him the \$237.83 which he expected to be paid for working 76 hours at \$3.13 per hour.

We understand that Mr. Wickle's employment on which his annuity is based as well as the services he performed as a reemployed annuitant were with a local committee of the Agricultural Stabilization and Conservation Service. Although local committee employees are subject to civil service retirement under 5 U.S.C. 8331(1)(F) and are entitled to certain other benefits of Federal employment, they are not considered Federal employees because they are employed by the committee concerned and not by the Government. However, since such employees are subject to all the civil service retirement provisions, the rules applicable to reemployment as contained in 5 U.S.C. 8344 and the implementing Civil Service Commission Regulations would appear to be applicable. Thus, the

[Authority To Pay Annuitant for Temporary Services]

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reduction in Mr. Wikle's pay as an annuitant employed by a county committee was subject to the deduction of retired pay allocable to the period of his reemployment.

In the instant case to invoke the waiver authority contained in the ASCS Handbook which is patterned after the provisions contained in 5 U.S.C. 5584 which authorize, under specified conditions, the waiver of erroneous payments of pay, would in effect necessitate a payment to be made to the employee in direct contravention of the statutory provisions contained in 5 U.S.C. 8344. Thus, despite the equities in the employee's favor we do not consider it to be within the authority of this Office to authorize the making of such a payment in direct contravention of section 8344 in order that such payment then may be considered for waiver.

Accordingly, we find no basis upon which we could approve payment to Mr. Wikle of the amount here in question.

Sincerely yours,

Paul G. Deubling

For the Comptroller General
of the United States

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