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DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**RECEIVED
OFFICE OF THE GENERAL COUNSEL

1984 MAY 21 1:38

FILE: B-213786

DATE: May 18, 1984

MATTER OF: Director of the Institute of Museum
Services - Compensation Rate**DIGEST:**

Section 205 of Public Law 94-462, 20 U.S.C. § 964 (1982), provides that the Director, Institute of Museum Services, will be compensated at the rate provided for Executive Level V positions. However, each Appropriation Act funding the Institute since it was created in 1976 has prohibited the use of its funds to compensate Executive Level V or higher positions. We hold that the appropriations restriction does not apply to the Institute Director's position. Statutes in apparent conflict are to be harmonized whenever possible. Executive Level V positions are only those listed in 5 U.S.C. § 5316 or established by the President under 5 U.S.C. § 5317. Since the Institute Director's position is on neither list, it is not an Executive Level V position and the statutes are deemed harmonious. Therefore, the Director may be paid at rate of \$63,800 annually, effective December 17, 1982, and \$66,400 annually, effective in January 1984.

This decision is in response to a letter dated November 17, 1983, from Donald J. Devine, Director, Office of Personnel Management (OPM), concerning the rate of compensation which may be paid to the Director of the Institute of Museum Services in view of a conflict between the agency's enabling legislation and its appropriations restriction. We hold that the Director of the Institute is entitled to a rate of pay equal to the rate authorized for Level V of the Executive Schedule, for the following reasons.

BACKGROUND

In 1976, the Museum Services Act (Title II of Public Law 94-462, October 8, 1976, 90 Stat. 1971, 1975),

established the Institute of Museum Services. The Act provides that the Institute shall be headed by a Director. Section 205 of the Act--presently 20 U.S.C. § 964 (1982)--provides in part:

"(a)(1) The Director of the Institute shall be appointed by the President, by and with the advice and consent of the Senate, and shall serve at the pleasure of the President. The Director shall be compensated at the rate provided for level V of the Executive Schedule (5 U.S.C. 5316)
* * *."

Notwithstanding the above, beginning with the Supplemental Appropriations Act, 1977, Public Law 95-26, May 4, 1977, 91 Stat. 61, 73, and in each appropriation act thereafter for the Department of the Interior and related agencies--which funds the Institute of Museum Services--including the Appropriation Act for fiscal year, 1984, Public Law 98-146, November 4, 1983, 97 Stat. 919, 949, the following restriction on the use of the Institute's appropriations has been included:

"* * * Provided, That none of these funds shall be available for the compensation of Executive Level V or higher positions * * *."

The letter from OPM Director Devine states that the approach used in the past to resolve those apparently conflicting provisions has been to set pay administratively for the Institute Director at the maximum rate allowable under the applicable appropriation act pay cap. Since this was less than the scheduled rate of pay for Executive Level V positions, that is, the rate fixed under applicable laws but for the pay cap, the appropriation restriction was considered met. However, the problem surfaced again when Public Law 97-377, December 21, 1982, 96 Stat. 1830, 1914, was enacted. That Act increased the rate of compensation payable for Executive Level V positions from \$57,500 to \$63,800, the scheduled rate for those positions, effective December 17, 1982. Thus, an appropriation act pay cap was no longer applicable to Level V positions.

In view thereof, Dr. Devine asks whether the Institute: (a) may pay the Director at the administratively determined rate of \$63,800, the maximum payable rate for a GS-18 position notwithstanding that this rate is also currently the scheduled rate for an Executive Level V position;^{1/} or (b) may administratively set the rate of pay slightly below that established for Executive Level V (e.g., \$63,799); or (c) must take some other approach in view of the appropriations restriction.

DECISION

It is a rule of statutory construction that statutes in pari materia, which appear to be in conflict, are to be construed as being in harmony with each other, so far as is reasonably possible. In the absence of an express repeal, a new provision is regarded as enacted in accord with prior statutes and they all should be construed together. However, if, in the final analysis, there is an irreconcilable conflict between the new provision and prior statutory language relating to the same subject matter, the new provision will control. 2A Sutherland, Statutes and Statutory Construction, § 51.02 (4th ed. C. Sands, 1973). See Edward J. Minkel, B-206156, April 27, 1982. It is also a rule of statutory construction that provisos are to be strictly construed since they serve the purpose of restricting the operative effect of other statutory language to less than what its scope would be otherwise. 2A Sutherland, Statutes and Statutory Construction, § 47.08 (4th ed. C. Sands, 1973).

In view of the appropriations restriction, the basic question is whether the position of Director of the

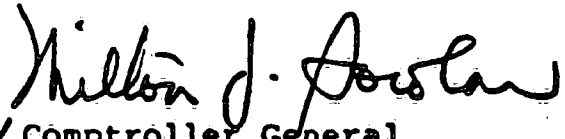
^{1/} Subsequent to Dr. Devine's letter, the maximum payable rate was increased to \$66,000. See Executive Order 12456, December 30, 1983, 49 Fed. Reg. 347, 349. Thereafter, pursuant to Public Law 98-270, April 18, 1984, _____ Stat. _____, the pay increase for General Schedule employees of the Government that became effective in January 1984 was increased from 3.5 percent to 4.0 percent. When this increase is applied to the Executive Schedule, the rate payable for Level V is \$66,400, effective in January 1984.

Institute of Museum Services is an Executive Level V position. If the position is not an Executive Level V position, the two statutes may be considered harmonious and the appropriations restriction on the use of funds for the Institute would not apply to the compensation payable to the Director's position.

We note that 20 U.S.C. § 964 did not identify the position of Director as an Executive Level V position; it merely set the compensation rate for the position as equivalent to the rate provided for an Executive Level V position. Moreover, section 5316 of title 5, United States Code, contains a specific list of positions which are designated as Executive Level V positions. There have been numerous adjustments in that schedule since 1976 when the position of Director of the Institute of Museum Services was created. However, that position has never been included in section 5316, nor has it been included in any presidentially established list of Executive Level V positions authorized by 5 U.S.C. § 5317.

Moreover, as noted above, neither OPM nor the Institute has considered the Director's position to be an Executive Level V position. In view thereof, since the appropriations restriction on the use of Institute funds prohibits only the compensation of Executive Level V or higher positions, the restriction is not applicable to the Director's position and the two statutes may be considered harmonious.

We note that the provisions of law and Executive order, previously referred to, not only increased the compensation rate payable to Executive Level V positions from \$57,500 to \$66,400, the scheduled rate for those positions, but also effectively increased the maximum rate of compensation payable to other positions for which the compensation is equal to the compensation payable to Executive Level V positions. Accordingly, the Director of the Institute of Museum Services is entitled to be paid compensation at the annual rate of \$63,800, on and after December 17, 1982, and at the annual rate of \$66,400, effective the first applicable pay period beginning on or after January 1, 1984.

for 
Comptroller General
of the United States