



Legal Opinion L-2002-14
November 13, 2002

U.S. Railroad Retirement Board Phone: (312) 751-7139
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TO : Kenneth P. Boehne
Chief Financial Officer

FROM : Steven A. Bartholow
General Counsel

SUBJECT : Proper Fiscal Year Appropriation to be Charged
In the Conversion of Compensatory Time to Overtime Pay

This is in response to your memorandum dated October 17, 2002, wherein you requested my opinion as to whether overtime work performed in a prior fiscal year should be charged to that prior fiscal year's appropriation. A Board employee worked overtime in Fiscal Year 2002. That employee was compensated with compensatory time in accord with 5 U.S.C § 5543. After the end of the fiscal year, a request was made to pay that individual overtime pay in accord with 5 U.S.C. § 5542, in lieu of the compensatory time previously granted that had not been used. A request for similar conversions, that was granted, had been made for other employees before the end of the fiscal year. This one request was inadvertently left off of the prior request.

In determining what fiscal year's appropriation should be charged, we must seek guidance in the decisions of the Comptroller General. The Comptroller General has ruled that the appropriation for the fiscal year during which the work is actually performed is the proper fiscal year to be charged for compensation for that work. See 24 Comp. Gen 676, 678 (1945) and 38 Comp. Gen 316, 319 (1958). Opinions of the Comptroller General have also held that the obligation to pay for overtime compensation is not extinguished until the compensatory time off is in fact granted. See B-159597, 1966 U.S. Comp. Gen. LEXIS 1905 (August 2, 1966) and B-183751, 1975 U.S. Comp. Gen LEXIS 1693 (October 3, 1975). See also the decision of the Office of General Counsel of the Office of Personnel Management, OPM Case Number S9700856 (December 2, 1997). Since the obligation to pay the overtime worked was not extinguished until the compensatory time off was actually used, the obligation to make the payment for the overtime worked in Fiscal Year 2002 remained in effect.

In conclusion, the work for which the person is to be compensated was performed during fiscal year 2002; therefore, the appropriation for that fiscal



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year should be charged for the compensation that will be paid to the employee in fiscal year 2003.