

DECISION



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

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FILE: B-185525

DATE: DEC 23 1975

MATTER OF: National Transportation Safety Board - Tenure and Compensation of Board Members and Chairman

DIGEST: Present members of National Transportation Safety Board may continue to receive their salaries if, upon expiration of their fixed terms of office, they continue to serve until their successors are appointed and have qualified. Present Board Chairman may not continue as Chairman after January 1, 1976, but may continue to serve as acting Chairman after that date, at regular Board member's compensation.

This action is in response to several questions presented by the Chairman of the National Transportation Safety Board concerning the tenure and compensation of the Board members and Chairman.

The Chairman asks whether present Board members may continue to receive their salaries if, upon expiration of their fixed terms of office, they continue to serve until their successors are appointed and have qualified. The Chairman further asks whether he is authorized to continue serving as Chairman until the President has designated, by and with the advice and consent of the Senate, an individual to serve as Chairman or until an acting Chairman has been named, and, if so authorized, at what salary (Executive Pay Level III or IV) is the Chairman to be paid.

The Board was originally established in 1966 by section 5 of the Department of Transportation Act, 49 U. S. C. § 1654 (1970). It was to be an independent agency located within the Department of Transportation, and to consist of five members appointed to 5-year terms by the President by and with the advice and consent of the Senate.

The Congress subsequently determined that the Board could not properly perform its functions unless it was totally separate and independent from any other Federal department, bureau, commission, or agency. It therefore provided in the Independent Safety Board Act of 1974, Pub. L. No. 93-633, title III, January 3, 1975, 88 Stat. 2166, at section 303(a), that the Board, " * * * previously established within the Department of Transportation, shall be an independent agency of the United States, in accordance with this section, on and after April 1, 1975." Section 303(b) provides for a Board of five members, each serving for a term of 5 years. In order to

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maintain continuity on the Board, Congress provided that the members appointed pursuant to the 1966 Act would continue to serve. Section 303(b)(2) states in that regard the following:

"* * * Individuals serving as members of the National Transportation Safety Board on the date of enactment of this title shall continue to serve as members of the Board until the expiration of their then current term of office. * * *"

Thus, members of the Board appointed pursuant to the Department of Transportation Act effectively became members of the Board established by the Independent Safety Board Act of 1974 for the duration of their 5-year terms. Section 303(b)(2) further provides that, "[U]pon the expiration of his term of office, a member shall continue to serve until his successor is appointed and shall have qualified." Since this provision does not distinguish among the members described in section 303(b)(2), it necessarily refers to all of them, including those appointed pursuant to the 1974 Act and those appointed pursuant to the 1966 Act and now continuing to serve as members until the expiration of their original terms, as well as those appointed to fill a vacancy on the Board who are serving the remainder of their appointed predecessors' terms. Accordingly, any Board member may continue to serve after the expiration of the member's term, until a successor is appointed and has qualified, and continue to receive the compensation designated for Board members at Level IV of the Executive Schedule. 5 U.S.C. § 5315(78) (1970).

In regard to the questions concerning the tenure and compensation of the Board Chairman, section 303(b)(3) provides in part as follows:

"On or before January 1, 1976 (and thereafter as required), the President shall--

"(A) designate, by and with the advice and consent of the Senate, an individual to serve as the Chairman of the Board (hereafter in this title referred to as the 'Chairman'); and

"(B) an individual to serve as Vice Chairman.

The Chairman and Vice Chairman each shall serve for a term of 2 years. * * *"

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Although, as noted above, there is a specific provision in the Act authorizing the continuance of Board members as members after the expiration of their terms, there is no such provision in regard to the continuance of the Chairman as Chairman. Instead, the Act establishes a 2-year term for a Chairman designated in accordance with section 303(b)(3). Since the Congress did not provide for an extension of the present Chairman's term, and did provide the period until January 1, 1976, for the President to designate a Chairman, we conclude that the present Chairman may not continue to serve as Chairman after January 1, 1976. However, we would have no objection to his serving as acting Chairman of the Board after that date, at the compensation of a regular Board member, until the President has designated, by and with the advice and consent of the Senate, a new Chairman of the Board or until an acting Chairman is otherwise named.

We would add that our decision in this regard applies only to the tenure and compensation of the present Chairman during the transition period until a Chairman is designated in accordance with the provisions of the 1974 Act. We express no opinion on any future situation where the President might fail to designate a new Chairman upon the expiration of the 2-year term of a Chairman named pursuant to the 1974 Act.

(SIGNED) JAMES B. STAATS
Comptroller General
of the United States