

**U.S. Department of Justice**

Executive Office for United States Attorneys

Office of the Director.

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MAY 23 2013

Robert Gay Guthrie
President
National Association of Assistant United States Attorneys
12427 Hedges Run Drive, Suite 104
Lake Ridge, VA 22192-1715

Dear Mr. Guthrie:

It was good seeing you at our recent meeting. This letter responds to the National Association of Assistant United States Attorneys' (NAAUSA) letter to Deputy Attorney General James Cole, dated November 26, 2012, regarding the use of uncompensated Special Assistant United States Attorneys (SAUSAs) in United States Attorneys' Offices.

Your letter requests that the Department of Justice (Department) discontinue its hiring of uncompensated SAUSAs based on NAAUSA's concern that such hiring "arguably violates" general principles of appropriations law. We respectfully disagree that the Department's use of uncompensated SAUSAs contradicts appropriations law principles. In fact, we continue to believe that the Department's long standing use of uncompensated SAUSAs is legally permissible.

As you correctly point out in your letter, there is an important distinction in this context between "volunteer services" and "gratuitous services." Opinions issued over the years by the United States Supreme Court, the Attorney General, the Comptroller General, and the Department's Office of Legal Counsel consistently have distinguished between the provision of voluntary services to an agency, which generally is not permissible under the Antideficiency Act, and the provision of gratuitous services, which generally is permissible. This long standing precedent has established that it is generally not a violation of the Antideficiency Act for an agency to accept gratuitous services from individuals who agree to waive entitlement to compensation.

With respect to SAUSAs in particular, Title 28 U.S. Code § 543 grants the Attorney General authority to appoint SAUSAs to assist United States Attorneys. Attorneys appointed under 28 U.S.C. § 543 are subject to a salary fixed by the Attorney General with a specified maximum amount, but there is no mandatory minimum salary. As a result, the Department is

authorized, pursuant to 28 U.S.C. §§ 543 and 548, to appoint SAUSAs at a gratuitous rate of pay (i.e., \$0). A gratuitous rate of pay distinguishes uncompensated SAUSAs from mere providers of volunteer services. Uncompensated SAUSAs thus legally may provide gratuitous services to the Department.

We have concluded that, because 28 U.S.C. §§ 543 and 548 give the Department specific authority to appoint SAUSAs at a gratuitous rate of pay, the Department's long standing use of uncompensated SAUSAs is legally permissible under the Antideficiency Act and does not result in an impermissible augmentation of its appropriations. Consequently, we do not believe that appropriations law principles require the Department to discontinue its use of uncompensated SAUSAs, as you request in your letter. Again, thank you for sharing NAAUSA's concerns regarding this issue.

Sincerely,



H. Marshall Jarrett
Director