



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

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September 21, 1973

The Honorable Walter E. Washington
Commissioner of the District of Columbia
Washington, D. C. 20001

Dear Mr. Washington:

We refer to the letter of August 10, 1973, from Mr. Donald H. Weinberg, Chairman, Police and Firemen's Retirement and Relief Board, in which he raised certain questions regarding the Policemen and Firemen's Retirement and Disability Act, approved September 1, 1916, 39 Stat. 718, as amended, now codified at sections 4-521 to 4-535 of title 4, District of Columbia Code. Mr. Weinberg was specifically concerned with whether certain members of the United States Secret Service are entitled to coverage under the provisions of that act.

Section 4-522 of title 4, D. C. Code, provides as follows:

"§4-522. United States Secret Service Division—Transfer of Civil Service retirement funds—Credit for prior service with other police units.

"Whenever any member of the United States Secret Service Division has actively performed duties other than clerical for ten years or more directly related to the protection of the President, such member shall be authorized to transfer all funds to his credit in the Civil Service Retirement and Disability Fund continued by sections 8331(5) and 8348 of title 5, U.S. Code, to the general revenues of the District of Columbia and after the transfer of such funds the salary of such member shall be subject to the same deductions for credit to the general revenues of the District of Columbia as the deductions from salaries of other members under sections 4-521 to 4-535, and he shall be entitled to the same benefits as the other members to whom such sections apply. Any member of the United States Secret Service Division appointed from the Executive Protective Service and assigned to duties directly related to the protection of the President shall receive credit for periods of prior service with

[Secret Service Members Entitlement to Coverage Under Police men and Firemen's Retirement and Disability Act]

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the Metropolitan Police force, the United States Park Police force, or the Executive Protective Service toward the required ten years or more service."

Mr. Weinberg indicated that since October 1940 the only members of the Secret Service that have been certified by the Secret Service as eligible to transfer their funds under the provisions of the above-cited section have been special agents who have been engaged full time in the protection of the President. Recently, however, the Secret Service has suggested new criteria for determining eligibility for participation in the District of Columbia Police Retirement Plan. These suggested criteria would add positions other than special agents to the protection-of-the-President category and allow time performed in temporary assignments to be cumulative towards the 10-year eligibility requirements in section 4-522. These new positions are as follows:

- "1. Special officers attached to the Office of Protective Forces whose assignments include the provision of security for the temporary residences of the President and who are used to augment Presidential protective details during visits of the President to such temporary residences; and
- "2. All security specialists assigned to the Technical Security Division, Office of Protective Intelligence, except those security specialists assigned to the Technical Development and Planning Branch."

It is Mr. Weinberg's belief that only agents engaged full time in the protection of the President are entitled to coverage under the provisions of section 4-522 and that temporary short term assignments protecting the President should not be cumulative toward the 10-year requirement. In that regard the following questions were presented:

- "1. Are Secret Service employees in the positions of Security Officer and Security Specialist legally entitled to retirement annuities under the provisions of the Policemen and Firemen's Retirement and Disability Act?
- "2. Can temporary assignments to Presidential protection be cumulative toward the basic 10 year requirement?

"3. In the event that the criteria for eligibility of Secret Service personnel under the Act is revised in the future, who has the legal authority to approve such revisions, the Commissioner of the District of Columbia or the Secretary of the Treasury?"

In a letter dated July 16, 1973, to Mr. Weinberg, the Deputy Director of the Secret Service outlined the suggested criteria which would entitle additional members of the Secret Service to coverage under section 4-522 as follows:

" * * * The two major organizational units within the Secret Service charged with the duty of performing protective responsibilities are the Office of Protective Forces and the Office of Protective Intelligence. Under the suggested criteria, the Special Agents, including supervisory agents, assigned to the Office of Protective Forces and the Office of Protective Intelligence are engaged in duties directly related to the protection of the President. Assignment as a Special Agent under the supervision of the Assistant Director, Protective Forces or Assistant Director, Protective Intelligence, would be countable toward the requisite 10 years establishing eligibility for transfer of funds.

"During special events, such as the Inauguration, election years, and periods of Presidential travel, Special Agents from other organizational units are assigned on a temporary basis to a protective function either to augment a protective detail or for the purpose of conducting advance security arrangements or other protection related activities. Time utilized by such Special Agents detailed on a temporary basis to a protective function is, under the suggested criteria, countable time for purposes of Police retirement.

"The Secret Service is charged with the enforcement of 18 U.S.C. 871, relating to threats against the President. Further, it is often necessary for Secret Service agents in the field offices to perform protective intelligence investigations involving persons who may be of security interest because of mental aberration or other factors.

Time utilized by such Special Agents in the performance of the foregoing functions is countable for purposes of retirement under the District system.

" * * * Under present criteria, a class of employees known as Special Officers assigned to the Office of Protective Forces whose duties relate to the provision of security for the temporary residences of the President and who are used to augment Presidential protective details are authorized to count such time toward the 10 year requirement for eligibility. These Special Officers are utilized by the Secret Service in lieu of Special Agents in protective assignments at temporary Presidential residences to provide continuing security at such locations. * * *

"As a result of the assassination of President Kennedy, extensive recommendations were made by the Warren Commission to broaden the scope, resources and practices of the Secret Service relative to Presidential protection. One of the functions which has been considerably augmented both at the White House, temporary residences and during periods of Presidential travel, has been in the area of technical security. These technical security personnel, assigned to the Office of Protective Intelligence, and with offices located in the White House complex, perform a variety of duties relative to the installation and maintenance of technical security equipment, the continuous surveillance of areas occupied by the Chief Executive for surreptitious listening devices, explosives and other intrusions that could compromise security. They are responsible for the examination of all mail and other items which are directed to the President and they are assigned, on a continuing basis, to augment Presidential protective details during Presidential movements or at temporary residences of the President. In view of the duties performed by Security Specialists assigned to the Technical Security Division, exclusive of the Technical Security and Planning Branch such Specialists are, under current criteria, authorized to count such time toward the requisite 10 year requirement for eligibility. * * *"

The provision of the Policemen and Firemen's Retirement and Disability Act which is now codified as section 4-522 originated as an amendment to

the original act of September 1, 1916, from the floor of the Senate in 1940. During consideration in the House of Representatives it was explained that the amendment extended retirement coverage to "the members of the United States Secret Service Police who actually guard or protect the President of the United States, not clerical forces in that group but those actually engaged in the active guarding or protection of the Chief Executive." See remarks of Mr. Randolph, 86 Cong. Rec., part 12, p. 13050. Thus, the phrase "service in connection with the protection of the President" was in effect defined as "active guarding or protection" of the President. The term "active guarding" was not, however, further defined.

Under section 3056 of title 18, United States Code, the Secret Service, in addition to its responsibilities relating to the protection of the President and other designated individuals, has numerous criminal investigative functions. The majority of Secret Service Personnel are engaged in the performance of those functions not related to the protection of the President. In the absence of a definite expression of congressional intent to the contrary, we believe that under the current wording of the statute all those members of the Secret Service, other than clerical, whose job connected activities are related to the area of protection of the President, as opposed to those engaged in other areas of responsibility are entitled to count their time spent in such activities toward the accumulation of the requisite 10 years under section 4-522. In that regard, we see no basis for excluding time spent on only a temporary or intermittent basis assigned to protective work.

Therefore, it is our view that the criteria proposed by the Secret Service is within the purview of section 4-522 as now written and that employees who are found eligible to participate in the District of Columbia Police Retirement Plan under that criteria may properly do so. It is therefore our view that questions 1 and 2 should be answered in the affirmative.

As to the third question, section 4-535 of title 4, D. C. Code, provides as follows:

"§4-535. Delegation of functions by Commissioner--Regulations.

"(a) The Commissioner is hereby vested with full power and authority to delegate from time to time to his designated agent or agents any of the functions vested in him by sections 4-521 to 4-535.

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"(b) The Commissioner is authorized to promulgate such rules and regulations as he may deem necessary to carry out the purposes of sections 4-521 to 4-535."

Thus under that section you, as Commissioner of the District of Columbia, have the ultimate authority to promulgate and approve regulations necessary to carry out the purposes of the Policemen and Firemen's Retirement and Disability Act. This would appear to include final approval of criteria for eligibility to participate in the retirement plan consistent with law and the intent of Congress.

We are mindful of the fact that at the time the 1940 amendment was adopted, the Civil Service Retirement accounts of only some 15 secret-service men would be transferred (see Senator Barclay's remarks of September 30, 1940, 86 Cong. Rec., Part 12, p. 12797) and that under the criterion herein discussed some 125 additional transfers would be made. If such additional transfers will adversely affect the integrity of the fund this may afford a basis for remedial legislation. However, under the law as now written we think that the responses presented herein are required.

Sincerely yours,

R.F.KELLER

Deputy Comptroller General
of the United States