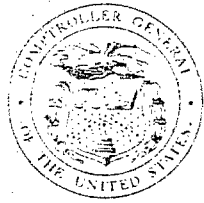


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DECISION



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

FILE: B-198557

DATE: July 17, 1980

MATTER OF: Major Marvin L. Friedman, USAF, (Retired)

DIGEST: Congressional consent required by Article I, section 9, clause 8 of the Constitution for a retired Regular officer of a uniformed service of the United States to accept employment and compensation therefor from a foreign government was granted by Public Law 95-105, subject to approval of the employment by the Secretary concerned and the Secretary of State. This approval authority operates only prospectively. Thus, a retired Regular officer accepting employment with a foreign government prior to receiving approval of both Secretaries is subject, in accordance with 58 Comp. Gen. 487 (1979), to collection from his retired pay of amounts received from the foreign employment for the period of employment prior to the approval being granted.

ENTITLEMENT

Is a retired Regular officer of the United States Air Force entitled to retired pay when he accepts employment and compensation therefor from a foreign government after receiving approval from the Secretary of the Air Force but prior to the granting of approval by the Secretary of State, as required by section 509 of the Foreign Relations Authorization Act, Fiscal Year 1978, Public Law 95-105, August 17, 1977, 91 Stat. 844, 859-860?

This question with pertinent facts was presented by the Deputy Assistant Comptroller for Accounting and Finance, United States Air Force, and has been assigned submission number DO-AF-1342 by the Department of Defense Military Pay and Allowance Committee.

Major Marvin L. Friedman, USAF, Retired, accepted employment with El Al Airlines on February 19, 1978. The

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Department of State has indicated that El Al Airlines is an entity of the government of Israel. Major Friedman requested approval on December 25, 1977, from the Secretary of the Air Force for this employment and the receipt of compensation therefor, in accordance with Public Law 95-105. The Secretary of the Air Force approval was granted on February 7, 1978, and Major Friedman was instructed to also obtain approval from the Secretary of State prior to accepting the employment. On March 5, 1978, Major Friedman requested the approval of the Secretary of State, which was granted and the information conveyed to him by letter dated March 31, 1980. The State Department's letter indicates that the approval was granted as of the date of original application.

In the request for decision it is noted that questions arise when the Secretarial approval is obtained after foreign employment has commenced. This is evidenced by the fact that the letter to Major Friedman granting the consent of the Secretary of State states that approval is granted as of the date of the application but not prior to enactment of the applicable statute. The submission points out that a literal reading of this statement indicates that approval was granted retroactively effective December 25, 1977. However, the statute itself indicates that Secretarial approval is effective only from the date it is granted. It is suggested in the submission that it seems likely that the retroactive feature expressed in the State Department's approval letter was based on language appearing in 58 Comp. Gen. 487 (1979), to the effect that delays arising in the processing of certain cases due to uncertainties in the application of Public Law 95-105 could be taken into consideration in establishing an equitable approval date. In view of the above, a decision is requested as to whether an adjustment of Major Friedman's retired pay is necessary.

Article I, section 9, clause 8 of the Constitution of the United States prohibits the acceptance by any person holding an office of profit or trust under the United States, of any present, emolument, title or office from a foreign government without the consent of the Congress. Retired Regular officers are members of the military service of the United States and are considered subject

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to the above-cited constitutional prohibition. If they accept, without the consent of Congress, employment and compensation therefor from a foreign government, they are subject to a withholding of their retired pay in an amount equal to the amounts received from the foreign government. B-178538, October 13, 1977.

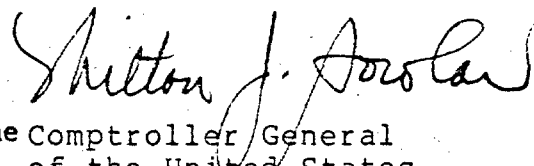
Section 509 of Public Law 95-109, granted the consent of the Congress for foreign employment to certain retired members of the uniformed services subject to approval of the Secretary concerned and the Secretary of State. In this regard, we have held that section 509 of Public Law 95-105 is prospective only. See B-175166, April 7, 1978. In addition, we concluded in the decision 58 Comp. Gen. 487 (1979) that the Secretarial approvals could be granted only prospectively, citing from the legislative history of Public Law 95-105.

We did note, however, that in certain instances involving individuals already employed by foreign governments at the time Public Law 95-105 was enacted, that the processing of their applications for approval of the employment had been delayed as a result of questions concerning the effect of section 509 on an individual's retired pay, and not due to the propriety of the employment. We expressed the view in such cases that if the Secretaries concerned made such determinations as to the reason for the delay, we would raise no objection to setting an approval date not earlier than the date the application was received.

The facts in Major Friedman's case do not bear any relationship to those in the special circumstances noted above. Major Friedman was not employed by El Al at the time Public Law 95-105 was enacted, and he applied for approval to accept such employment after the enactment of Public Law 95-105. Also, there is no suggestion in the record that the delay in the State Department granting approval was occasioned by questions concerning his retired pay. We also note that, as is indicated above, he was specifically advised by the Air Force that he must also obtain the Secretary of State's approval prior to accepting the employment.

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Accordingly, it is our view that Major Friedman's retired pay should be withheld in an amount equal to the emoluments he received from El Al for his employment prior to receiving approval from the State Department. However, since he received the approval on March 31, 1978, collection should be made in accordance with 58 Comp. Gen. 487, 490-491, answer to question (1)(a). That is, current retired pay should be withheld in an amount equal to that received from the foreign employment, but only in an amount equal to the amount of retired pay received during the period of foreign employment, if the amounts received from the foreign employment exceed his retired pay entitlement.



For the Comptroller General
of the United States