

B-232436

June 8, 1989

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## Digest

D.C. government employee occupying an excepted service position, who was employed by the District of Columbia prior to January 1, 1980, is advised that he may not transfer to a nontemporary competitive service position in the federal government without establishing eligibility on an appropriate civil service register and being ranked sufficiently high among competing eligibles for appointment selection. Since there was no right to transfer prior to January 1, 1980, the savings clause, section 422(3) of Public Law 93-198 is not applicable.

GAO

United States  
General Accounting Office  
Washington, D.C. 20548

Office of the General Counsel

B-232436

June 8, 1989

[REDACTED]  
[REDACTED]:

We refer to your letter of August 25, 1988, in which you request that the Comptroller General of the United States issue an opinion as to whether employees of the District of Columbia (D.C.) who were hired prior to January 1, 1980, retain as a benefit the right to transfer to a position with a federal agency in the competitive service.

Under the statutes governing our Office, you are not entitled to a formal decision of the Comptroller General of the United States concerning the question presented. See 31 U.S.C. § 3529 (1982). However, we will furnish the following information in order to assist you.

You state that as a D. C. government employee, you are interested in transferring to a career position in a federal executive agency. You wrote to the United States Office of Personnel Management (OPM) who, by letter dated July 22, 1988, informed you that most appointments in the D.C. government have not conferred eligibility for reinstatement or transfer into the federal competitive service. The OPM stated that although a few D.C. government agencies had certain of their positions covered in the federal competitive service by statute, that coverage is no longer in effect due to statutory repeal by the District of Columbia Self-Government and Governmental Reorganization Act ("Home Rule Act"), Public Law 93-198, Dec. 24, 1973, 87 Stat. 774. Further, OPM stated that your D.C. government employment has been in an excepted appointment, which does not confer eligibility for transfer into the federal competitive service. In order to be considered for nontemporary employment in the federal competitive service, OPM said that you will need to establish eligibility on an appropriate civil service register, or inventory of eligibles, and be ranked sufficiently high among competing eligibles for appointment selection.

You state that prior to the Home Rule Act, several employees of your D.C. government agency transferred to the federal government but now, you cannot transfer. You point out that, based on the provisions of Public Law 93-198, cited above, the D.C. government enacted the District of Columbia Comprehensive Merit Personnel Act of 1978 (CMPA), D.C. Law 2-139, on March 3, 1979, and most of its provisions became effective on January 1, 1980. You contend that since D.C. government employees were previously allowed to transfer to the federal government, you believe that OPM erred in its ruling on your right to transfer to a federal agency in the same manner as a federal employee with career status. You rely on the provisions of the savings clause, section 422(3) of Public Law 93-198 which provides, in essence, that the District government merit system shall provide for persons employed by the District government immediately preceding the effective date of the merit system, personnel benefits, ". . . all at least equal to those provided by legislation enacted by Congress, or regulation adopted pursuant thereto, and applicable to such officers and employees immediately prior to the effective date of the system . . ."

You have advised us that you are employed in the Office of the Inspector General and that you are not familiar with the precise circumstances involved when other D.C. government employees were previously allowed to transfer to the federal government to competitive service positions.

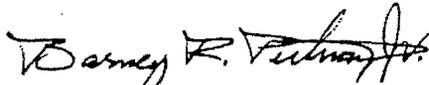
Under these circumstances, and without rendering a decision in the matter, we point out that OPM guidelines provide that D. C. government positions are municipal rather than federal and are outside the competitive service unless specifically included, even though some of them must be filled under civil service regulations and even though OPM examines for the positions. Positions in certain organizations in the District government, not including the Inspector General's Office, are specifically included in the competitive service. See Federal Personnel Manual, ch. 212, §§ 1-2b and 1-3d (Inst. 258, Aug. 27, 1979). The same language appears in the prior FPM provision revised July 1969. A position excepted by statute can be brought into the competitive service only by statute. We are not aware of any statutory provision that permits an employee occupying an excepted position in the Office of the Inspector General, D.C. government, to be transferred to a nontemporary competitive service position in a federal agency without establishing eligibility on an appropriate civil service register. See Federal Personnel Manual, ch. 212, § 2-2a (revised July 1969).

We would also point out that the District government has a separate merit system, and, generally, the legal basis for movement between the competitive service and other merit systems is an agreement between OPM and another merit system entered into under civil service rule 6.7. However, the D.C. government is not listed as an agency covered by such an agreement. See Federal Personnel Manual ch. 315, § 6-2a (Inst. 304, May 23, 1983). There was no agreement between OPM and the D.C. government in the prior regulation dated May 16, 1979.

Inasmuch as you occupy an excepted position with the D.C. government and no statutory provision exists allowing transfer to a competitive position in the federal government, it does not appear that you would be eligible for transfer into a competitive position with a federal agency. In light of this conclusion, the provisions of section 422(3) of Public Law 93-198 would not appear to be applicable to your situation since no right of transfer existed prior to January 1, 1980.

We hope that the foregoing information is responsive to the question you presented in your letter.

Sincerely yours,



Barney R. Putnam, Jr.  
Senior Attorney

CIVILIAN PERSONNEL

Compensation

Civil Service regulations/laws

Personnel transfer

Rights