



Comptroller General
of the United States

Washington, D.C. 20548

B-230844

May 25, 1988

The Honorable J. James Exon
United States Senate

Dear Senator Exon:

This is in response to your letter of March 15, 1988, forwarding correspondence from _____ and requesting a decision regarding application of the dual compensation restrictions to retired military members reemployed with the U.S. Postal Service. This restriction is applicable to Postal Service employees by virtue of a specific statutory provision. For this reason, the rationale by which retired members reemployed with the Federal Reserve Board are exempt from the dual compensation restriction would not apply to military retirees reemployed with the Postal Service.

The current statutory dual compensation restriction applicable to retired members of the uniformed services is codified in 5 U.S.C. §§ 5531 and 5532. Section 5532 places limits on the amount of retired pay a retired uniformed services member may receive if he or she becomes employed in a civilian "position" with the federal government. Section 5531 defines "position" for the purpose of section 5532 as follows:

"(2) 'position' means a civilian office or position (including a temporary, part-time, or intermittent position), appointive or elective, in the legislative, executive, or judicial branch of the Government of the United States (including a Government corporation and a nonappropriated fund instrumentality under the jurisdiction of the armed forces) or in the government of the District of Columbia"

The Postal Service is an independent establishment within the executive branch. 39 U.S.C. § 201. Its employees are exempt from all but specified laws dealing with public or federal officers and employees. The dual compensation restriction contained in 5 U.S.C. § 5532 is one of those laws specifically made applicable to Postal Service employees. In this regard, 39 U.S.C. § 410 provides:

"§ 410. Application of other laws

"(a) Except as provided by subsection (b) of this section, and except as otherwise provided in this title or insofar as such laws remain in force as rules or regulations of the Postal Service, no Federal law dealing with public or Federal contracts, property, works, officers, employees, budgets, or funds, including the provisions of chapters 5 and 7 of title 5, shall apply to the exercise of the powers of the Postal Service.

"(b) The following provisions shall apply to the Postal Service:

"(1) section 552 (public information) . . . and section 5532 (dual pay) of title 5, except that no regulation issued under such chapters or section shall apply to the Postal Service unless expressly made applicable"

In your letter you refer to the fact that 5 U.S.C. § 5532 does not apply to military retirees reemployed by the Federal Reserve Board. In Denkler v. United States, 782 F.2d 1003 (Fed. Cir. 1983), the U.S. Court of Appeals determined that employment with the Federal Reserve Board does not constitute the holding of a "position" as defined in 5 U.S.C. § 5531, quoted above. In reaching this conclusion, the Court interpreted the term "position" as covering employment with a nonappropriated fund instrumentality only if that instrumentality is under the jurisdiction of the Armed Forces. Because 12 U.S.C. § 244 authorizes the Federal Reserve Board to assess member banks to meet its expenses and because those assessments may be left on deposit with member banks and are not to be construed as appropriated monies, the Court found that the Federal Reserve Board was a nonappropriated fund instrumentality, not included within the definition of position contained in 5 U.S.C. § 5531.

The holding in Denkler is narrowly defined by the unusual authorities applicable to the Federal Reserve Board. We recognize that the Postal Service funds its operations largely through postal revenues. By law, those revenues are treated very differently, however, from the member bank assessments levied by the Federal Reserve Board. Postal revenues and other monies received by the Postal Service are required by 39 U.S.C. § 2003 to be deposited with the Treasury in a special revolving fund and all such revenues

are specifically appropriated to the Postal Service by 39 U.S.C. § 2401(a). In addition, the Postal Service receives appropriated funds as reimbursement for certain public service costs. 39 U.S.C. § 2401(b). Because the Postal Service is not a nonappropriated fund instrumentality in the nature of the Federal Reserve Board, the holding in Denkler does not provide a basis to view 5 U.S.C. § 5532 as inapplicable to military retirees reemployed with the Postal Service, particularly in view of 39 U.S.C. § 410 specifically preserving its restrictions.

We hope that the above analysis will be helpful to your constituent. The correspondence forwarded with your letter is enclosed.

Sincerely yours,

A handwritten signature in cursive script, reading "Milton J. Fowler".

Acting Comptroller General
of the United States

Enclosure