

DECISION



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

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FILE: B-193562

DATE: December 4, 1979

MATTER OF: Major Martin L, Kammerer, USAF,
Retired

- DIGEST: 1. No specific sanction is authorized in section 509 of the Foreign Relations Authorization Act for Fiscal Year 1978 with respect to a retired member who accepts employment and compensation therefor from a foreign government without the approval. However, substantial effect is given to the prohibition in Article I, section 9, clause 8 of the Constitution by withholding a member's retired pay in an amount equal to that received from the foreign government. This is based on the view that the emoluments received by the retired member are received on behalf of the United States.
2. Based upon the history of section 509 of the Foreign Relations Authorization Act for Fiscal Year 1978 an individual who was employed by a foreign government when that provision was enacted is not required to refund amounts paid him by the foreign government once approval to accept employment and compensation from the foreign government is given under that section. A member's monthly retired pay may be reinstated. This is the case even though amounts of retired pay previously withheld from the member do not equal that received from the foreign government, since Congress intended that retired pay of these retirees be resumed on approval.

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[Deductions From Retirement Pay
For Members Employed by a Foreign Government]

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This action is in response to a request for advance decision to clarify and amplify our decision B-193562, May 3, 1979, 58 Comp. Gen. 487, concerning retired military members employed by foreign governments. The basic question is, once approval to accept foreign employment and compensation therefor is granted pursuant to section 509 of the Foreign Relations Authorization Act, Fiscal Year 1978, when do deductions from retired pay cease if the member was employed by a foreign government prior to receiving approval? It is our view that in the following circumstances deductions from retired pay may be discontinued on the date approval has been granted by the Secretary concerned and the Secretary of State. The request was submitted by the Deputy Assistant Comptroller for Accounting and Finance, U.S. Air Force, and has been assigned control number DO-AF-1332 by the Department of Defense Military Pay and Allowance Committee.

The following factual situation is presented. Major Martin L. Kammerer, a regular Air Force officer, retired in the grade of major (O-4) on February 29, 1968, pursuant to 10 U.S.C. 8911. In September 1976, he advised Headquarters, Air Force Accounting and Finance Center that he expected to be employed on November 1, 1976, by the Saudi Arabian government. Later he indicated that he had accepted this employment on October 24, 1976. Effective November 1976, payment of his retired pay was stopped. On October 12, 1977, he provided the approvals of the Secretary of State dated October 4, 1977, and the Secretary of the Air Force dated September 21, 1977, for his employment by the foreign government as required by section 509 of the Foreign Relations Authorization Act of 1978. During the period October 24, 1976, through October 3, 1977, Major Kammerer was paid \$47,661.75 by the Saudi Arabian government. The amount of \$33,611.58 has been collected from his retired pay through August 31, 1979, leaving \$14,050.17, uncollected.

In the request for advance decision it is stated that our decision of May 3, 1979, is susceptible to two interpretations. The first being that once approval is granted collection from retired pay ceases even if

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the amounts collected at that time do not equal that received from the foreign government. The second is that since the emoluments received from the foreign government without approval are considered received by the retired member for the United States, to the extent that emoluments are not paid to the United States, a debt in favor of the Government is created which is to be collected by offset against retired pay or otherwise.

The second interpretation is correct. However, in accord with the legislative history of section 509 retired members employed by foreign governments at the time that provision was enacted must be treated differently. These individuals are relieved of any further obligation to pay debts which arose from their foreign government employment as of the date approval of the Secretaries involved was received. Retired pay for this group may be reinstated as of the date the secretarial approvals are received and any remaining debt cancelled.

On the theory that emoluments received by a retired member are approved on behalf of the U.S. State Dept.
Article I, section 9, clause 8 of (the Constitution) of the United States is interpreted as (prohibiting, among others, retired regular officers of the uniformed services from accepting employment and compensation therefor from foreign governments without the consent of Congress.) See B-178538, October 13, 1977, and cases cited therein.)

but
The Congress with the enactment of the Foreign Relations Authorization Act, ~~Fiscal Year~~ 1978, Public Law 95-105, August 17, 1977, 91 Stat. 844, 859-860, granted ~~consent~~ to such employment and compensation therefor, if approval of the Secretary of State and the Secretary concerned is secured by the individual seeking such employment. Those provisions have no retroactive effect with respect to retirees employed by foreign governments prior to enactment or with respect to retirees who may enter employment prior to receiving secretarial approvals.)

In our decision B-193562, May 3, 1979, 58 Comp. Gen. 487, we responded to several questions in this

area, including the effect of Public Law 95-105. We noted that Public Law 95-105, as with the constitutional provision, did not provide any specific sanction for accepting the employment prior to approval, however, Congress was aware of our interpretation of the constitutional provision at the time it enacted Public Law 95-105. As a result we concluded that where an individual accepts employment and compensation therefor and does not obtain secretarial approval, our position that in order to give substantial effect to the constitutional prohibition, retired pay in an amount equal to that received from the foreign government should be withheld, would continue to be applicable. This is the basic rule to be applied when foreign employment is accepted by a retiree who does not have required secretarial approvals.

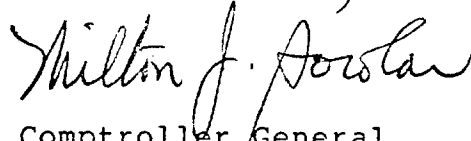
Without abrogating the basic rule and in view of the clear statement of congressional intent we also held in the May 3, 1979 decision that individuals employed by foreign governments at the time section 509 was enacted would have deductions from their retired pay discontinued once the requisite approval was granted. See House Committee on Foreign Relations Report No. 95-231, 95th Cong. 1st Sess., Foreign Relations Authorization Act, Fiscal Year 1978, pages 20-21. This is a specific and limited exception to the basic rule. Therefore, an individual who is subject to the constitutional prohibition and does not receive the required approval must have his retired pay withheld in an amount equal to the emoluments received from the foreign government. An individual such as Major Kammerer, employed by a foreign government prior to or at the time of enactment of ~~the act~~ section 509 (August 17, 1977) who receives approval of his employment by a foreign government becomes entitled to retired pay once the approval is granted. He is not required to make further payments because of his foreign employment after that date.

the retired Air Force Officer
Accordingly, in Major Kammerer's case he became entitled to receive his retired pay starting ~~October 4, 1977~~, the date he received the required approvals, not-

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withstanding the fact that the retired pay withheld did not equal the amount received from the foreign government prior to the granting of the approval.)

A handwritten signature in cursive script that reads "Milton J. Fowler".

For The Comptroller General
of the United States