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DECISION

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

Proposed Program to Promote Enlistment and Satisfactory Serv in Army

FILE: B-200013 DATE: April 15, 1981

MATTER OF: Private Industry Payments to Induce Enlistments in the Army

DIGEST: Proposed program for a nonprofit corporation which would be formed and funded by private industry for the purpose of making payments to selected high school graduates to induce them to enlist and serve satisfactorily in the Army should not be implemented without additional statutory authority in view of the possible applicability of the prohibition against enlistment bounties (10 U.S.C. 514(a)) and the prohibition against receiving extra pay for services (5 U.S.C. 5536), as well as the rule that extra earnings gained in the course of the soldiers' service to the Army belong to the United States and must be paid into the Treasury.

This action is in response to a request from the Assistant Secretary of the Army (Manpower and Reserve Affairs) for our opinion as to the propriety of a proposed program under which enlisted members of the Army would receive payments from a private corporation as encouragement to their enlistment and satisfactory service in the Army. For the reasons discussed below it is our view that the program should not be implemented without enactment of authorizing legislation.

Background

The basic concept of the proposed recruiting program is that a nonprofit corporation funded entirely by private industries would pay selected high school graduates who enlist in the Army monthly stipends during their initial term of service and provide certain of these enlistees with employment assistance once they complete their Army service. Apparently the program would be included in the Army recruiting campaign publicity to encourage enlistments.

Under a tentative outline of the program, participating private industries would be responsible for recruiting the

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industrial sponsors of the program and for establishing and funding the nonprofit corporation. The nonprofit corporation would accept the voluntary enrollment of soldiers, establish the amount of stipends to be paid soldiers with specific skills, pay the stipends, and furnish employment assistance for selected soldiers enrolled in the program upon termination of their initial service obligation. The Army would set advertising policy, provide information about the program, and assist soldiers to apply. The Army would also set standards to govern the qualification or disqualification of soldiers for the program, verify soldiers' qualification for the program, report soldiers disqualified to the nonprofit corporation, and report to the corporation soldiers enrolled in the program who separate from the service and are ready for employment assistance. The responsibilities of the corporation and the soldiers enrolled in the program would be set out in a written agreement that would be subject to Army approval.

Apparently, the amount of the monthly stipends would vary between $50 and $100 and would be based on the type of skill learned and duty performed by the soldier in the service. The stipends would be paid effective the first month of the soldier's service and would continue monthly through the initial enlistment as long as the soldier continued satisfactory performance of military duties as determined by the Army.

It appears that the program is intended to benefit the Army by providing additional inducement to high school graduates to enlist and perform satisfactorily in their initial enlistments. The participating industries would benefit in that they would have available a pool of trained and motivated potential employees.

Because of possible legal problems with soldiers accepting such payments, the matter was presented to us for review.

Prohibition Against Paying Bounties

Section 514(a) of title 10, United States Code (1980), provides that "No bounty may be paid to induce any person to enlist in an armed force." While the term "bounty" is not

defined in the statute, common definitions of that term include a "premium given or offered to enlisted men to induce enlistment into public service" (Black's Law Dictionary, 5th Ed. 1979), and "an extra allowance to encourage entry into the armed services" (Webster's Third New International Dictionary, 1966).

The Army recognizes that the proposed payments to high school graduates to induce their enlistment in the Army appear to fall within the usual definitions of bounty. However, the Army indicates that the legislative history of section 3 of the act of May 18, 1917, ch. 15, 40 Stat. 78, from which the language in 10 U.S.C. 514(a) was derived indicates that it was intended to prohibit bounties paid by States or the Federal Governments. In particular it was directed against certain types of abuses which arose during the Civil War. See 55 Cong. Rec. 1523-1525 (1917). The Army notes that the legislative history of subsequent enactments indicates no different intent and concludes that the present statute should be read to apply only to bounties paid by Federal and State Governments and not to those paid by a private corporation.

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While the main purpose of the 1917 statute appears to have been, as the Army indicates, to prevent the abuses which arose during the Civil War through payment of Government bounties, we have found nothing in the legislative history indicating an intent to exclude any type of bounty, and the language of the statute that "no bounty may be paid" does not indicate an intent to exclude any type of bounty. Also, under the proposed program, although the payments are not Government payments since they would be made with private funds, the Government (Army) would be a major participant in administering the program.

Accordingly, we cannot say that the proposed payments would not violate 10 U.S.C. 514(a).

Extra Pay for Military Services

Since the proposed payments would be made on a continuing basis as long as the members performed their duties satisfactorily, and since the qualification for an amount of

such payments would be based on the type of duty being performed, the payments could also be considered as supplements to, or additional pay for, military service.

The Army points out that the current criminal statute (18 U.S.C. 209) which prohibits the payment or receipt of any contribution to or supplementation of the salary of an officer or employee of the executive branch of the Government does not apply to enlisted members of the Armed Forces. We agree. 18 U.S.C. 202(a).

Also to be considered is 5 U.S.C. 5536, which does apply to enlisted members, and prohibits the receipt of additional pay or allowance as follows:

> "§ 5536. Extra pay for extra services prohibited
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> "An employee or a member of a uniformed service whose pay or allowance is fixed by statute or regulation may not receive additional pay or allowance for the disbursement of public money or for any other service or duty, unless specifically authorized by law and the appropriation therefor specifically states that it is for the additional pay or allowance."

The Army argues that ~~this~~ provision does not apply to the proposed payments because the payments are to come solely from private funds and the statute only applies to additional pay from Government funds. The statute may be read that way considering that its original source statute was apparently enacted to prevent the simultaneous receipt of pay from more than one Government position. See United States v. King, 147 U.S. 676, 679 (1893). However, although the great majority of the cases in which this statute or its predecessors have been applied involved payments from Government funds, we have found at least two cases in which a predecessor statute (sec. 1765, Revised Statutes) was cited as a basis for prohibiting receipt of payments from non-Government funds. See Gibson v. Peters, 150 U.S. 342, 347 (1893), in which it was held that a United States District Attorney was not entitled to be paid additional fees for legal work claimed to have been performed for a National Bank Receiver, such fees to have been paid out of the assets of the bank. See also 3 Comp. Gen. 128 (1923) in which it was held that the receipt

by customs officials of extra compensation for service at night, weekends and holidays, to be paid by shipping agents and brokers would be prohibited by the statute.

In addition, however, whether or not the proposed payments would be prohibited by 5 U.S.C. 5536, clearly they would be subject to the well-established principle of law that the earnings of an employee in excess of his regular compensation which are gained in the course of or in connection with his services belong to the employer. In the cases of Federal employees and members of the uniformed services, it has long been the rule that amounts so received are, in effect, received for the United States and are to be paid into the Treasury. 49 Comp. Gen. 819 (1970), 37 Comp. Gen. 29 (1957), 32 Comp. Gen. 454 (1953), and 31 U.S.C. 484. Under the proposed program apparently no additional services would be required of the recipients, only that they perform their military duties. Clearly the payments would be tied directly to their status as members of the Army and must be considered as additional earnings gained in the course of, or in connection with their services to the Army.

The Army questions whether that principle would apply to the proposed payments since Army approval of the payments might constitute acquiescence by the employer or principal that would, under general principles governing compensation of agents or employees, allow the recipients to retain the payments. In that respect since the funds are deemed received on behalf of the United States, they become Government funds and must be paid into the Treasury. 31 U.S.C. 484, and 37 Comp. Gen. 29, 30. To otherwise dispose of Government funds, that is to allow the soldiers to keep them, would require additional statutory authority.

Conclusion

In view of the above the program should not be implemented without enactment of specific statutory authority to authorize it.

Milton J. Socolar

Acting Comptroller General
of the United States