



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

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June 5, 1973

B-175651

Mr. Harold D. Kozs
505 Roosevelt Drive
Dothan, Alabama 36301

Dear Mr. Kozs:

Your letter of April 20, 1973, concerns the reduction of your retired pay by the Department of the Navy incident to your civilian employment by the Department of the Army.

This matter was the subject of our letter to you of April 12, 1973, explaining the reasons why it was necessary to reduce the amount of your retired pay. You still feel however that your retired pay is not subject to the dual compensation restrictions of 5 U.S.C. 5532, it being your view that such section of the code is based upon Public Law 88-448, approved October 19, 1964, a law enacted after your "reestablished employment date of February 24, 1964," and therefore such law is inapplicable to your employment.

As indicated in our letter of April 12 the record before us shows that you were retired from the U.S. Navy as a lieutenant by reason of length of service under 10 U.S.C. 6323. Further you were employed on February 24, 1964, by the Department of the Army as a GS-7 and received a within grade to GS-7, step 2, on March 7, 1965, and were promoted to GS-9 on April 19, 1965. On May 12, 1965, it was determined that your initial appointment and subsequent step and grade increases were illegal since your appointment was prohibited by section 2 of the act of July 31, 1894, as amended, 5 U.S.C. 62 (1958 ed.). That prohibition was removed by repeal of section 2 of the act of July 31, 1894, effective November 30, 1964, by section 402(a)(7) of the Dual Compensation Act, 78 Stat. 492. Thereafter the Department of the Army took corrective personnel action to show your employment as a GS-7, step 1, effective December 1, 1964, and advised you that the \$4,583.28 received as a result of the illegal appointment and subsequent promotions had to be refunded. Evidently the indebtedness was reduced at the rate of \$20 a pay period.

On May 11, 1972, Private Law 92-86 was enacted. That law relieved you of all liability to repay the sum of \$4,583.28 and provided that any sums collected from you incident to the overpayment would be refunded to you. Additionally, the law provided that your service from February 24, 1964, through November 30, 1964, would be regarded as valid and creditable.

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Federal service. Also provision was made that you be paid an amount equal to the difference between the salary you received from May 29, 1965, to the date of enactment of Private Law 92-86, and the salary you would have received during such period had you been promoted from step 2 of grade GS-7 to step 1 of grade GS-9 effective as of April 18, 1965.

The above-described provisions of Private Law 92-86 have been accomplished and, as pointed out in our letter to you of April 12, there is no provision therein which would exempt you from the dual compensation restrictions set forth in 5 U.S.C. 5532.

Inasmuch as you were a retired Navy officer, your employment in a civilian position from February 24, 1964, through November 30, 1964, was in violation of the "dual office" provision of section 2 of the act of July 31, 1894, as amended, 5 U.S.C. 62 (1958 ed.). Such provision was repealed effective November 30, 1964. On and after December 1, 1964, your Federal civilian employment was and is subject to the provisions of the Dual Compensation Act, 5 U.S.C. 5532. That law provides for a reduction in your retired pay during your employment by the Federal Government. Such provisions apply to all retired officers of a regular component of a uniformed service with certain exceptions not applicable to your case. The provisions of Private Law 92-86 merely validated your service prior to December 1, 1964, including your entitlement to within-grade and grade promotions previously denied to you. It did not, however, make any provision to specifically exempt you from the general provisions of law as stated in 5 U.S.C. 5532. Accordingly the contention to the effect that February 24, 1964, the date to which your service was validated by Private Law 92-86 negates the general dual compensation restrictions which were effective December 1, 1964, cannot be sustained. As pointed out above, the authority permitting your current employment is based on the Dual Compensation Act and not Private Law 92-86.

In view of the foregoing it is concluded that the action of the Department of the Navy in reducing your retired pay on and after December 1, 1964, was and is correct.

Sincerely yours,

Paul G. Deabling

For the Comptroller General
of the United States