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DECISION



Stalgenberg
110 P. 11
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-175166

DATE: April 7, 1978

**MATTER OF: Dr. R. Edward Bellamy, USPHS, Retired
(Deceased)**

DIGEST:

Section 509 of Foreign Relations Authorization Act, Fiscal Year 1978, granting the consent of Congress to the acceptance of foreign employment by certain officers of the United States, as required by Article I, section 9, clause 8 of the Constitution, does not permit recovery of the retired pay by the widow of a retired Public Health Service officer whose retired pay was withheld during 1971-1977 while he worked for a foreign government. Such period of employment was prior to the effective date of section 509 and that provision is not retroactive.

It has been requested by Duncan, Brown, Weinberg and Palmer, P.C., attorneys for Mrs. R. Edward Bellamy, that we reconsider our decision 51 Comp. Gen. 780 (1972), in which we held that her late husband, Dr. R. Edward Bellamy, a retired officer of the Regular component of the Commissioned Corps of the Public Health Service (PHS), was not entitled to continue to receive his PHS retired pay while employed by a foreign government, the Canadian Department of Agriculture. The request is based upon the enactment of section 509, Title V, of the Foreign Relations Authorization Act, Fiscal Year 1978, Public Law 95-105 August 17, 1977, 91 Stat. 844, 859-860, which under certain circumstances grants the consent of Congress to the acceptance of foreign employment by certain officers of the United States.

Following his retirement from the PHS, Dr. Bellamy moved to Canada and was employed by the Canadian Department of Agriculture. After working in Canada for almost 4 years, receiving both his retired pay and Canadian salary, Dr. Bellamy inquired whether his eligibility to receive his retired pay would be affected if he became a Canadian citizen. Upon receipt of his letter, the Department of Health, Education, and Welfare advised Dr. Bellamy that it believed that receipt of his retired pay while an employee of the Canadian Government was in violation of Article I, section 9, clause 8 of the United States Constitution, which provides:

"No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State."

The Department of Health, Education, and Welfare suspended his retired pay pending our review of this issue. In our decision, 51 Comp. Gen. 780, supra, we held that retired Regular officers of the PHS hold an office within the meaning of the quoted constitutional provision, and that, therefore, while he would not be required to repay the sum received prior to suspension of payments, Dr. Bellamy could not continue to receive retired pay while employed by the Canadian Government.

Following our decision, Dr. Bellamy initiated efforts to have Congress enact private legislation consenting to his employment, as authorized by the Constitution; however, Congress has not yet passed such legislation. Before further pursuing the attempt to obtain congressional consent on behalf of her late husband, Mrs. Bellamy's attorneys ask that we review our prior decision in light of section 509 of the Foreign Relations Authorization Act, supra.

It appears that Dr. Bellamy's period of employment by the Canadian Government was prior to August 15, 1977, the date of enactment of section 509 of the Foreign Relations Authorization Act, as was Dr. Bellamy's death.

Section 509 grants the consent of Congress, required by Article I, section 9, clause 8 of the Constitution, to accept civil employment and compensation from foreign governments under certain conditions. It provides in pertinent part, that:

"(a) Subject to the condition described in subsection (b), the consent of Congress is granted to--

"(1) any retired member of the uniformed services,

"(2) any member of a Reserve component of the Armed Forces, and

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"(3) any member of the commissioned Reserve Corps of the Public Health Service,

to accept any civil employment (and compensation therefor) with respect to which the consent of Congress is required by the last paragraph of section 9 of article I of the Constitution of the United States, relating to acceptance of emoluments, offices, or titles from a foreign government.

"(b) No individual described in subsection (a) may accept any employment or compensation described in such subsection unless the Secretary concerned and the Secretary of State approve such employment.

"(c) For purposes of this section, the term--

"(1) 'uniformed services' means the Armed Forces, the commissioned Regular and Reserve Corps of the Public Health Service, and the commissioned corps of the National Oceanic and Atmospheric Administration;

* * * * *

"(3) 'Secretary concerned' means--

* * * * *

(F) the Secretary of Health, Education, and Welfare, with respect to retired members of the commissioned Regular Corps of the Public Health Service and members of the commissioned Reserve Corps of the Public Health Service."

The primary issue presented here is whether section 509 can be applied retroactively to allow Mrs. Bellamy to recover her husband's retired pay, which was withheld beginning in 1971 and continuing through the remainder of his Canadian Government employment.

On its face, section 509 is prospective only and does not affect those retired members who had accepted employment and compensation prior to enactment of the law. This is in accord with the general

rule that a statute is effective on and after the date of its enactment unless it is clear from its language or necessary implication that a different effective date was intended. 34 Comp. Gen. 404, 406 (1955) and 39 Comp. Gen. 286, 290 (1959).

Section 509 specifies that congressional consent to acceptance of foreign employment is conditioned upon approval of the Secretary of State and the Secretary of the uniformed service concerned to such acceptance of foreign government employment. In enacting section 509 Congress took into account the fact that a number of American citizens were currently employed by foreign governments and subject to losing their retirement benefits. The Committee on International Relations, House of Representatives, specifically addressed this issue in H.R. Report No. 95-231, 95th Cong. 1st Sess. 21 (1977), when considering section 509. The Committee report states in part:

"The committee is particularly concerned with problems facing American citizens currently employed by foreign governments, who are subject to the constitutional provision contained in Article I, section 9, clause 8 of the Constitution of the United States. But for the enactment of this section, and under a 1974 ruling of the Comptroller General, the individual's foreign salary would be set off against his retirement pay. It is the intention of the committee, that if such an employee obtains the approval specified in subsection (b) of this section, no reductions will be made from retirement benefits payable after such approval is granted. Given the unique circumstances applying to such individuals, the committee expects that the Secretary of State and the Secretary concerned will give expeditious consideration to the requests for such approval." (Emphasis added.)

Since section 509 is not retroactive and since Dr. Bellamy's foreign employment took place prior to its enactment, that section may not be construed as granting congressional consent to such employment.

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Accordingly, it is our view that additional action by Congress would be required to authorize payment of the retired pay withheld from Dr. Bellamy.


Acting Comptroller General
of the United States