

DECISION

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

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APR 21 1976

FILE: B-126158

DATE:

MATTER OF: Proposed Amendments to Volume 1 of the
Joint Travel Regulations

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- DIGEST:
1. Proposed revision of Volume 1 of the Joint Travel Regulations to extend the one-year time limit for selecting a home upon retirement in deserving cases under circumstances other than those for members undergoing training or who are hospitalized would not be contrary to the statutory language or the congressional intent of Public Law 89-680 (1960).
 2. There is no objection to a proposed revision of Volume 1 of the Joint Travel Regulations to extend the one-year time limit for selecting a home upon retirement, if it is restricted to the member's immediate family, unforeseen events which prevent such move and the delay occasioned by such event is limited to a time certain.

This action is in response to a letter dated November 24, 1975, from the Assistant Secretary of the Air Force (Manpower and Reserve Affairs), for our views as to whether it is legally permissible to amend Volume 1 of the Joint Travel Regulations (JTR) to authorize the Secretaries of the uniformed services to extend the one-year time limit for selecting a home upon retirement in deserving cases under circumstances other than those for members undergoing training or who are hospitalized. The letter was forwarded to our Office by the Per Diem, Travel and Transportation Allowance Committee and has been assigned PDATAC Control No. 75-32.

The submission states that Public Law 89-680, approved October 15, 1966, 80 Stat. 957, authorized the extension of the time limit for travel of members to their homes of selection upon retirement and for the transportation of their dependents and household goods. Prior to enactment of Public Law 89-680, the law governing such matters (37 U.S.C. 404(c), 406(d) and 406(g)) prescribed no time limit within which a member who is retired,

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placed on the temporary disability retired list, discharged, or released from active duty, may select his home for purposes of performing his travel, dependent travel and shipment of household effects. However, the submission points out that our decision B-144302, December 19, 1960 (40 Comp. Gen. 375), recognized the long-standing administrative rule that one year is a reasonable time for the performance of travel of members to their homes in compliance with retirement orders and in light of the apparent congressional recognition of such rule, the one-year period could not be extended by the military services without specific statutory authority.

The submission goes on to state that pursuant to the authority of Public Law 89-680, the provisions of the JTR's were amended to provide for the one-year limitation in such circumstances, except that such period may be extended if the member, at the termination of active service or during the one-year period subsequent thereto, is hospitalized or is undergoing treatment at a hospital at Government expense. Also, the regulations provide that a member who, on the date of termination of active service is undergoing education or training for civilian employment, or who commences such education or training within one year following such date, may travel to a selected home provided travel is completed within one year after completion of education or training, or two years from termination of active service, whichever is earlier, and the travel during such period is authorized or approved by the Secretary concerned or his designated representative. The regulations provide that an extension of this time limit may be authorized or approved. Similar provisions are contained in the regulations with respect to transportation of dependents and shipment of household goods. See Volume 1 of the JTR's, paragraphs M4158-2; M7010-2; M8260-4 and 5.

The submission further states that the legislative history of Public Law 89-680 indicates that it was intended to state specifically in the law the one-year administrative rule which we announced in our decision 40 Comp. Gen. 375 (1960), and to also authorize the Secretaries to extend by regulation the one-year limitation in the before-mentioned situations and in certain other deserving cases. (H.R. Rep. No. 962, 89th Cong., 1st Sess. 2 and 3 (1965).)

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There is discussion throughout the reports and hearings on Public Law 89-680 of the decision in 40 Comp. Gen. 375 (1960) and of the need for statutorily providing an extension of the one-year limitation for those members undergoing hospitalization or academic training. However, no elaboration is given in the reports and hearings as to what was meant by the use of the phrase "and other deserving cases." It seems clear, however, that from the references to 40 Comp. Gen. 375 (1960), Public Law 89-680 was intended to reinforce with statutory language the long-standing and uniform administrative view that one year is a reasonable time for members to perform travel to their home of record or selection in compliance with military retirement orders, but also recognizing the necessity to grant certain exceptions when such travel is prevented by circumstances beyond the control of the member. Certainly, it could be argued that if Congress had intended to limit extension authority to hospitalization and academic training only it would have been easy for them to do so. The statute instead uses very broad language by providing for exceptions to the one-year rule in the following manner:

"* * *except as prescribed in regulations by the Secretaries concerned.* * *"

In this connection, the authority of the Secretaries to prescribe regulations must be strictly construed so that in the exercise of that power the regulations will not be inconsistent or out of harmony with, or which alters, adds to, extends or enlarges, limits, or restricts proper administration of the law. See 1 Am. Jur. 2d, Administrative Law, Section 132. See also 18 Comp. Gen. 285 (1938); 41 Comp. Gen. 213 (1961). The controlling rule is stated in the case of Manhattan General Equipment Col v. Commissioner of Internal Revenue, 297 U.S. 129, 134, as follows:

"The power of an administrative officer or board to administer a federal statute and to prescribe rules and regulations to that end is not the power to make law--for no such power can be delegated by Congress--but the power to adopt regulations to carry into effect the will of Congress as expressed by the statute. A regulation which does not do this, but operates to create a rule out of harmony with the statute, is a mere nullity.

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Lynch v. Tilden Produce Co., 265 U.S. 315, 320-322;
Miller v. United States, 294 U.S. 435, 439-440, and
cases cited. * * *

Thus, by adopting the one-year limitation rule with full knowledge of the decision in 40 Comp. Gen. 375 (1960), it is considered that Congress meant to retain the principle established in that case. In that decision, we took the position that the fundamental reason for providing a time limitation on the concept of transportation at Government expense for members of the uniformed services upon retirement is to insure that their travel from the last duty station to their home is not considered to be unrelated to the retirement or as giving rise to a right to transportation at Government expense independent of the retirement orders.

Within the context of the foregoing, the examples of "deserving cases" as set forth in the submission are: (1) a situation where a member is prevented from selecting a home within the one-year time limit because his or her spouse has a terminal illness, (2) a case where there has been a death in the immediate family near the time of the planned move, (3) instances where the construction of a retirement home has been delayed because of labor strikes, or (4) other unforeseen circumstances beyond the control of the member. It is suggested that the conclusion of any of these would not in and of itself result in any greater expenditure of funds on the part of the Government and would take into account circumstances that are beyond the control of the member that are not unrelated to the retirement.

We consider the three specific examples mentioned as being appropriate reasons for extending the one-year time limit if the occurrence of one of those events is the reason why the member's move is not completed within the first year after retirement. Regarding the general example we do not consider "unforeseen circumstances beyond the control of the member" as being sufficiently definite to permit us to comment on whether exceptions granted on that basis would be within the spirit of the amendment in question. On the other hand, it is probable that circumstances will arise which would be as deserving of an extension as the three specific examples given.

In view of the remedial character of the legislation and the fact that the Secretary of the service involved was to have

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authority to determine which cases were deserving of an extension of the one-year limitation, we believe that a regulation giving general guidelines with respect to the use of this authority would be appropriate. Accordingly, a regulation which would permit the Secretaries concerned to grant extensions in appropriate circumstances would, in our opinion, be proper provided that such authority is limited to cases in which an unexpected event beyond the control of the member has occurred which prevented him from moving to his home of selection in one year (which he would otherwise have done) and provided that extensions are given in terms of limited periods of time as justified by the reason for the delay in moving.

Accordingly, we would not object to a revision of the Joint Travel Regulations to authorize the Secretaries of the services to extend the one-year time limit for selecting a home upon retirement so long as it is consistent with the foregoing. Any doubtful proposed changes should be submitted here for consideration.

R.F.KELLER

[Deputy Comptroller General
of the United States