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

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MAR 29 1978

The Honorable Melvin Price
Chairman, Committee on Armed Services
House of Representatives

Dear Mr. Chairman:

Further reference is made to your letter dated January 17, 1978, with enclosures, concerning the propriety of the Navy's action in extending the term of enlistment of beyond his 21st birthday to make up periods of time lost from his enlistment due to his absences from duty.

On May 24, 1965, at age 17 with the written consent of his father, Mr. enlisted in the United States Navy obligating himself to serve for the period "during minority until 11 May 1969," the day preceding his 21st birthday. His enlistment was involuntarily extended on several occasions by the Navy pursuant to 10 U.S.C. § 972 (1970) as adjustments for periods of "time lost." Mr. service was terminated on July 9, 1971, with a bad conduct discharge awarded as a result of a court-martial conviction for absence without leave (AWOL) offenses committed subsequent to his 21st birthday while he was serving on the extension of his enlistment making up time lost. Mr. and his parents have asserted that the extension of his enlistment beyond the period of his minority exceeded the Navy's authority because the Navy was allegedly without jurisdiction over him after May 11, 1969, upon his reaching his majority. They contend, in effect, that 10 U.S.C. § 972 does not authorize the military to extend its jurisdiction over a minority enlistee beyond his 21st birthday by extending his enlistment beyond that age.

In this regard you ask our opinion as to whether the Navy was acting within its authority under 10 U.S.C. § 972 in extending Mr. enlistment, taking particular note of the parental consent form signed by Mr. father, which provided consent only for enlistment for the period of minority, and the language of section 972 which makes an individual liable for time lost only in amounts equaling the term for which he enlisted.

The question presented is essentially one involving the jurisdiction of the service concerned over an individual for

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purposes of enforcing the criminal provision of the Uniform Code of Military Justice. 10 U.S.C. 801 et seq. As such the question you present is not within the scope of our authority in legal matters. We have, however, researched the matter and have the following comments.

The statute providing the terms of enlistment for members enlisting in the Regular Navy at the time Mr. Lee enlisted was 10 U.S.C. § 5534 (1965) which provided in pertinent part that enlistments may be made—

> "* * * of male persons under 18 years of age for the duration of their minority and of men at least 18 years of age for a term of two, three, four, or six years."

However, under 10 U.S.C. § 5533(a) (1965), the enlistment of a male person at least 14 and under 18 years of age required "the consent of his parents or guardian." The form Mr. father signed giving that consent provided in pertinent part that he consented to his son's enlistment in the Navy "for the period of minority years." Under 10 U.S.C. 5534 as quoted above, such a minority enlistment was the only enlistment available to an individual under 18 years of age.

In construing the predecessor statute to 10 U.S.C. § 5533(a), which was substantially the same, the Supreme Court in United States v. , 302 U.S. 46, 49-50 (1937), stated in part:

> "The statute under which plaintiff's son was accepted declares that minors between ages of 14 and 18 years shall not be enlisted in the navy without the consent of their parents. It means that, while minors over 18 may enlist without parental permission, the government elects not to take those between 14 and 18 unless their parents are willing to have them go. It is a determination by Congress that minors over 14 have capacity to make contracts for service in the navy. And it is in harmony with rulings under the common law to the effect that enlistment of a minor for military

> service is not voidable by him or his parents. Enlistment is more than a contract; it effects a change of status. It operates to emancipate minors at least to the extent that by enlistment they become bound to serve subject to rules governing enlisted men and entitled to have and freely to dispose of their pay. Upon enlistment of plaintiff's son, and until his death, he became entirely subject to the control of the United States in respect of all things pertaining to or affecting his service."

The courts have also repeatedly held that the applicable statutes in effect when an enlistee signs the enlistment agreement must be deemed incorporated by reference into the agreement. See, for example, v. 414 F. 2d 1060, 1065 (5th Cir. 1969), and v. , 289 F. Supp. 812, 814 (D. Md.), aff'd per curiam, 401 F.2d 544 (1968), cert. denied, 393 U.S. 1052 (1969). Thus, although Mr. enlistment required parental consent, once that consent was given and he was enlisted, his status became that of an enlisted member of the Navy and he became subject to all the laws, rules and regulations pertaining to that status. Therefore, the fact that the parental consent given to Mr. enlistment was in terms of an enlistment for the period of his "minority years" would not prevent his being retained in the Navy beyond age 21 if his retention was otherwise required pursuant to law. Compare 10 U.S.C. § 507 (1970) and Ex Parte Taylor, 73 F. Supp. 161 (S.D. Cal. 1947), concerning extension of enlistments during war.

The statute applied in Mr. s case to retain him on active duty after reaching his majority, 10 U.S.C. § 972, basically provides that an enlisted member of an armed force who, under certain specified conditions is absent from duty, is liable after his return to full duty "to serve for a period that, when added to the period that he served before his absence from duty, amounts to the term for which he was enlisted or inducted." Apparently, the Lees believe that because the period of enlistment was defined as Mr. minority, as opposed to a particular number of years, section 972 may not be used to extend his enlistment beyond his 21st birthday, i.e., the term for which he was enlisted.

Section 972 does not contain an exception, either express or implied, for minority enlistments. Instead it applies generally

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to an "enlisted member" who is absent for the reasons specified. Although Mr. enlistment was stated to be for the period of his minority, his enlistment contract also states a date of termination. Thus, Mr. term of enlistment was for the length of time between the date he signed the contract and the date of his 21st birthday. Assuming that his absence fell within the reasons delineated in section 972 (as appears to be the case), it appears that the Navy was within its authority in extending his enlistment pursuant to 10 U.S.C. § 972 to make up the time lost so that his total period of service would equal this time period.

Since the AWOL offenses for which Mr. was convicted occurred subsequent to his 21st birthday it is now argued that he had fully discharged his active duty obligation and that the Navy was obliged to discharge him in accordance with the terms of his minority enlistment agreement. At the time of his court-martial Mr. was under a duty to assert this contention so that his status could officially be determined. Compare v. , 420 F.2d (9th Cir. 1969). Whether he attempted to do so is not apparent from the record before us but it is apparent that the Navy court-martial determined that it had jurisdiction over him while he was making up the time lost.

We trust the information provided serves the purpose of your inquiry.

Mr. Navy record forwarded to us by your staff is returned.

Sincerely yours,

R.F. KELLER

Deputy Comptroller General
of the United States

Enclosure