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

B-198751

January 8, 1982

The Honorable James J. Howard  
House of Representatives

Dear Mr. Howard:

We again refer to your letter dated September 11, 1981, requesting a report on an appeal by Lieutenant Colonel Theodore W. Hammer, USA, Retired, of decision B-198751, February 18, 1981, in which it was ruled that his post-retirement employment activities violated the "selling" prohibition of 37 U.S.C. 801(c).

By decision B-198751, dated today, copy enclosed, we sustained the earlier ruling in his case. In the absence of a showing that Colonel Hammer did not participate in prohibited selling activities, the forfeiture of retired pay must be imposed even though he may not have intended to violate the provision in question.

We regret that a response more favorable to your constituent was not possible in the circumstances.

Sincerely yours,

*Harry D. Van Cleave*

For Comptroller General  
of the United States

Enclosure

205 20

**DECISION**



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

**FILE:** B-198751

**DATE:** January 8, 1982

**MATTER OF:** Lieutenant Colonel Theodore W. Hammer, USA,  
Retired

**DIGEST:** Where a retired Regular officer of a uniformed service signs and submits bids as part of his employment with contractor doing business with Department of Defense agencies, he is "selling" within the meaning of 37 U.S.C. 801(c) which prohibits such activity and subjects him to loss of military retired pay while so engaged.

This action is in response to a request from Lieutenant Colonel Theodore W. Hammer, USA, Retired, for reconsideration of decision B-198751, February 18, 1981, rendered in his case. We held in that case that his employment activities immediately following his retirement constituted "selling" as that word is used in 37 U.S.C. 801(c), which provisions prohibit selling supplies or war materials to those agencies listed in the statute for 3 years following retirement. We affirm that decision.

Colonel Hammer retired from the Army for years of service on June 1, 1979. On June 4, 1979, he began working as a contract administrator for an electronics firm. It is reported that the major portion of the company's sales volume is derived from Government contracts.

By attachment to Department of Defense Form 1357, "Statement of Employment for Regular Retired Officers," dated September 8, 1979, Colonel Hammer stated that his duties included receiving and signing quotations in response to formal solicitations from Government supply agencies. He also reviewed purchase orders for compliance with the quotations, and in the event of error, prepared and signed amendments to the purchase contracts.

The Army notified Colonel Hammer by letter dated September 21, 1979, that his described activities were in violation of the selling restrictions of 37 U.S.C. 801(c), and that he was not entitled to retired pay during any period that he was in violation of those provisions. Shortly thereafter, his employer submitted a written

B-198751

statement that Colonel Hammer's duties had been restructured to avoid any real or apparent violation of the statute.

After our decision B-198751, February 18, 1981, was issued, the Army began deductions from his retired pay to repay the retired pay received by him during the indicated violation period. Colonel Hammer protested the deductions on the basis that his duties were actually administrative in nature and he had no knowledge of the post-retirement restrictions at the time he took the position.

In our decision B-198751, February 18, 1981, after analyzing the law, the governing Department of Defense Directive and the Army Regulations, as well as prior decisions of this Office, it was concluded that Colonel Hammer's employment activities during that period constituted actual participation in the Government procurement process and as such required forfeiture of his retired pay.

In support of his present appeal from that decision, Colonel Hammer states that he had no contact with Government officials, performed no negotiations, and did not socialize or in any other way perform any act that could not have been performed by a person with no previous military experience. Further, he contends that he had no knowledge that any of the duties he was performing could possibly be interpreted as a conflict of interest as he had received no counseling concerning any of these matters at the time of retirement.

Colonel Hammer apparently believes that lack of knowledge and intent to violate the law may justify not imposing the penalty, i.e., loss of retired pay for the period.

The provisions of 37 U.S.C. 801(c) provide in part:

"(c) Payment may not be made from any appropriation \* \* \* to an officer on a retired list of the Regular Army \* \* \* who

B-198751

is engaged for himself or others in selling,  
or contracting or negotiating to sell,  
supplies or war materials to an agency of  
the Department of Defense \* \* \*."

If a retired officer of a Regular component engages in any phase of the proscribed procurement process then he may not receive military retired pay during the period of such activity. No exceptions or qualifications are made in the law. As a result, regardless of Colonel Hammer's intent, he is precluded from receiving retired pay while he was engaged in the proscribed activities. See 41 Comp. Gen. 642, 646 (1962); 42 id. 32 (1962). The provision of law in question is clear. Knowledge, intent, or even lack of good faith are not necessary in order to require withholding of retired pay.

In the absence of a showing that Colonel Hammer did not participate in selling of supplies or war materials to Defense Department or other listed agencies during the period in question the decision of February 18, 1981, is sustained.

*Harry R. Van Cleave*

For Comptroller General  
of the United States