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DECISION

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

FILE: B-204533 DATE: December 30, 1981

MATTER OF: Commander Martin P. Merrick, USN, and Petty Officer Albert Jackson, Jr., USN

DIGEST: Without specific statutory authorization, employment of active duty naval personnel in Federal civilian positions in connection with high school extracurricular activities is unauthorized as incompatible with the members' military duties and compensation for these services may not be paid from appropriated funds.

This action is in response to a request for an advance decision on the propriety of payment of the claims of Lieutenant Commander Martin P. Merrick, USN, and Chief Petty Officer Albert Jackson, Jr., USN, active duty military personnel, who seek compensation for additional duties performed at the Roosevelt Roads Naval Station, Ceiba, Puerto Rico. Under the general rule that, in the absence of specific statutory authorization therefor, any arrangement by a member of the uniformed services for the rendition of services to the Government in another position or employment is incompatible with the member's military duties, the claims must be denied.

At the time these claims arose, Commander Merrick and Petty Officer Jackson were on active duty in the United States Navy, stationed at the Roosevelt Roads Naval Station. After normal working hours, the two claimants were employed at the Roosevelt Roads High School as Drama Club Director and Junior Varsity Coach, respectively. Roosevelt Roads High School, a unit of the Antilles Consolidated School System, is operated with appropriated funds by the United States Department of Defense. Each claimant requests compensation for these additional duties at the rate of $750 for the school years 1980-1981. The superintendent of the school system has taken the position that certain provisions of the Dual Compensation Act of 1964, as amended, now codified to 5 U.S.C. §§ 5531-5537, provide for exceptions to the dual compensation restrictions, thus enabling the members to accept the compensation for their service at the high school.

At issue here is whether a person in the active military service may, in the absence of statutory authority, be employed in a Federal civilian capacity and be paid therefor from appropriated funds. As pointed out in our decision 46 Comp. Gen. 400 (1966), this question has been considered many times, and it has been consistently held that, in the absence of a statute expressly so providing, only the pay and allowances that accrue under the laws and regulations applicable to the military service concerned are properly payable. See also 49 Comp. Gen. 444 (1970). Furthermore, in 46 Comp. Gen. 400 (1966), we considered the Dual Compensation Act of 1964, as amended, and its legislative history and concluded that there was nothing in the 1964 act or elsewhere in the statutes which would justify a modification or reversal of the precedent of viewing active military service as precluding entitlement to compensation from Federal civilian employment.

Our holding that employment of an active duty military member in a civilian position is unauthorized unless specifically permitted is based on a conclusion that such employment is incompatible with military duty. Thus, the employment of an Army enlisted man as an airways observer by the Weather Bureau (18 Comp. Gen. 213 (1938)), enlisted members on furlough as Department of the Interior firefighters (33 Comp. Gen. 368 (1954)), "off duty" military personnel as Federal civilian workers in commissaries or fire departments paid from appropriated funds (46 Comp. Gen. 400 (1966)), and military physicians as fee-basis Veterans Administration doctors (47 Comp. Gen. 505 (1968)), have all been held to be unauthorized under the rule that, in the absence of specific statutory authority, any arrangement for the rendition of services to the Government in another position or employment is incompatible with the member's military duties, actual or potential. Cf. 47 Comp. Gen. 505 (1968), and cases cited therein.

In the present case, the Antilles Consolidated School System is authorized under 20 U.S.C. § 241(2) to employ personnel to provide free public education comparable to that provided in the District of Columbia. Although 20 U.S.C. § 241(2) permits such personnel to be employed without regard to a number of specific statutory restrictions,

it does not provide any specific authority for the employment of active duty military personnel as school employees. As a result, we must conclude that such employment is unauthorized as incompatible with the members' military duties. See 46 Comp. Gen. 400 (1966).

Accordingly, the claims of Commander Merrick and Petty Officer Jackson for compensation for services rendered as Federal civilian employees after their normal hours of military duty must be denied. The vouchers forwarded with the submission may not be paid and will be retained in our files.

Harry R. Van Cleve

For Comptroller General
of the United States