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Mr. Forman

**DECISION**



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

**FILE:** B-199718

**DATE:** June 19, 1981

**MATTER OF:** Station housing allowance

- DIGEST:**
1. Military members occupying quarters formerly owned by Panama Canal Company (now administered by the Panama Canal Commission) are not entitled to station housing allowances since such quarters are considered Government quarters under Volume 1, Joint Travel Regulations, regardless of whether the member pays rent. Although the Panama Canal Treaty of 1977 transferred the housing owned by Panama Canal Company to Republic of Panama, the United States retained right to use the housing for its employees, and the quarters are still to be considered Government quarters within the meaning of the regulations.
  2. Under paragraph M4301-3g(2) of 1 JTR, a member in Government housing (i.e., any quarters owned or leased by the Government, if made available to a member) is precluded from receiving a station housing allowance even if he pays rent and utilities equal to or greater than a member in comparable private housing who receives the allowance. In such circumstances, no objection would be posed to an amendment to the regulations authorizing payment of the station housing allowance, since Congress did not intend such a result.

The question presented for decision is whether quarters formerly owned by the Panama Canal Company, but transferred to the Republic of Panama under the Panama Canal Treaty of 1977, are still considered Government quarters for purposes of authorizing station housing allowances to members residing in them subsequent to approval of the Treaty. The answer is yes. However, we would raise no objection to an amendment to Volume 1 of the Joint Travel Regulations (1 JTR) so as to permit payment of housing allowances to members occupying these quarters if found necessary by the proper authorities.

*Entitlement of Military Members Occupying Quarters Formerly Owned by Panama Canal Company to Station Housing Allowance*  
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The question was submitted by Lieutenant Colonel R. M. Sarda, Finance and Accounting Officer, Department of the Army, Headquarters, 193d Infantry Brigade (Panama). The Per Diem, Travel and Transportation Allowance Committee approved the submission and assigned it control number 80-24.

The submission recognizes that in our decision 54 Comp. Gen. 214 (1974), we held that the Panama Canal Company (replaced by the Panama Canal Commission) quarters are considered Government quarters under the definition of such now contained in Appendix J, 1 JTR. The disbursing officer asks whether the approval of the Panama Canal Treaty of 1977 changes the status of these quarters so that they are no longer considered Government quarters, since the quarters are administered by the Panama Canal Commission and members occupying the quarters pay rent and utilities to the Commission.

The question is presented because in many instances members of the uniformed services assigned to the Panama Canal Commission are required to reside in quarters owned by the Commission for which they are charged rent and utilities. Often these charges exceed the member's basic allowance for quarters entitlement. Normally, payment of a station housing allowance authorized under 37 U.S.C. 405 would be authorized to offset the increased costs to the member; however, since this allowance may not be made when a member is occupying Government quarters, such allowance has been historically denied to members occupying the Panama Canal Company quarters.

Under Article XIII of the Panama Canal Treaty of 1977, the title to all housing owned by the Panama Canal Company was transferred immediately to the Republic of Panama. The United States, however, retained the use of the housing as needed to accommodate United States citizen employees. See Article XIII-2(a) of the Treaty. Appendix J, 1 JTR, defines Government quarters as including "lodgings or other quarters obtained by U.S. Government contract." Since the Panama Canal Treaty constitutes a legal agreement under which the United States obtains such housing as it needs for its employees, the housing is still considered to be Government quarters under the current definition in 1 JTR.

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Since the quarters are still Government quarters, no station housing allowance may be paid to the members occupying them under the current regulations issued pursuant to 37 U.S.C. 405. See 54 Comp. Gen. 214 (1974).

Regulations implementing this statute are contained in paragraph M4301-3g(2), 1 JTR, and provide that a member is not entitled to a station housing allowance while occupying Government quarters. As noted, the definition of Government quarters in Appendix J, 1 JTR, includes Panama Canal Company quarters prior to and subsequent to approval of the Treaty.

Accordingly, we have no basis for changing the view expressed in 54 Comp. Gen. 214, supra, and a member occupying Government quarters in Panama as defined in Appendix J, may not be paid a station housing allowance.

It is our view, however, that there is no impediment to an amendment to the regulations to authorize the payment of a station housing allowance to members in Government housing under certain circumstances.

Under the provisions of 37 U.S.C. 405, a station housing allowance may be authorized for members of the uniformed services on duty outside the United States or in Hawaii or Alaska for the purpose of deferring the increased housing costs encountered in those areas. A station housing allowance may be prescribed under this section without regard to costs other than housing costs and may consist of the difference between basic allowance for quarters and applicable housing costs.

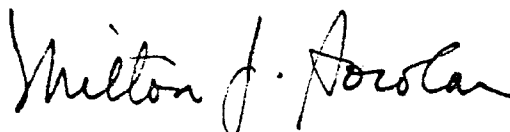
In this regard we can see no valid reason why a member who is occupying Government quarters and paying rent and utilities comparable to that paid by members residing in non-Government quarters should not be entitled to a housing allowance. We believe that the station housing allowance entitlement should be authorized under conditions similar to when a basic allowance for quarters is authorized for a member occupying Government quarters for which he pays rent. See 37 U.S.C. 403(e). This, of course, assumes that the charges made by the Government for the quarters are comparable to the costs for non-Government quarters for which a member receives a station housing allowance.

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Further support for this conclusion is found in the legislative history of an amendment to 37 U.S.C. 405. On October 22, 1970, the statute was amended by Public Law 91-486, 84 Stat. 1085, to authorize the services to pay members separately for station housing allowance and station cost-of-living allowance as opposed to the previous statutory authority for only a unitary cost-of-living allowance. In so doing, Congress explained that "when the service member is furnished Government quarters he forfeits his BAQ and has no entitlement to the supplementary housing allowance." H.R. Rep. No. 91-842, 91st Cong., 2d Sess. 5 (1970). Correspondingly, if a member receives BAQ under 37 U.S.C. 403(e), while occupying Government housing, he should be entitled to a station housing allowance if the costs to the member justify it.

Thus, it is our view that the applicable provision in 1 JTR may be changed to authorize payment of a station housing allowance in such circumstances. Rates could be prescribed by the appropriate authorities on the basis of cost data applicable to such housing.

Accordingly, while station housing allowances may not be authorized for members occupying Government quarters under current regulations, we would raise no objection to an amendment to the regulations authorizing the allowance in the described circumstances.



Acting Comptroller General  
of the United States