

DECISION



17047 17041  
THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

*Use for Addressee*

FILE: B-201426

DATE: February 19, 1981

MATTER OF: Peace Corps Volunteers -  
*Applicability of Dual Compensation Act to Peace Corps Volunteers*

DIGEST: Peace Corps volunteers serving under section 5 of the Peace Corps Act (22 U.S.C. 2504) do not hold "positions" as defined by the dual pay provisions of 5 U.S.C. 5531 and, therefore, retired Regular officers of the uniformed services are not subject to retired pay reduction as required by 5 U.S.C. 5532 for retired Regular officers who hold other Government positions.

This is in response to a request by the Director of the Peace Corps, for a decision concerning the applicability of the dual compensation provisions contained in 5 U.S.C. 5531 et seq. (1976), to retired Regular officers of the uniformed services who serve as Peace Corps volunteers. It is reported that the Peace Corps has in the past recruited a number of retired officers to serve as volunteers overseas and that if 5 U.S.C. 5532 operates to reduce the retired pay of these volunteers, such recruitment would be seriously impeded. The Director has concluded that the retired pay reduction provisions do not apply to volunteers. We agree.

Subsection 5532(b) of title 5, United States Code, provides in part that:

"(b) A retired officer of a regular component of a uniformed service who holds a position is entitled to receive the full pay of the position, but during the period for which he receives pay, his retired or retirement pay shall be reduced to an annual rate equal to the first \$2,000 of the retired or retirement pay plus one-half of the remainder, if any. \* \* \*"

Item (2) in section 5531 defines "position" as "a civilian office or position (including a temporary, part-time or intermittent position), appointive or elective, in the legislative, executive, or judicial branch of the Government of the United States \* \* \*." It seems clear from the language of sections 5531 and 5532 that the retired pay reduction provisions necessarily contemplate an employment relationship with the Government. We have held that the essential element

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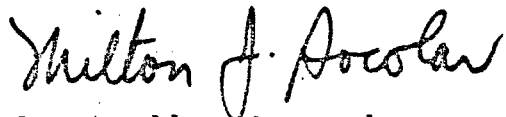
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in establishing the applicability or nonapplicability of dual compensation statutes is whether the arrangements in question give rise to an employment relationship with the Government. 45 Comp. Gen. 757 (1966). Also, we have held that for the purposes of certain travel allowances authorized by title 5, United States Code, Peace Corps volunteers are not considered officers or employees of the United States. See 42 Comp. Gen. 443 (1963).

Further, subsection 5(a) of the Peace Corps Act, 22 U.S.C. 2504(a) provides that " \* \* \* except as otherwise provided in this Act, volunteers shall not be deemed officers or employees or otherwise in the service or employment of, or holding office under, the United States for any purpose." The Act enumerates several statutes to which volunteers are subject, but does not mention the dual compensation provisions in this regard.

Additionally, the legislative history of the Peace Corps Act indicates that volunteers shall not be considered as Federal employees or as holding office under the United States except as provided in the Act. House Report No. 1115, 87th Cong. (1961).

In view of the above expression of the clear intent of Congress to exclude Peace Corps volunteers from the restrictions on benefits applicable to Federal officers and employees generally, it is our opinion that the restrictions on the receipt of retired pay for retired Regular officers of the uniformed services contained in the dual compensation provisions of title 5, United States Code, do not apply to Peace Corps volunteers.



Acting

Comptroller General  
of the United States