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GAO

United States General Accounting Office
Washington, DC 20548

Office of
General Counsel

In Reply
Refer to: B-194971

*[Acceptance of Employment By Military Member while
on Terminal Leave prior to Retirement]*

Colonel Lee Gatter, USA
U.S. Army Dental Activity
Fort George G. Meade, Maryland 20755

do not make available to public reading room
JUN 20 1976

AGC 00061

Dear Colonel Gatter:

In your letter of May 22, 1975, you ask if you, a Regular Army officer, may go on terminal leave for approximately 1 month prior to your retirement and while on such leave accept employment with the University of Michigan Hospital involving faculty status at the University, a State supported institution. Your question arises as a result of our decision 56 Comp. Gen. 855 (1977).

DLG 02018

While this is not a decision of the Comptroller General, the following may prove to be of assistance to you.

Subsection 973(b) of title 10, United States Code, provides in part that an officer on the active list of the Regular Army may not hold a civil office by election or appointment under the United States, a territory or possession, or a State. The acceptance of such a civil office or the exercise of its functions by such an officer terminates his military appointment.

An officer who is in a terminal leave status is still on the active list of his service and thus the provision would be applicable to him.

While 5 U.S.C. 5534a authorizes an officer to accept an office or position and compensation therefore in the Governments of the United States, the District of Columbia, the possessions and territories during his terminal leave, such provision is not applicable to a civil office with a State Government. See 56 Comp. Gen. 855 (1977), copy enclosed.

In your particular case the question is whether the acceptance of the position with the University of Michigan Hospital would constitute the acceptance of a civil office within the meaning of 10 U.S.C. 973(b), thus causing loss of your appointment.



Letter

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A comprehensive review of the criteria used in determining whether a position is a "civil office" is provided in 44 Comp. Gen. 830 (1968), copy enclosed. On the basis of information available we cannot comment on the status of employees of the University of Michigan Hospital in that regard.

We trust the foregoing will be of assistance to you.

Sincerely yours,

Edwin J. Mousma

Edwin J. Mousma
Assistant General Counsel

Enclosure