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United States General Accounting Office
Washington, DC 20548

Office of
General Counsel

In Reply
Refer to:

B-197825

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FEB 27 1980

Lieutenant Colonel R. B. Paschal, USAF
132 Russwood Circle
Universal City, Texas 78148

Dear Colonel Paschal:

This is in response to your letter of February 12, 1980, in which you, in effect, request a decision of the Comptroller General concerning your status if you seek election to the Schertz, Cibolo, Universal City, Texas Independent School District Board of Trustees. You say that the election will take place in April 1980, and that you plan to retire in June 1981. You also say that you have been advised by your Base Legal Office that you are probably prohibited from accepting this office by 10 U.S.C. 973(b), which prohibits any Regular officer of the Armed Forces from holding civil office while on the active list.

This is not a decision of the Comptroller General of the United States. The following may be of assistance to you.

Section 973(b) of title 10, United States Code, which was derived from section 18 of the act of July 15, 1870, ch. 294, 16 Stat. 319, Section 1222, Revised Statutes, provides in pertinent part:

"(b) * * * no officer on the active list of the * * * Regular Air Force * * * may hold a civil office by election or appointment, whether 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."



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It has been held that "civil office" as used in the statute contemplates a specific position created by law with certain duties imposed by law on the incumbent, and the duties of the position must involve the exercise of some portion of the sovereign power. 44 Comp. Gen. 830 (1965) and 29 Comp. Gen. 363 (1950).

The office of trustee of an independent school district in the State of Texas would appear to be within the criteria outlined above since it is created by statute which imposes certain duties constituting an exercise of sovereign power. See generally Vernon's Texas Code Annotated (V.T.C.A.) Education Code.

Thus, if you accept this office or exercise the duties of it while still on active duty you may be subject to termination of your military appointment.

We are not aware of any provision of law authorizing a waiver of the provisions of 10 U.S.C. 973(b).

We trust the foregoing will be of some assistance to you.

Sincerely yours,

Edwin J. Monsma

Edwin J. Monsma
Assistant General Counsel