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UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

OFFICE OF GENERAL COUNSEL

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April 20, 1981

*Propriety of Active Duty Military Personnel Employment During
Off-Duty Hours With Civilian Firms Under Contract
With Government*

Major Carl F. Meyer, Jr., JAGC
Deputy Staff Judge Advocate
United States Army Intelligence
and Security Command
Arlington Hall Station
Arlington, Virginia 22212

not make available to public reading

Dear Major Meyer:

This is in response to your December 9, 1980 request for an advisory opinion on whether active duty military personnel assigned to the United States Army Intelligence and Security Command who are permitted to work during their off-duty hours for civilian firms, under contract with the Government, which provide custodial services, would be receiving "extra pay for extra services" thereby violating 5 U.S.C. § 5536 (1976). Pursuant to 31 U.S.C. §§ 74, 82d (1976) a decision of the Comptroller General is not being rendered on your request. However, for your assistance, we are providing the following information.

The Comptroller General has held that officers and enlisted personnel serving on extended active duty in the uniformed services may not be employed during their off-duty hours in civilian positions which are paid for by appropriated funds since this would violate the long-standing rule that active military service is incompatible with Federal civilian service. 46 Comp. Gen. 400 (1976). Moreover, section 1765, Revised Statutes (a predecessor to 5 U.S.C. § 5536) has been interpreted to preclude a Federal employee from receiving compensation from a private source to render services which he is required to perform as part of his official duty. 3 Comp. Gen. 128 (1923).

Additionally, any resolution of this question would also entail discerning whether there are civilians, capable of performing the services, who are denied this opportunity because the civilian firms have hired military members. See 10 U.S.C. § 974 (1976), and Jenkins v. Rumsfeld, 412 F. Supp. 1177 (D.C. Va. 1976).

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