

*File*  
*ADP*  
*Asst. of*  
*Ret. Officers*  
*(Xerox included)*

P16-3(18)/OR

June 1, 1943.

Memorandum concerning the legality of retired naval officers holding civil offices under Federal, State, or Territorial government or employment with private concerns.

The usual cases of employment of retired officers are covered in this memorandum, which is furnished for information only. The applicable statutes should be referred to in any particular case.

The question as to whether a retired officer may legally accept a civil appointment and still hold his position on the retired list is one of private concern only and not a subject with which the United States can concern itself until some action has been taken by the retired officer. The obvious course for any retired officer called upon to determine that question is to seek the advice of private counsel, since it is one strictly of private concern and in no sense of public interest. (Attorney General's opinion, March 26, 1897, 21 Op. Atty. Gen. 510).

Under this opinion of the Attorney General, it is not for the Navy Department to decide in any particular case whether the prospective employment of a retired officer would come within the prohibition of any statute.

Unless otherwise provided by law, retired officers whose retired pay amounts to \$2,500 per annum are prohibited from holding any other compensable Federal office unless (1) elected thereto, or (2) appointed by the President with Senate confirmation, or (3) retired because of battle injuries or incapacities incurred in line of duty. (5 U. S. Code, sec. 62).

*5-62*  
*Office*  
*\$2500.00*

Retired officers of the Navy may accept appointments to positions on the diplomatic or consular branches of the Foreign Service of the United States. (34 U. S. Code, sec. 226.)

Naval appropriations are not available for the pay of any officer on the active list who is employed by any person or company furnishing naval supplies or war material to the Government, and any such employment would be unlawful; nor are naval appropriations available for the pay of any retired officer who for himself or for others is engaged in selling or contracting or negotiating for the sale of naval supplies or war material to the Navy or to the Navy Department. (Act of June 10, 1896, 29 Stat. 361, as amended by sec. 9, Act of July 22, 1935, 49 Stat. 490; 34 U. S. Code, sec. 583).

NAVY review(s) completed.

NAVY HAS NO OBJECTION TO DECLASSIFICATION AND RELEASE

P16-3(1E)/OR

Persons or firms that furnish plans, specifications, designs or drawings for the Navy "are commonly understood as being engaged in the furnishing of professional services, and clearly professional services are not 'naval supplies or war materials' within the accepted meaning of that term." (Comp. Gen. D-12238, Nov. 7, 1940.)

Under sections 41 and 109, Criminal Code, a retired officer is forbidden to represent the United States in the transaction of business with companies or firms in which he has a direct or indirect pecuniary interest or to assist in the prosecution of claims against the United States. (Act of Mar. 4, 1909, 35 Stat. 1097, 1107; 18 U. S. Code, 93, 198.)

Retired officers while not on active duty are permitted to receive compensation for services rendered to or in behalf of any person, in relation to any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter or thing in which the United States is a party or directly or indirectly interested, before any department, court-martial, bureau, officer, or any civil, military or naval commission, provided he does not represent any person in the sale of anything to the Government through the department in whose service he holds a retired status. (Sec. 113, Criminal Code, Act of Mar. 4, 1909; 35 Stat. 1109, as amended by Act of October 3, 1940; 18 U. S. Code 203.)

Where a retired officer has qualified for and accepted appointment to a civilian office or position under the Federal Government or the municipal government of the District of Columbia, or under any corporation the majority of the stock of which is owned by the United States, the combined rate of his compensation in such civilian office or position and his retired pay or on account of commissioned service is limited by law to \$3,000 per annum, but if the retired rate of pay exceeds \$3,000, then the retired officer can only receive one pay and must therefore elect whether he will continue to receive his retired pay or the pay of the civilian office or position. Should he give up his retired pay while holding a civil office or position, he may again receive his retired pay when he relinquishes his civilian office or position. (Act of June 30, 1932, sec. 212, 47 Stat. 406, as amended by Act of July 15, 1940, sec. 3, 54 Stat. 761; 5 U. S. Code, sec. 59a). An officer receiving retired pay of \$2,900 per annum and employed in a civilian office or position with a salary of \$2,500 per annum would be paid at a net rate of \$3,000 per annum. (12 Comp. Gen. 37, 42.)

The inhibition of subparagraph (a) of section 212, Act of June 30, 1932, supra, limiting the combined rate of compensation to \$3,000

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CERTAIN PROVISIONS OF LAW RELATING TO RETIREMENT FOR PHYSICAL DISABILITY  
OF OFFICERS OF THE U. S. NAVY AND U. S. NAVAL RESERVE

Act of January 16, 1857, as amended by: August 3, 1861, (Sec. 1457 R.S.):  
(U. S. Code, Title 34, Sec. 389):

Except as otherwise provided in this title, officers retiring from active service shall be placed on the retired list of officers of the grades to which they belonged, respectively, at the time of their retirement, and continue to be borne on the Navy Register. They shall be entitled to wear the uniform of their respective grades, and shall be subject to the rules and articles for the government of the Navy and to trial by general court-martial. The names of officers wholly retired from the service shall be omitted from the Navy Register.

Act of Aug. 3, 1861 (Sec. 1448, R.S) (U.S. Code, Title 34, Sec. 411):

Whenever any officer, on being ordered to perform the duties appropriate to his commission, reports himself unable to comply with such order, or whenever, in the judgment of the President, an officer is incapacitated to perform the duties of his office, the President, at his discretion may direct the Secretary of the Navy to refer the case of such officer to a board of not more than nine or less than five commissioned officers, two-fifths of whom shall be members of the Medical Corps of the Navy.

Act of Aug. 3, 1861 (Sec. 1453, R.S) (U.S. Code, Title 34, Sec. 417):

When a retiring board finds that an officer is incapacitated for active service, and that his incapacity is the result of an incident of the service, such officer shall, if said decision is approved by the President, be retired from active service with retired pay.

Act of Aug. 27, 1940, Sec. 4, as amended (U.S. Code, Title 34, Sec. 855c-1:)

All officers x x x, warrant officers, x x x of the United States Naval Reserve or United States Marine Corps Reserve, who, if called or ordered into active naval or military service by the Federal Government for extended naval or military service in excess of thirty days, suffer disability x x x in line of duty from disease or injury while so employed shall be deemed to have been in the active naval service during such period, and they x x x shall be in all respects entitled to receive the same x x x retirement pay, and hospital benefits as are now or may hereafter be provided by law or regulation for officers, warrant officers, x x x of corresponding grades and length of service of the Regular Navy or Marine Corps: x x x PROVIDED FURTHER, That this section shall be effective from September 8, 1939.

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Act of July 24, 1941, Sec. 8(a) (U.S. Code Title 34, Sec. 350g(a)):

An officer or enlisted man of the active list of the Regular Navy or Marine Corps, or an enlisted man of the Fleet Reserve or Fleet Marine Corps Reserve, who incurs physical disability while serving under a temporary appointment in a higher rank, shall be retired in such higher rank with retired pay at the rate of 75 per centum of the active duty pay to which he was entitled while serving in that rank.

Act of July 24, 1941, Sec. 8(b) (U. S. Code, Title 34, Sec. 350g(b)):

An officer or enlisted man of the retired list of the Regular Navy or Marine Corps who was placed thereon for reasons other than physical disability shall, if he incurs physical disability while serving under a temporary appointment in a higher rank, be advanced on the retired list to such higher rank with retired pay at the rate of 75 per centum of the active duty pay to which he was entitled while serving in that rank.

Act of July 24, 1941, Sec. 8(c) (U.S. Code, Title 34, Sec. 350g(c)):

An officer of the retired list of the Regular Navy or Marine Corps who was placed thereon by reason of physical disability shall, if he incurs physical disability while serving under a temporary appointment in a higher rank, subject to the provisions of subsection (c) thereof, be advanced on the retired list to such higher rank with retired pay at the rate of 75 per centum of the active duty pay to which he was entitled while serving in that rank.

Act of July 24, 1941, Sec. 8(d) (U.S. Code, Title 34, Sec. 350g(d)):

An officer of the retired list of the Regular Navy or Marine Corps who was placed thereon for reasons other than physical disability shall, if he incurs physical disability while serving on active duty in the same rank as that held by him on the retired list and if not otherwise entitled thereto, receive 75 per centum of the active duty pay to which he was entitled while serving in that rank.

Act of July 24, 1941, Sec. 8(e) (U.S. Code, Title 34, Sec. 350g(e)):

The benefits of this section shall apply only to an individual who incurs physical disability in line of duty in time of war or national emergency. In the cases of those officers to whom subsection (c) thereof is applicable retirement in the next higher rank shall be effected upon a finding by a naval retiring board that the disability was incident to the service while on active duty in the higher rank and upon a rating by such board, in accordance with regulations prescribed by the Secretary of the Navy, at not less than 30 per centum permanent disability. In all other cases officers shall be retired in accordance with existing law providing for the retirement of officers.

Act of July 24, 1941, (U. S. Code, Title 34, Sec. 350g(g)):

The provisions of this section shall not apply in any case unless the proceedings of the Naval Retiring Board shall be commenced within six months from the termination of the temporary appointment or release from active duty of the individual concerned whichever may occur earlier.

Act of July 24, 1941, Sec. 8(f) (U. S. Code, Title 34, Sec. 350g(f)):

The jurisdiction of naval retiring boards is hereby extended as may be necessary in the administration of this Section, and their proceedings shall be conducted in all respects as provided by existing law and regulations except as may be necessary to adapt the same to cases provided for in this section.

Act of July 24, 1941, Sec. 10 (U. S. Code, Title 34, Sec. 350i):

Personnel appointed or advanced under the authority of this act may be continued in their temporary status during such period as the President may determine, but not longer than six months after the termination of war or national emergency. Upon the termination of their temporary status such personnel shall, unless otherwise provided herein, revert to their permanent grades, ranks, or ratings, but upon being subsequently retired or in the case of retired officers returned to an inactive status, they shall, on condition that their performance of duty under such temporary appointments has been satisfactory, be placed on the retired list, or advanced thereon as the case may be, with the highest rank held by them while on active duty; Provided, That except where specific provision is made otherwise, their retired pay shall be based on the pay of the rank or rating held at the time of retirement; Provided further, That nothing in this Act shall entitle such personnel, when recalled to active duty to any other rank or rating than that in which they were serving at the time of retirement.

Act of July 24, 1941, Sec. 11(a) (U. S. Code, Title 34, Sec. 350j(a)):

The provisions of this Act, except as may be necessary to adapt the same thereto shall apply to - -

(a) Personnel of the Naval Reserve (except the Fleet Reserve) and the Marine Corps Reserve (except the Fleet Marine Corps Reserve) in like manner and to the same extent and with the same relative conditions in all respects as are provided for personnel of the Regular Navy and Marine Corps, but this shall not be construed to authorize the temporary appointment of the personnel thereof to ranks or grades in the Regular Navy or Marine Corps.

U. S. Code, Title 34, Sec. 991:

Except as otherwise provided by law, the pay of all officers of the Navy who have been retired x x x on account of incapacity resulting x x x from wounds or injuries received in the line of duty, or from sickness or exposure therein, shall, when not on active duty, be equal to 75 per centum of the pay provided by law for the grade or rank which they held, respectively, at the time of their retirement x x x. (R. S. Sec. 1588, May 30, 1908, c. 227, 35 Stat. 501; Aug. 29, 1916, c. 417, 39 Stat. 579).

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IN ORDER TO ASSURE EXPEDITIOUS RECEIPT OF RETIRED PAY, THE FOLLOWING INFORMATION IS FURNISHED:

1. Two certified copies of orders releasing you from active duty, and two certified copies of SecNav's letter advising you that you have been placed on the retired list should be immediately forwarded to the Disbursing Officer carrying your active duty pay accounts.
2. Pay accounts of all retired officers, after release from active duty, are carried in the Field Branch, Bureau of Supplies and Accounts, (Special Payments Division), Cleveland 15, Ohio, which office should be kept informed of your current correct address. Any question arising, regarding your retired pay, should be addressed to that office.

NOTICE

VOCATIONAL REHABILITATION UNDER PUBLIC LAW 16, 78th CONGRESS.

1. For your information, Public No. 16, 78th Congress, provides in part as follows:- "Any person who served in the active military or naval service at any time after December 6, 1941, and prior to the termination of the present war, who is honorably discharged therefrom, and who has a disability incurred in or aggravated by such service for which pension is payable under laws administered by the Veterans Administration, or would be but for receipt of retirement pay, and is in need of vocational rehabilitation to overcome the handicap of such disability, shall be entitled to vocational rehabilitation as may be prescribed by the Administrator of Veterans Affairs to fit him for employment consistent with the degree of disablement: Provided, That no course of training in excess of a period of four years shall be approved nor shall any training under this part be afforded beyond six years after the termination of the present war."

2. In the event you are interested in vocational rehabilitation, you may be entitled to this benefit from the Veterans Administration, Washington, D. C.

3. The above notice is furnished in accordance with SoChav letter, JAG:J:HJM:amp S07 12 133 of 18 September 1943.