

Auditor for the War Department in settlement No. 50851, dated May 1, 1918, in disallowing his claim for difference between pay as major and as colonel from August 5 to 17, 1917, and difference between pay as lieutenant colonel and as colonel from August 18, 1917, to March 6, 1918, as follows:

"As promotion of commissioned officers of the Regular Army is regarded, under Army Regulations, as an appointment to a new office, the pay of the grade to which promoted accruing only from the date of the acceptance of such promotion, said officer is not entitled to pay as colonel prior to March 7, 1918, the date he accepted the appointment of that grade."

The appellant, a major in the Regular Army, was appointed a lieutenant colonel in the National Army on August 18, 1917; accepted same date; was appointed and promoted to colonel in the National Army as of date August 5, 1917, and promotion announced by Special Order, No. 63, War Department, published March 16, 1918, accepted March 7, 1918, as stated on copy of order filed.

Upon his submitting claim for pay, the quartermaster, March 22, 1918, in a letter to Col. Stewart, states:

"Your appointment to the grade of colonel, N. A., was not made, so far as is known in this office, to fill an existing vacancy, and the promotion is not one to which you were required by law to be promoted by virtue of seniority. It is therefore regarded as a new appointment, and the pay of the higher grade does not commence until the date of acceptance. For these reasons voucher submitted by you claiming difference in pay between major and colonel from August 5 to August 17, and difference in pay between lieutenant colonel and colonel from August 18, 1917, to March 6, 1918, is returned to you herewith inclosed."

On April 4, 1918, the Quartermaster General states:

"Colonel Stewart is advised that promotions in the National Army are viewed as appointments in a new office, the first sentence of paragraph 1260, Army Regulations, governing, and pay of the higher grade commences from date of acceptance only. \* \* \*"

Paragraph 1260, Army Regulations, 1913, provides in part, viz:

"A person appointed to the Army, or receiving an appointment to a new office therein, is entitled to pay from date of acceptance only. \* \* \*"

It was said in 80 MS. Comp. Dec., 243, August 19, 1917, that—

"It is well understood that an appointment to a new office, except in cases of officers of the Army promoted thereto by seniority, carries pay in the new office or advanced grade only from date of acceptance of commission."

In the case of the appointment of an officer of the Regular Army to a command in the organization composed of members taken from the National Guard, it was held (24 Comp. Dec., 312) that such appointment would be to a new office and that the "date of acceptance

of the appointee is the date from which officers of the Regular Army temporarily promoted as a consequence of said appointment will be entitled to the pay of the grade to which they are promoted."

From the facts appearing I am of the opinion that the appellant is not entitled to the increased pay as claimed, on the ground as stated by the Quartermaster General, that promotions in the National Army are viewed as appointments in a new office and that pay of the higher grade commences from the date of acceptance of the office.

The action of the auditor is affirmed and a certificate of no differences will issue accordingly.

#### TAXES ON PROPERTY LEASED BY GOVERNMENT.

Although taxes are not payable by the Federal Government as the owner of real property, they are properly payable as part of the rent when specifically included in the terms of a lease.

Comptroller Warwick to John W. Swift, Disbursing Officer, United States Food Administration, May 25, 1918:

I have your letter of May 23, 1918, relative to whether you are authorized under the appropriation for salaries and expenses of food administration (40 Stat., 283) to pay real estate taxes upon certain premises leased by the Food Administration in the District of Columbia.

You state that "according to my understanding the Federal Government is exempted from payment of taxes to State and municipalities."

The lease of the premises is from September 10, 1917, until the termination of the existing war at an annual rental, and specifically covenants that the lessee (the United States) shall pay "any and all taxes that may be assessed upon said demised real property for the period during which it is in possession thereof."

Without at this time deciding any question as to the validity of a lease for an indefinite term or for a period longer than that of the fiscal year covered by an appropriation (see *Chase v. United States*, 155 U. S., 489), I have to inform you that the taxes are not payable by the United States as owner, but as tenant, the taxes becoming part of the consideration or rent of the premises, and as such they are properly payable, if otherwise correct.

#### INJURED EMPLOYEES' COMPENSATION.

The compensation of an injured employee under the act of May 30, 1908, is payable at the same rate and under the same conditions that existed when the injury occurred; hence, if at that time the class of workmen to which the employee belonged were required to work on Sundays and holidays, said injured employee is also entitled to be paid for such Sundays and holidays.