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United States General Accounting Office  
Washington, DC 20548

Office of  
General Counsel

In Reply  
Refer to: B-197813

February 28, 1980

Lieutenant Colonel James Landrum, Jr.  
USMC, Retired  
5020 Biscayne Boulevard  
Miami, Florida 33137

Dear Colonel Landrum:

In your letter of February 6, 1980, you say that you are a Regular officer of the United States Marine Corps, retired in 1966. You have been employed by American National Red Cross since that time. You have recently applied for a transfer within the Red Cross to the position of Special Representative, Federal Emergency Management Agency, Denton, Texas. The position is a Red Cross position and you will receive your pay from the Red Cross. It is your understanding, however, that the Federal Government reimburses the Red Cross for the cost of the position on an annual basis.

In view of this, you ask if you will be subject to the provision of the Dual Compensation Act, if you accept this position.

This is not a decision of the Comptroller General. However, the following may be helpful to you.

The Dual Compensation Act (5 U.S.C. 5532) provides for a reduction in the retired or retirement pay of a retired officer of a Regular component of a uniformed service during a period in which he holds a "position" and receives the pay therefor. There is also a provision requiring that a member in receipt of retired or retainer pay when employed in a Government position, have his retired or retainer pay reduced in an amount equal to that which his retired pay and the pay of the position exceeds the amount currently paid for level V of the Executive Schedule.

Of prime importance in your case is the term "position" as used in the Dual Compensation Act. It is defined in 5 U.S.C. 5331(2) as follows:



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"\* \* \* a civilian office or position (including a temporary, part-time, or intermittent position), appointive or elective, in the legislative, executive, or judicial branch of the Government of the United States (including a Government corporation and a non-appropriated fund instrumentality under the jurisdiction of the armed forces) or in the Government of the District of Columbia."

Since you say that the position to which you are transferring is with the American National Red Cross, and that organization remains your employer and pays your salary, it would appear that you are not affected by the Dual Compensation Act. We believe this to be the case, even if the Red Cross receives funds from the Federal Government in reimbursement for the position.

We trust this is of some assistance to you.

Sincerely yours,

Edwin J. Monsma  
Assistant General Counsel