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HOUSE OF REPRESENTATIVES

( Report  
( No. 1540

TO AMEND SECTION 2 OF THE LEGISLATIVE, EXECUTIVE, AND JUDICIAL APPROPRIATION ACT APPROVED JULY 31, 1894.

February 5, 1923.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

MR. JAMES, from the Committee on Military Affairs, submitted the following

R E P O R T.

(To accompany H. R. 13434)

The Committee on Military Affairs, to whom was referred the bill (H. R. 13434) to amend section 2 of the legislative, executive, and judicial appropriation act, approved July 31, 1894, having considered the same, report thereon with a recommendation that it do pass.

This bill if enacted into law would affect about 12 retired enlisted men. These men were all retired for length of service. They are all veterans of the Spanish-American War, the Philippine insurrection, and the World War. All of them served as officers during the World War, and when they were discharged therefrom returned to their former grades of retired enlisted men. After these men were placed upon the Army retired list about 12 of them were called back into the Government service, most of them with the Veterans' Bureau. Of these 12 each was given a position because of his technical knowledge in the various bureaus at salaries ranging from \$3,000 to \$3,500 per year. This was nearly two years ago.

Since that time these 12 men have been working for the Government, and because of their former experience and technical knowledge they were brought into this service and have been able to render perhaps better service than any other set of men could have performed for the Government. Each of these 12 men had worked in various positions for the Government for at least one year and a half before any objection was made to them drawing the pay of retired enlisted men and also the salary attached to the position held under the Government. These men were innocently employed by the heads of the departments and performed the work assigned to them each for a year and a half

without any thought of the contract of employment being in contravention of law. But quite recently the Comptroller General of the United States has issued a very astounding opinion that has given a very narrow interpretation of the statute that prohibits dual employment. This opinion of the comptroller holds that a retired enlisted man of the Army, Navy, Marine Corps, or Coast Guard is ineligible for employment to any civil office under the Federal Government where the compensation of such office is \$2,500 or more per annum. He holds that a retired enlisted man as such holds an office under the Government. This is indeed an amazing interpretation of the section that would seem to govern in employment of this character. The following is the section of the law that has received this very remarkable interpretation as embodied in the opinion of the Comptroller General of the United States recently issued:

No person who holds an office the salary or annual compensation attached to which amounts to the sum of two thousand five hundred dollars shall be appointed to or hold any other office to which compensation is attached unless specially heretofore or hereafter specially authorized thereto by law; but this shall not apply to retired officers of the Army or Navy whenever they may be elected to public office or whenever the President shall appoint them to office/and with the advice and consent of the Senate.

by

If it is granted that retired enlisted men who are receiving retired pay are officers under the Federal Government, then before they would come under the inhibition of this law just quoted their retired pay would have to amount to at least \$2,500 per annum, because according to this law the second employment is not either invalid or void unless under the first employment of office the salary was at least \$2,500. But in no sense is a retired enlisted man from the Army, Navy, Marine Corps, or Coast Guard as officer under the law. He was not an officer when he was fulfilling the duties of a soldier. He could not become an officer when discharged from the service. He is given retired pay as a part of his former contract. The retired pay is simply an occupational bonus or pay that he is receiving because of his former long, honest, and faithful service to his Government. If a great industry retires its employees by reason of age and long service on a life pension after their services have been performed for the company under certain contractual rules, would anyone say these retired employees are officers of the company? If they are officers, what function have they to perform---what are the duties? They have no function to perform; they have no connection with their former employment or that industry. They are only pensioners on the roll of the industrial establishment.

These retired enlisted men as such are paid such a small pittance by the Government that they can not live and support families without additional incomes from some source. They have all spent their lives in the Army on the pay of an enlisted man, and none of them has been able to lay aside anything for his old age. Consequently they must have other employment, and, as has been said before, all of these 12 men have faithfully performed duties assigned to them by the Government for a year and a half at salaries ranging from \$3,000 to \$3,500.

The Comptroller General holds in this decision that because they were receiving this retired pay, which amounts on the average to about seven or eight hundred dollars per annum, that their second employment at salaries of \$2,500 per annum or more, was not only invalid but entirely void from the beginning. In other words, because of this prohibitive statute there was no contract for a second employment, and therefore that all of the money or salary that they received from the Government for the work performed in the various departments of the Government was illegally received by them.

The effect of this opinion will be that these men in the absence of this remedial law will be compelled to pay back to the Treasury of the United States all of the money that they have drawn by virtue of their employment, which in each instance will amount to something between four and five thousand dollars. This bill, H. R. 13434, validates this employment. That is, it specifically states that retired enlisted men are not officers as contemplated by the section of law hereinbefore recited. This bill goes further and validates all the payments that have been heretofore made to these men for their efficient and honest work that they innocently performed for the Government.

It is thought this bill ought to speedily pass because it is ridiculous to hold that a retired enlisted man is an officer of the United States Government, and it is asking too much to have these men work for more than a year and a half and then be required to give back every dollar of money that has been paid them for an honest and conscientious service rendered the Government.

The Secretary of War in a letter to the chairman of the Military Affairs Committee recognizes their good work and recommends the passage of this bill. I quote verbatim from his letter dated February 2, 1923, addressed to the Hon. Julius Kahn, chairman of the House Military Affairs Committee:

A number of retired enlisted men are especially qualified, by long experience and training, for certain Government positions, and it is in the interest of efficiency to remove restrictions on their filling positions for which qualified. It also seems highly undesirable to have long and faithful service in the Army disqualify a man from holding an office for which he is qualified, and in which his services would be valuable to the Government.

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I therefore recommend favorable consideration by your committee of the bill H. R. 13434.

Sincerely yours,

John W. Weeks, Secretary of War.

As Secretary Weeks suggests, it would seem to be foolish on the part of the Government to decline to employ these men who have technical knowledge and are fitted for certain work in the departments simply because they get a few hundred dollars as pay as retired enlisted men and employ other men to do the same work at the same salary who know nothing at all of the duties to be performed. It is not common sense. It is wasteful extravagance. It never was the law. It is not now the law. It is only the interpretation of one man, but since

that interpretation is estopping the Government officials from employing able men to do the necessary work of the Government this law ought to be passed, thereby setting aside the decision of the comptroller and forever making it clear what was meant by the section of law above quoted.

It will be noticed that this section exempts from the effects of this statute retired officers of the Army or Navy whenever they may be elected to public office or whenever the President shall appoint them to office. The only reason that enlisted men were not exempt was because no one ever thought that a retired enlisted man held an office by reason of his retirement.

Webster defines "office" to be a particular duty, charge or trust; an employment undertaken by commission or authority; a post or position held by an official or functionary; a position of trust or authority under a government; a legal right to exercise a public function or employment and to take its lawful emoluments. In a more general sense, administrative or executive rights, powers or duties, constituting established and legally recognized functions.

With these definitions in mind can anyone think or in his own mind conjure up any authority that a retired enlisted man may have or any duty, or any public function that he has to perform? If any, what is his particular duty, charge or trust? What public authority has he? What legal right has an enlisted man to exercise a public function by reason of his retired status? A retired enlisted man has no duty to perform or any authority of any kind. He does nothing except monthly receive a small gratuity from his Government as a reward or a pension for past services fully and honestly performed through a period of many years.

In the view of your committee this bill ought to speedily become a law in order that these employments may be legalized and these men be retained in the services where they are needed.