

August 22, 1957



Dear Mike:

In Larry's absence from the city on vacation I am taking the liberty of answering your note of August 16.

The paragraph in the July-August "Support Bulletin" to which you refer appears to be inaccurate. What it probably means to say is that military service prior to January 1, 1957 can be credited toward social security benefits in the event a military retirement benefit is not based on the same service. As a matter of fact, the article in question was taken from a local newspaper and unfortunately was not submitted to this Office prior to publication in the "Support Bulletin."

Persons such as yourself, who have retired under P.L. 810 are, as you indicate, entitled to credit military service in the computation of both Naval Reserve and Civil Service retirement. In this connection there is quoted a portion of section 305 of Public Law 810 as follows:

"...No period of service otherwise creditable in determining the eligibility of any person to receive, or the amount of, any annuity, pension, or old-age benefit payable under any provision of law on account of civilian employment, in the Federal Government or otherwise, shall be excluded in such determination because such period of service may be included, in whole or in part, in determining the eligibility of such person to receive, or the amount of, any retired pay payable under this title."

We are looking forward to seeing you in the fall.

Sincerely,

John S. Warner

OGC:OEP:jem

Orig. - Addressee

✓ 1 - Subject - Pay & Allow. 5

1 - Signer

August 16, 1957

TO: Larry Houston, General Counsel

FR:

Dear Larry:

Please bear with my problems just a little longer. I will doubtlessly retire soon and have no further legal problems for your kind consideration.

The July - August 1957 "Support Bulletin", page 12, last paragraph, concerns me.

I have had a very clear impression that when I retire under CSR I will:

- a. Receive CSR income based on civil, plus all active military service.
- b. Continue to receive, as I do now, US Naval Reserve retired pay under P. L. 810, 80th Congress.

The Supreme Court (by refusal to review) has ruled that dual compensation laws do not apply to military reserve officers retired under certain laws--including Public Law 810.

I hope I am correct in my belief that the comments in the "Support Bulletin" were written without knowledge of, or regard for, the status of retired reserve officers.

Many thanks for any comments, and I also send kindest regards to you and am in hopes of seeing you in October.



MCC:aMcL

AT



Dear Mike:

The notice you got about retired pay and the Tanner case applies only to those retired under Title III of the 1948 Act. If there is any doubt at all in your case you should have your orders carefully checked. If you are under Title III the following information should be helpful.

The Department of Defense is awaiting a reply from the Comptroller General as to whether the decision in the Tanner case will be applied generally to all retired reserve personnel or whether it will be restricted to the parties involved in the case. Until the Comptroller General returns his opinion, no Finance Officers in any of the services will pay claims of retired officers in your position. We expect the Comptroller General's opinion to be favorable to you. I will let you know as soon as the Department of Defense has received its answer from the Comptroller General.

In the event that you receive your retired pay for those past years in which you have waived it, you will want to amend your income tax returns for those years in order to avoid paying tax on the total sum in the year received. Section 1303 of the Internal Revenue Code of 1954 provides that back pay received in one year, if in excess of 15% of gross income for that year, may be allocated for tax purposes to the years in which earned. It seems clear that this section of the Code applies to your case.

Let me know if you have any further questions on this matter. I will keep you informed of Department of Defense action.

Very truly yours,

151

Lawrence R. Houston

*OMC:JDA:H2*

*cc: OMC chiers - no cin*

*" subject - Pay + Allow - 5*

March 13, 1956

AT   
Dear Mike:

I have just received from the Department of Defense copies of the Comptroller General's decision in regard to the Tanner Case. A copy is enclosed for your use.

As you can see, the Comptroller General is giving relatively limited effect to the Tanner decision. From what I know of the facts of your service and retirement, it would appear that the Navy will be prepared to pay your retirement from 1 July 1953, to date and from now on. Your entitlement to retirement pay will depend upon your being a member of a reserve component during any period for which retirement is paid. The decision authorizes payment from 1 January 1953, but the period before 1 July 1953, almost certainly involves lapsed appropriations.

Your entitlement to retirement pay for any period prior to 1 January 1953, will depend upon the outcome of one or more cases pending before the Court of Claims. The Department of Defense also informs us that the Comptroller General has not yet made a decision on the effect to be given to the Brand case regarding inclusion of time spent at the military academies as service for retirement purposes. That decision may be some time in coming.

I would suggest that you get in touch with the appropriate Navy finance officer and inquire as to the steps you must take to receive the retirement compensation owing you. By this time the various Navy finance centers should have received instructions from the Department on paying these claims, and they will be best able to inform you of the steps to be taken, including those necessary for collection for periods involving lapsed appropriations.

I think that this should answer all the questions in your 5 March letter. If you have any further difficulties, please get in touch with me.

OGC:JDM:ep(621)  
cc: OGC Chrono - no circ.  
Subject - Pay & Allow. - 5 ✓  
Signer - JDM

Very truly yours,

S/  
Lawrence R. Houston

Enclosure - Letter from the  
Comptroller General of the U. S.

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MEMORANDUM CONCERNING THE PAYMENT OF CLAIMS  
SIMILAR TO THE TANNER CASE.

In the January-February 1956 issue of the magazine, THE RETIRED OFFICER, under our column, "Court Rulings", it was announced that it was expected that the Comptroller General would follow the TANNER case in paying the claims of those under similar circumstances. Theretofore, in the November-December 1955 issue, it had been indicated that the Comptroller General probably would follow this decision, provided it was not overruled by the Supreme Court.

It will be recalled, the TANNER case held that retired reserve officers, retired under Title III, Public Law 810, are entitled to receive their retired pay and the pay of any civilian office in which they might be employed, despite the Dual Compensation Act of 1932.

A number of letters have now been received by the Association asking what action might be taken by individuals with similar claims to the TANNER case. Since the publication of our notice in the January-February 1956 issue, we have received still further information that the Department of Justice has decided not to attempt by court action to seek to have the principle contained in the TANNER case overruled. It is assumed that the Department of Justice will, in the near future, so advise the interested departments and agencies, including the Comptroller General.

The normal procedure following receipt of such notification would be for the Comptroller General to authorize the Department of Defense to make settlements in those cases similar to that of Tanner. It should be pointed out, however, that such authority will probably be restricted to "genuine" Tanner cases - that is, those cases which embody the same principles as those for which the TANNER case stands. In the case where the settlement of a claim involves lapsed appropriations, these would have to be handled by the Comptroller General.

Consequently, except in cases of lapsed appropriations in which cases the claims must be made to the Comptroller General, we advise all those with claims similar to the TANNER case now to submit their claims to the Finance Office of the Department under which they hold retired status and, if it should be necessary for them to further file their cases with the Comptroller General, they will be so advised.

THE RETIRED OFFICERS ASSOCIATION

February 27, 1956

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LRM  
JPH  
Spec. in Pay. Allow's

John,  
will you follow up please.

November 22, 1955

PERSONAL

Mr. Lawrence R. Houston  
General Council

Dear Larry:

Many thanks for your letter of November 15 regarding the Tanner case, retired pay under Title III of the 1948 Act under which I was retired.

Needless to say, I await with interest your advice regarding the Comptroller General's opinion for guidance of the finance officers in the military services. Meanwhile, I have no further questions--only my thanks.

Yours sincerely,

[Redacted signature box]

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MCC:aMcL

[Redacted distribution box]

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Dear



This is in response to your inquiry in reference to the decision in the Court of Claims, in TANNER v. United States, 129 CtCl. 792. The Court of claims held, contrary to decisions of the Comptroller General, that the restrictions contained in the so-called dual compensation statute do not apply so as to restrict the concurrent receipt of retired pay and pay from a Federal position in the cases of Reserve officers of the Army and Air Force retired under Title III of the Act of June 29, 1948 (Public Law 810, 80th Congress). While this decision referred to retired reserve officers of the Army and of the Air Force, retired under Title III, Public Law 810, 80th Congress, the same principles apply to retired reserve officers of the other services, retired under that Title.

On August 29, 1955, the Attorney General petitioned the Supreme Court for a writ of certiorari. On October 10, 1955, the Supreme Court refused to grant the Government a review. Tanner and the others on the petition in the Court of Claims are now entitled to recover without further action on their part.

In the past, under such circumstances, the General Accounting Office has made or has authorized settlement in the cases of all others similarly situated. There is no reason to believe that there will be a departure from the same procedure in these cases.

Therefore, if you are retired under the provisions of Title III, Public Law 810, 80th Congress, and you are now being employed by the Federal Government or by the Municipal Government of the District of Columbia, and your retired pay is under waiver, or if you have previously been so employed and relinquished your retired pay during such employment, you should address a claim to the finance officer having your retired pay record and request that your account be adjusted on the basis of the findings of the Court of Claims. It makes no difference under which department you hold retired status. The decision applies to all who are retired under Title III of the above-mentioned Act.

Sincerely yours

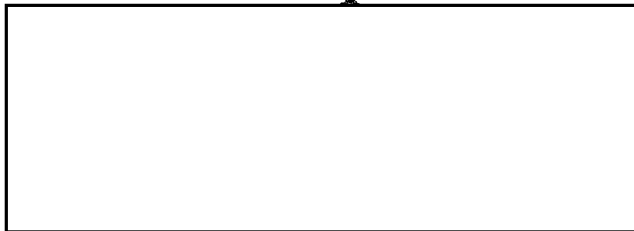
RETIRED OFFICERS ASSOCIATION

OFFICE OF THE GENERAL COUNSEL

11/4/55



Herewith copies  
of correspondence on  
Tanner case, per  
telephone conversation



TRANSMITTAL SLIP		DATE
		22 November 1955
TO: Administration		
ROOM NO.	BUILDING	
REMARKS		
Kindly forward the envelope attached to General Council - 221 East.		
<input type="checkbox"/> aMcL		<i>Thompson W</i>
FROM: Chief,	<input type="checkbox"/>	
ROOM NO.	BUILDING	EXTENSION

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