

LAW REVIEW 1006

Prior Approval Required for Uniformed Services Retiree or Reservist to Work for a Foreign Government

By Captain Samuel F. Wright, JAGC, USN (Ret.)

Q: I will retire later this year from the Army Medical Corps and I am seeking post-retirement employment. I have had discussions with a friendly foreign government about the possibility of my going to work for that government as a civilian physician. A friend told me that I must get prior permission from the Army and the Department of State before I am permitted to take a job working for a foreign government. Where does that requirement come from?

A: That requirement comes from the United States Constitution: "No Title of Nobility shall be granted by the United States; And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State." United States Constitution, Article I, Section 9, Clause 8. Yes, it is capitalized just that way, in the style of the late 18th Century.

A retired member of a uniformed service, or a reserve member not on active duty, is deemed to hold an "Office of Profit or Trust" with the United States, for purposes of this clause of the Constitution. The Comptroller General of the United States has ruled that a retired member of a uniformed service who violates this provision by accepting employment with a foreign government, without permission, must forfeit his or her retired pay to the extent of the pay received from the foreign government.

Congress has by statute provided a procedure for such consent to be granted or denied:

(a) Congressional Consent.— Subject to subsection (b), Congress consents to the following persons accepting civil employment (and compensation for that employment) for which the consent of Congress is required by the last paragraph of section 9 of article I of the Constitution, related to acceptance of emoluments, offices, or titles from a foreign government:

- (1) Retired members of the uniformed services.
- (2) Members of a reserve component of the armed forces.
- (3) Members of the Commissioned Reserve Corps of the Public Health Service.

(b) Approval Required.— A person described in subsection (a) may accept employment or compensation described in that subsection only if the Secretary concerned and the Secretary of State approve the employment.

(c) Military Service in Foreign Armed Forces.— For a provision of law providing the consent of Congress to service in the military forces of certain foreign nations, see section [1060](#) of title [10](#).

Title 37, United States Code, section 908 (37 U.S.C. 908).

The definitions section of title 10, United States Code provides that the term "Secretary concerned" refers to the Secretary of the Army, with respect to matters concerning the Army. 10 U.S.C. 101(a)(9)(A). You should submit your request for permission to work for a foreign government to the Secretary of the Army.

If the Secretary of the Army (or his designee) approves your request, he will forward it to the Secretary of State. Approval or disapproval of the application will be based on an assessment of whether the proposed foreign government employment would adversely affect the foreign relations of the United States in view of the applicant's status as a retiree or reservist in the uniformed services.

If the Secretary of the Army or the Secretary of State denies your request for permission, you can request reconsideration in writing, but denial of such a request is not judicially reviewable in court. If you seek and obtain permission and begin the employment, and if the foreign government employer later proposes a material change in your duties, you must seek and obtain permission before the change of duties goes into effect.

The Department of Health and Human Services has published a four-page manual about the application of Article I, section 9, clause 8 and 37 U.S.C. 908 to reserve and retired members of the Public Health Service commissioned corps. You can find this manual at http://dcp.psc.gov/eccis/documents/CCPM26_9_1.pdf.

If you have questions, suggestions, or comments, please contact Captain Samuel F. Wright, JAGC, USN (Ret.) (Director of the Servicemembers' Law Center) at swright@roa.org or 800-809-9448, ext. 730.