



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

B-177406

40357  
JAN 21 1974

Mr. E. A. Shea, Director  
Retired Pay Department  
Navy Finance Center  
New Federal Office Building  
Cleveland, Ohio 44199

Dear Mr. Shea:

Further reference is made to your September 14, 1972 letter, file reference X0:MTP:mj, with attachments, addressed to our Claims Division (now Transportation and Claims Division) in which you request a decision as to the disposition of the retainer pay of a person receiving such pay since his transfer to the Fleet Reserve in 1962. The documents submitted with your letter indicate that the person was convicted of a felony, murder, by a court of the Commonwealth of Virginia and on November 15, 1971, was sentenced to life imprisonment in the State Penitentiary. It also appears that after the prison sentence, the attorney in the criminal matter was appointed committee of the estate, both real and personal, in accordance with the laws of the Commonwealth of Virginia.

Subsequently, the attorney wrote to your office requesting that the payments of retainer pay should be sent to him as committee.

Since receipt of your letter, this Office has received correspondence to the effect that proceedings have been instituted to have the attorney removed as committee of the prisoner's estate. The fleet reservist has also requested that, if possible, his retainer payments should be sent to a trust account for his son in a Richmond, Virginia bank or if that is not possible, the payments should be kept by the Government.

This Office has been unable to obtain information concerning the prisoner's allegation that legal proceedings have been initiated to remove the attorney as his committee.

It has been the long-established policy of the Government not to account to strangers for its transactions. Section 203 of title 31, United States Code, prohibits the assignment of claims

PUBLISHED DECISION  
53 Comp. Gen. ....

091963  
716480

B-177406

against the United States. Section 492 of said title requires that public money be drawn only in favor of persons to whom payment is to be made. The apparent purpose of this policy is to protect the Government against the danger of "becoming embroiled in conflicting claims with delay and embarrassment" and against being "harassed by multiplying the number of persons with whom it had to deal." Martin v. National Surety Co., 300 U.S. 588 (1937); Hobbs v. McLean, 117 U.S. 567 (1886).

However, this Office has held, in accordance with title 37, section 602, that retired or retainer pay may be paid to a committee or guardian, appointed by a court of competent jurisdiction for a mentally incompetent member. See B-163558, July 15, 1968, copy enclosed.

Title 53, Code of Virginia, Chapter 15, provides for the estates of convicts. Section 53-305 concerns the appointment of committee for property as follows:

"When a person is convicted of a felony and sentenced to confinement in a State correctional institution for one year or more his estate, both real and personal, if any he has, shall, on motion of any party interested, be committed by the circuit or corporation court of the county or city in which his estate, or some part thereof is, to a person selected by the court, who after giving bond before the court, in such penalty as it may prescribe, shall have charge of the estate until the convict is discharged from confinement."

Section 53-307 of said title provides for the powers and liabilities of a committee as follows:

"Such committee may sue and be sued in respect to all claims or demands of every nature in favor of or against such convict, and any other of the convict's estate, and he shall have the same right of retaining for his own debt as an administrator would have. No action or suit on any such claim or demand shall be instituted by or against such convict after judgment of conviction, and while he is incarcerated. All actions or suits to which he is a party at the time

B-177406

of his conviction shall be prosecuted or defended, as the case may be, by such committee after ten days' notice of the pendency thereof, which notice shall be given by the clerk of the court in which the same are pending."

In the case of Merchant's Adm'r v. Shry, 116 Va. 437, 82 S.E. 106 (1914), the court in construing a prior but similar statute stated that "The powers conferred upon the committee of a convict are strikingly similar to those given a committee of a lunatic."

Additionally, the court stated (82 S.E. at page 109):

"We conclude, therefore, that a committee may be appointed on the motion of any party in interest; that, by virtue of his appointment, he takes charge of the whole estate, real and personal, of the convict \* \* \*."

In the case of Haynes et al. v. Paterson, 125 Va. 730, 100 S.E. 471 (1919), the court indicated that a convicted felon had the right to contract, acquire, hold, and dispose of property. However, this was in circumstances where a committee had not been appointed.

Therefore, it would appear that in accordance with the laws of Virginia, a person convicted of a felony and sentenced to confinement in a state correctional institution for one year or more has no special restrictions on the disposition of his estate until a committee has been appointed by a court of competent jurisdiction. Once the committee has been appointed and while the convict is confined in the correctional institution his estate is to be administered by the committee and the convict can no longer control the disposition of his estate.

Thus, the situation is comparable to one in which there is a mental incompetent for whom a committee or a guardian has been appointed. In such cases the Government can properly pay over any amounts due to the committee or guardian.

Inasmuch as a committee appears to have been appointed for the estate of the convicted felon, it is charged by law with the managing of his estate which would include receiving and accounting for all monies due and payable to him. Thus, since the prisoner

E-177406

no longer has control over his estate, his request to pay over his retired pay to his son's trust account, even if otherwise permissible, or in the alternate, for the Government to keep the money, cannot be honored.

Accordingly, payment of retainer pay may be made to the court appointed committee. However, since doubt appears as to whether the attorney is still the court appointed committee for the prisoner, in view of correspondence with which was enclosed a copy of a petition for the removal of the attorney as his committee, no payment should be made to the attorney prior to certification by the court that he is currently the committee of the convicted felon.

Sincerely yours,

R.F.KELLER

Deputy Comptroller General  
of the United States