

DATE: 03-11-91

CITATION: VAOPGCPREC 38-91
Vet. Aff. Op. Gen. Couns. Prec. 38-91

TEXT:

SUBJECT: VIRGIN ISLANDS-STATE HOME CONSTRUCTION

(This opinion was overruled by O.G.C. Prec. 55-91 issued 5-14-91.)(This opinion, previously issued as Opinion of the General Counsel 3-77, dated October 12, 1976, is reissued as a Precedent Opinion pursuant to 38 C.F.R. §§ 2.6(e)(9) and 14.507. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

To: Assistant Administrator for Construction

QUESTION PRESENTED:

May the Veterans Administration extend financial assistance to the Virgin Islands for purposes of construction of a State home facility to furnish nursing home care to eligible veterans?

COMMENTS:

Inasmuch as Congress has expressly declared that the Virgin Islands are an "unincorporated territory of the United States of America," 48 U.S.C. § 1541, we must consider whether such a legal entity may be considered a "State," within the meaning of subchapter III, chapter 81 of title 38, United States Code. The purpose of that subchapter, as articulated in section 5032 of title 38, is "to assist the several States to construct State home facilities for furnishing nursing home care to war veterans." (Underscoring supplied.) Among the definitions applicable to that subchapter, section 503(b) provides that the "term 'State' does not include any possession of the United States". These provisions appear on their face to rule out any such joint Federal- territorial construction financing venture.

Among the general definitions for title 38 purposes, section 101(19) and 101(20) provide respectively:

"(19) The term 'State home' means a home established by a State (other than a possession) for veterans ... disabled by age disease or otherwise who by reason of such disability are incapable of earning a living. Such term also includes such a home which furnishes nursing home care for veterans ..."

"(20) The term 'State' means each of the several States, Territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico, For the purpose of section 903 and chapters 34 and 35 of this title, such term also includes the Canal Zone."

The definition of State home originated with the legislative consolidation effected by Public Law 85-857. The meaning of the word "possession in 38 U.S.C. § 101(19) was not made explicit therein. Nevertheless, the legislative history underlying that provision shows that the parenthetical phrase was inserted during the legislative process to reflect the fact that the original Act of August 27, 1888, to provide Federal aid to such homes, made no reference to possessions. That statute was entitled "An Act to provide aid to State or Territorial homes for the support of disabled soldiers and sailors of the United States." 25 Stat. 450. that enactment predated the Spanish- American War and this country's annexation of extra-continental territory thereafter. Legislative materials reflect the existence at that time of two Territories with charitable institutions housing impoverished veterans, the Wyoming Territory and Washington Territory. (As distinct from the Virgin Islands' status today, these were incorporated Territories, "incorporated" into the United States by making the Constitution applicable to them.) As reported out of committee, the bill had referred only to State homes. The legislative history, nevertheless, reflects concern with the number of Civil War veterans "from the various States and Territories of the Union" dependent on public charity in the several States and Territories. H.R.Rep. No. 2821, 50 Cong., 1st Sess. (1888). The following colloquy in the House led to amendment of the bill and inclusion in the Act of references to Territories and Territorial homes:

"Mr. Baker, of N.Y. I wish to ask the gentleman from Nebraska whether this bill in its terms applies to the Territories?"

"Mr. Gifford. that is the amendment I desired to offer.

"Mr. Baker, of N.Y. I move to insert after the word 'States' wherever it occurs, the words 'or Territories'." 19 Cong.Rec. 6553 (1888).

It is by no means clear from the legislative history of the 1888 Act or from subsequent amendments and appropriations measures relating to State homes that unincorporated extra-continental territories were intended to fall within that scope. While our legislative files show that a question regarding authority to extend Federal aid to Guam (an unincorporated territory) under the 1888 Act, as amended, (24 U.S.C. § 134) was raised in 1951, the issue was not formally submitted and the matter remained unresolved.

In the final analysis, while section 101(19) may provide guidance on the current question, the statutory development and construction of that provision may not

mandate a construction of section 5031(b) at odds with the plain meaning of its language and that of other pertinent provisions of subchapter III, chapter 81.

Moreover, sections 101(19) and 101(20) are not applicable here, since section 5031(b) as the latter and more specific provision must govern.

In construing the phrase in the section 5031(b) definition of State, "any possession of the United States," those entities having been excluded from the class entitled to receive VA assistance for State home construction, we are necessarily guided by the subchapter's declaration of purpose--"to assist the several States" to construct such facilities. 38 U.S.C. § 5032. The use of the modifier "several" before the word "States" sharpens the otherwise broad scope that word may suggest and reasonably leads one in this context to construe the phrase to mean the individual States of the Union. Further, the word "possession" is not a term of art (any more than the word "territory") and takes its meaning from its context.

Standing alone, as in section 5031(b), the word is clearly broader in scope than as used in a series such as in section 101(20), where the language reflects an apparent intent to be precise in terminology. See, e.g., David Cabrera, Inc v. Union de Choferes y Duenos, 256 F.Supp. 839 (D.P.R.1966). In the context of section 5031(b), the breadth of the phrase "any possession of the United States" is at least coextensive with the category of unincorporated territories of the United States. The legislative history of Public Law 88-450 provides no indication to the contrary.

HELD: The Virgin Islands is a U.S. "possession" within the meaning of 38 U.S.C. § 5031(b), and, accordingly, there is no authority for the VA to extend financial assistance to construct a State home facility to furnish nursing home care.

VETERANS ADMINISTRATION GENERAL COUNSEL
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