

DATE: 03-11-91

CITATION: VAOPGCPREC 39-91
Vet. Aff. Op. Gen. Couns. Prec. 39-91

TEXT:

SUBJECT: BANKING FACILITIES IN VA HOSPITALS

(This opinion, previously issued as Opinion of the General Counsel 8-77, dated April 4, 1977, 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

QUESTIONS PRESENTED:

(1) Is there authority for providing space in an existing or planned VA hospital for the operation of a bank; and (2) if so, what procedure should be employed to accomplish the provision of such space?

COMMENTS:

VA Manual M-1, Part 1, Chapter 1, paragraph 1.44, entitled "Banking Facilities for Patients," provides:

"a. Within the Director's overall responsibility for the general welfare of patients, the need for adequate banking services is of primary importance. It is generally expected that competent patients' requirements for cashing checks, depositing funds, and transmitting funds will be met by the services offered by the Fiscal divisions, Veterans Canteen Service, branch or contract post offices where available, or other money order services.

"b. Where competent patients' requirements cannot be satisfactorily met in this manner, Directors are authorized to negotiate for a local reputable financial institution to render such services within the facility..... If the arrangements require that the institution be provided space on either a full-time or part-time basis, the information will be submitted to the Chief Medical Director in accordance with and in the form prescribed by MP-3, Part II. (Emphasis supplied)"

The above VA Manual provisions have been promulgated pursuant to the Administrator's general authority, found at 38 U.S.C. § 210(c), to make "all rules and regulations which are necessary or appropriate to carry out the laws administered by the Veterans' Administration...." While there is clearly no

express statutory basis for the administrator's decision to provide banking services for patients within VA hospitals, it is our opinion that this authority is implicit in his statutory power to "prescribe ... such rules and procedure governing the furnishing of hospital and domiciliary care as he may deem proper and necessary." 38 U.S.C. § 621(1).

In this regard, paragraph 1.44(a), above, in discussing the Director's responsibility for providing for the patients' general welfare, unequivocally states that the "need for adequate banking services is of primary importance."

(Emphasis added). Thus, this Manual provision not only clearly permits such services to be provided within VA hospitals, but within the meaning of 38 U.S.C. § 621(1), they are, in the appropriate circumstances, "proper and necessary."

Attention is specifically invited to the fact that, where space is to be provided to a bank, it must be accomplished pursuant to the provisions of MP-3, Part II, Paragraph 22.01a(1) of the Manual would be applicable to the proposed new hospital construction and requires that real property interests (including buildings) shall not be larger than needed for approved programs. In order to permit the plans for the new construction to include space for the bank, a determination is required that the operation of the bank within the VA hospital is an "approved program." Such a determination can properly be made under the provisions of paragraph 1.44 of VA Manual M-1. Accordingly, it is our opinion that the VA may properly provide a reasonable amount of space for use by a bank in the plans for a new VA hospital.

As a result of information furnished to us by the Department of Medicine and Surgery, we believe it is necessary to give consideration to other aspects of this matter which will become pertinent upon the opening of the new hospital.

The bank in question is a State bank which is specifically authorized under Title 6.142 of the Code of Virginia to operate banking facilities within VA hospitals. This bank has continually occupied space and provided banking services to patients and employees at the present VA hospital since 1946. The occupancy has been under various "permits" and "Memorandums of Agreement," which are, in effect, mere revocable licenses.

There is little question that the VA, in the appropriate circumstances, has the authority to grant revocable licenses and permits. In fact, under the authority of MP-3, Part II, para. 2514, and a widely-recognized decision of the Comptroller General, 22 C.G. 563 (1942), it has become common practice for the VA to grant such licenses or permits to certain organizations such as the American Red Cross and veterans' organizations, where the criteria as determined by the Comptroller General have been met, i.e., a definite benefit is insuring to the Government, no injury to the property will occur, use of same is limited, space is not required for immediate Government needs, and where there is no intention to

cause an "alienation of the title, ownership or control of Government property."
See 34 Op.Atty.Gen. 320.

In further explanation of the above criteria, this office concluded in an unpublished opinion of May 7, 1958, to the Chief Medical Director, that the VA could grant permits for a use of a transitory nature. That memorandum, which, coincidentally, dealt with the furnishing of space in VA hospitals to banks, further concluded that, where the "space" was not used for "transitory" purposes, resort must be made to appropriate proceedings for the leasing of property and space. While that opinion did not define the term "transitory" in light of the conclusion reached therein and the facts upon which it was based, it is clear that its common meaning was intended. "Transitory," as defined by Webster's New International Dictionary, 2nd Ed., 1947, means "continuing only for a short time; not enduring; fleeting; evanescent; temporary." Again, in an unpublished opinion of April 27, 1970, to the Associate Deputy Administrator, this office confirmed that revocable licenses were only appropriate in situations where the contemplated use was "transitory in nature." Such licenses, it was concluded, could not be sanctioned where the space would be furnished on a continuing basis. In accordance with the authorities cited, we believe that the present authority of the VA to grant such licenses and permits continues to be restricted to situations where the use of the space is of a transitory or temporary nature.

In light of the above, it would appear that a formal "lease" under the provisions of 38 U.S.C. § 5012 must be the instrument used to consummate the banking arrangement. This conclusion is based on the fact that a bank has already occupied hospital space for over 30 years, the occupation and use by a bank in the new hospital is anticipated to also be "long-term," the fact that a bank has continually paid a monthly "rent" and particularly the fact that substantial physical accommodations will be made in the space to facilitate the use the use by a bank i.e., vault(s), teller cages, alarm systems, etc. Although certain of the criteria of the Comptroller General apparently have been met, we find it impossible, in view of the above information, to perceive the anticipated arrangement as "transitory" by any definition.

38 U.S.C. § 5012(1), which limits the term of such leases to three years, provides that, unless said lease is to a "public or nonprofit organization," the provisions of 41 U.S.C. § 5 requiring formal advertising shall apply. Banks are not "public organizations" within the meaning of the statute, as this exception was intended to apply to temporary VA out-lease for "civic, health, educational or local government use," in which case formal advertising would serve "no useful purpose and involve time and expense that is considered unnecessary" See the legislative history pertaining to PL 93-82, which amended section 5012(a), at 117 Cong.Record 16385 (1971).

HELD:

Space may lawfully be provided in an existing or planned VA hospital for the operation of a bank.

If such space is to be provided, it must be accomplished by the execution of a formal lease and by formal, competitive advertising in the absence of a legal justification for procurement by negotiation under Part 1-3 of the Federal Procurement Regulations.

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