

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

AUG 1 1975

B-173832

The Honorable George E. Danielson, Chairman  
Subcommittee on Cemeteries and Burial Benefits  
Committee on Veterans' Affairs  
House of Representatives

Dear Mr. Chairman:

Your letter of May 23, 1975, requests our opinion as to whether the existing provisions of the National Cemeteries Act of 1973, approved June 18, 1973, Pub. L. No. 93-43, 87 Stat. 75, are sufficient to authorize the appropriation of funds either for operation and maintenance or for the establishment of additional cemeteries. You express particular interest in these issues as they relate to plans by the Veterans Administration (VA) to expand the National Cemetery System by establishing 11 new "regional national cemeteries." You also request any recommendations that we may have regarding appropriate authorizing language, should additional legislation be considered.

The National Cemeteries Act of 1973 transferred jurisdiction over most national cemeteries from the Department of the Army to the VA under a new chapter 24 of title 38, United States Code. The following new sections of 38 United States Code (Supp. III, 1973) are particularly relevant to the issues presented:

"§ 1000. Establishment of National Cemetery System;  
composition of such system; appointment of director.

"(a) There shall be within the Veterans' Administration a National Cemetery System for the interment of deceased servicemen and veterans. To assist him in carrying out his responsibilities in administering the cemeteries within the System, the Administrator may appoint a Director, National Cemetery System, who shall perform such functions as may be assigned by the Administrator.

"(b) The National Cemetery System shall consist  
of—

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"(1) national cemeteries transferred from the Department of the Army to the Veterans' Administration by the National Cemeteries Act of 1973;

"(2) cemeteries under the jurisdiction of the Veterans' Administration on the date of enactment of this chapter; and

"(3) any other cemetery, memorial, or monument transferred to the Veterans' Administration by the National Cemeteries Act of 1973, or later acquired or developed by the Administrator.

\* \* \* \* \*

"§ 1004. Administration.

"(a) The Administrator is authorized to make all rules and regulations which are necessary or appropriate to carry out the provisions of this chapter, and may designate those cemeteries which are considered to be national cemeteries.

"(b) In conjunction with the development and administration of cemeteries for which he is responsible, the Administrator shall provide all necessary facilities including, as necessary, superintendents' lodges, chapels, crypts, mausoleums, and columbaria.

"(c) Each grave in a national cemetery shall be marked with an appropriate marker. Such marker shall bear the name of the person buried, the number of the grave, and such other information as the Administrator shall be regulation prescribe.

"(d) There shall be kept in each national cemetery, and at the main office of the Veterans' Administration, a register of burials in each cemetery setting forth the name of each person buried in the cemetery, the number of the grave in which he is buried, and such other information as the Administrator by regulation may prescribe.

"(e) In carrying out his responsibilities under this chapter, the Administrator may contract with responsible persons, firms, or corporations for the care and maintenance of such cemeteries under his jurisdiction as he shall choose, under such terms and conditions as he may prescribe.

\* \* \* \* \*

**"§ 1006. Acquisition of lands.**

**"As additional lands are needed for national cemeteries, they may be acquired by the Administrator by purchase, gift (including donations from States or political subdivisions thereof), condemnation, transfer from other Federal agencies, or otherwise, as he determines to be in the best interest of the United States."**

The VA believes that the foregoing statutory provisions are sufficient to afford it broad authority to select sites for national cemeteries, acquire lands therefor, and to develop and expand national cemeteries, subject only to the budgetary and appropriations processes. Thus the VA apparently considers that its plan to establish national cemeteries in the 11 Federal regions may be implemented--contingent upon the availability of appropriations--without further authorizing legislation. This "regional cemetery system" is discussed in "A Study of the National Cemetery System," submitted by the VA in January 1974. See H.R. Comm. Print No. 110, 93d Cong., 2d Sess., 8, 55-71 (1974).

You point out, however, that the National Cemeteries Act of 1973 does not contain a specific section authorizing appropriations for additional national cemeteries. Moreover, you have indicated that the so-called regional cemetery system is at present no more than a VA recommendation which has never been authorized or approved by law. 121 Cong. Rec. H6036-37 (daily ed., June 24, 1975). The remarks referred to were made during House consideration of the Department of Housing and Urban Development-Independent Agencies Appropriation Bill, 1976, H.R. 8070, 94th Cong., which includes, under the heading Construction, Major Projects, for VA, \$13.6 million justified for cemetery construction. See H.R. Rep. No. 94-313, 43-44 (1975). You declined to raise a point of order against this item, but stated for the record your view that a point of order would lie due to the lack of authorizing legislation.

Initially, we offer several general observations concerning the issues raised. First, our Office cannot express an opinion on whether a proposed appropriation is proper under the rules of the House or the Senate since this is not a matter within our jurisdiction. In this regard, it might further be noted that, if the proposed appropriation referred to above is enacted and there is no departure from the intent to use it for cemetery construction as reflected in the cited House report, we would have no objection to such expenditures. Second, we are aware of no legal requirement for specific appropriation authorization language, although the use of such language certainly serves to remove any doubt as to whether an authorization of appropriations is intended. Rather,

the enactment of general legislation which clearly contemplates Federal financing is sufficient authorization for appropriations to carry out such legislation. B-111810, March 8, 1974.

Turning to the instant matter, it seems very clear that several provisions of the National Cemeteries Act do contemplate Federal financing so as to constitute sufficient authorization for appropriations. For example, 38 U.S.C. §§ 1004(b)-(e) authorize VA to provide various facilities and services at national cemeteries, expressly including in subsection (e) authority to contract for the care and maintenance of cemeteries. Likewise, 38 U.S.C. § 1006, *supra*, clearly recognizes that Federal financing will be required for acquisition of additional lands through purchase, condemnation, etc. Thus, it appears that the specific issue to be resolved (putting aside the possible effect of the pending appropriation) is whether the particular manner in which VA plans to implement such authority, *i.e.*, by acquiring and maintaining new cemeteries as part of a proposed regional cemetery system, is inconsistent with the statute.

The legislative history of Pub. L. No. 93-43 is inconclusive as to congressional intent with regard to immediate implementation of a regional cemetery system. The VA had submitted a draft version of 38 U.S.C. § 1006, which reads as follows (underscoring supplied):

"§ 1006. Acquisition of lands

"As additional lands are needed for national cemeteries, they may be acquired by the Administrator by purchase, gift (including donations from States or political subdivisions thereof), condemnation, transfer from other Federal agencies, or otherwise, as he determines to be in the best interest of the United States. Location and development of cemeteries will be based upon a regional plan of cemetery access and to the extent feasible will rely upon existing Federal landholdings."

See H.R. Rep. No. 93-131, 37 (1973).

However, the underscored language was omitted from both the Senate (S. 49, 93d Cong.) and House (H.R. 2828, 93d Cong.) versions of the legislation considered. See S. Rep. No. 93-55, 33 (1973). Section 3(a) of Pub. L. No. 93-43, 87 Stat. 78, required the VA to conduct a comprehensive study and submit recommendations to the Congress concerning, *inter alia*, "criteria which govern the development and operation of the National Cemetery System, including the concept of regional cemeteries \* \* \*." VA's January 1974 report, referred to hereinabove, was submitted pursuant to this requirement. It is apparent that the Congress was not prepared

to mandate a program of development based on a regional plan. It did, however, ask to be informed as to the criteria on which the VA was proceeding to select cemetery sites. There is nothing in the legislative history to suggest that the VA did not have full authority to exercise its statutory duties, pending further consideration and action by the Congress of the regional concept. Even if the Congress did expect that further action to implement the regional concept would be deferred until after the Congress had acted on the VA report, such tacit expectation cannot prevail over the express statutory grant of authority to VA under the title 38 provisions added by Pub. L. No. 93-43, considered as a whole. As noted above, under section 1000(b)(3) of title 38, the National Cemetery System includes "any other cemetery \* \* \* later acquired or developed by" VA. No mention is made of a requirement for additional legislation. Section 1004(a) clearly confers broad powers upon VA, including authority to designate national cemeteries. While this authority seems applicable only to cemeteries already within VA's jurisdiction--see, e.g., H.R. Rep. No. 93-131, *supra*, 17--it does provide a clear example of the establishment of new national cemeteries without further legislation. Most importantly, section 1006 authorizes VA to acquire additional lands needed for national cemeteries. This authority seems unequivocal on its face. The only possible limitation would be to construe section 1006 as applying solely to the acquisition of additional lands to expand existing national cemeteries. However, we perceive no affirmative basis for such a construction in the statutory language or legislative history. Additionally, the new title 38 provisions added by Pub. L. No. 93-43 concerning VA's management and operation of the National Cemetery System, particularly its authority to acquire additional lands, was patterned after the statutory authority previously exercised by the Department of the Army. S. Rep. No. 93-53, *supra*, 20, 37; H.R. Rep. No. 93-131, *supra*, 6, 18. This prior statutory authority was similar to the new title 38 language--compare 38 U.S.C. § 1006 with 24 U.S.C. §§ 271, 271a (1970).

Accordingly, it is our opinion that the title 38 provisions are sufficient in themselves to authorize the acquisition of lands for, and operation and maintenance of, a regional cemetery system, subject to the availability of appropriations. If, however, the Congress wishes to amend the legislation to restrict the VA's present authority to develop and operate a national cemetery system in accordance with its own criteria and discretion, the title 38 provisions might be amended as follows:

1. Add a new sentence to 38 U.S.C. § 1000(b)(3) to read: "Except in the case of an existing cemetery designated pursuant to section 1004(a) of this title, a new national cemetery may be acquired or established only pursuant to a statute specifically authorizing such acquisition or establishment."

2. Amend 38 U.S.C. § 1006 to read:

"As additional lands are needed for expansion of existing national cemeteries or for the establishment of new national cemeteries specifically authorized pursuant to section 1000(b)(3) of this title, they may be acquired by the Administrator by purchase, gift (including donations from States or political subdivisions thereof), condemnation, transfer from other Federal agencies, or otherwise, as he determines to be in the best interest of the United States."

If new cemeteries were established pursuant to specific authorizing legislation, there would appear to be no need to provide specifically for their operation and maintenance in view of the present 38 U.S.C. § 1004(e).✓

Finally, in view of the many variables we are in no position to consider the possible effect of legislation along the lines suggested above upon the status of proposed new national cemeteries for which appropriations might be made in H.R. 8070, supra. However, the Committee might wish to consider this matter if additional authorizing legislation is deemed desirable.

Sincerely yours,

R. F. KELLER

Deputy Comptroller General  
of the United States