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B-156510 June 7, 1965

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The Honorable Herbert C. Bonner, Chairman Committee on Merchant Marine and Fisheries House of Representatives

Dear Mr. Chairman:

Your letter dated April 13, 1965, requests our views on several legal questions which arose during the recent bearings of your committee on the proposed administrative closing of designated Public Health Service hospitals, announced January 19, 1965, by the Secretary of Health, Education, and Welfare.

To briefly summarize the situation, the Department of Health, Education, and Welfare contemplates closing, over the period ending with the fiscal year 1968 or 1969, seven of the twelve general hospitals of the Public Health Service. The hospitals to be closed are in Chicago, Memphis, Savannah, Boston, Galveston, Norfolk and Detroit. They are the smallest of the Service's general hospitals, having a capacity of 1,035 beds, or approximately 35 percent of the present bed capacity of the twelve hospitals.

The closed hospitals are to be converted to outpatient clinics which will refer Public Health Service beneficiaries in need of hospitalization to Veterans Administration, Department of Defense, or local community hospitals. Merchant seamen, the largest category of Public Health Service beneficiaries, are to be referred to Veterans Administration hospitals, and its is contemplated the Veterans Administration will give the merchant seamen a higher priority in admission to its hospitals than veterans with nonservice-connected disabilities.

The five remaining Public Health Service hospitals, located at Staten Island, Baltimore, New Orleans, San Francisco, and Seattle, are to be modernized and enlarged from a bed capacity of 1,937 to not more than 2,400, or an increase of about twenty percent. In the course of the hearings your committee was informed that a study was being conducted, by the Office of Science and Technology, to weigh the merits of transferring responsibility for the health care of American seamen, and the five remaining Public Health Service general hospitals, to the Veterans Administration.

In view of the foregoing the questions arose, on which our opinion is requested, "as to the authority of the Department of Health, Education, and Welfare to close any or all of the Public Health Service hospitals and to transfer a statutory responsibility to another government agency." Also, "The questions arose as to the authority of the Veterans Administrator to render hospital care to Public Health Service beneficiaries in preference to veterans of any category

and under what authority, if any, can nonveterans be treated at Veterans Administration hospitals."

The Public Health Service Act, as amended (42 U.S.C. 201, et seq.), contemplates the operation by the Public Health Service, Department of Health, Education, and Welfare, of hospitals and other stations for the care of certain beneficiaries, such as merchant seamen, and in the absence of Public Health Service facilities authorizes the referral of such beneficiaries, at he expense of the Service, to public or private hospitals, Section 249. The act also states that any executive department, in accordance with the interdepartmental service provisions of 31 U.S.C. 689, may perform work or service for the Public Health Service, Section 254.

The Surgeon General, who administers the Public Health Service, is enpowered by the Public Health Service Act to "control, manage, and operate all institutions, hospitals, and stations of the Service* * *." Section 248(a). Our examination of the act does not disclose a substantive basis for restrictively construing the general administrative powers thus conferred. Rather, in the context of providing medical care, involving professional judgment, we consider inherent in the power to control, manage, and operate the Service's various health facilities, the discretionary authority to close and convert the outpatient clinics one or more of the Service's general hospitals. The closing, however, of all Public Health Service general hospitals, with general referral of beneficiaries to facilities outside the Service, would in our opinion be an unwarranted extension of the Surgeon General's discretionary authority.

While we consider the proposed conversion of the seven smallest hospitals to outpatient clinics to be within administrative authority where the treatment of Public Health Service beneficiaries may otherwise be provided, we do not view the contemplated interdepartmental transfer of the remaining five Public Health Service hospitals, together with responsibility for the health care of merchant seamen, as encompassed by that authority. The accomplishment of the latter transfer of facilities and responsibility would require a Reorganization Plan, in the event the Reorganization Act is extended beyond June 1, 1965, or a legislative enactment. This view of the matter we understand is also entertained by the Department of Health, Education, and Welfare.

In considering your questions with reference to the rendering of hospital care by the Veterans Administration to nonveterans, we particularly noted the memorandum dated March 25, 1965, of the Assistant General Counsel, Veterans Administration, which appears on page 227 of your Committee's hearings. We concur in his position that the Veterans Administration may furnish, in accordance with the provisions of 31 U.S.C. 686, hospital care on a reimbursable basis to beneficiaries of other Federal agencies w here facilities are available.

Section 686 provides for interagency furnishing, on a reimbursable basis, of "material, supplies, equipment, work, or services of any kind that the requisitioned Federal agency may be in a position to supply or equipped to render * * *." In concluding that the Veterans Administration may furnish hospital care to nonveterans on a space available basis under a section 686 arrangement, we have not overlooked the existence of section 5003 is in effect an extension of the scope of section 686 in that it provides for the mutual use or exchange of hospitals and the transfer of such facilities, etc., without reimbursement. Section 5003 is not in conflict with section 686, and is not

viewed as precluding resort to the interagency service provisions of the latter. However, the use of section 686 would require the Veterans Administration to be in a position to supply or equipped to render the requested services. Sec. 23 Comp. Gen. 935. And we are of the opinion that the situation of being in a position to render service cannot be artificially created by the promulgation of an administrative regulation, under 38 U.S.C. 621, which would subordinate statutory beneficiaries of the Veterans Administration to beneficiaries of other agencies and constitute a relinquishment of the Veterans Administration's primary responsibility. See 38 U.S.C. 201, 610, and 5003, United States v. St. Paul Mercury Indemnity Company, 133 F. Supp. (1955) 726, 735, 736, affirmed 238 F. 2d 594, United States v. Alperstein, 183 F. Supp. (1960) 548, affirmed 291 F. 2d 455.

We believe the foregoing answers the questions submitted but we shall be pleased to consider any additional aspects you may wish to explore.

Sincerely yours,

Joseph Campbell Comptroller General of the United States