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

Dear Mr. Chairman:

This is in response to your request for clarification of our earlier response to you, dated August 1, 1975, as to whether the provisions of the national Cemeteries Act of 1973, Pub. L. No. (3-43, 87 Stat. 75, approved June 18, 1973, 38 U.S.C. Sec. 1000 at seq. (Supp. IV. 1974), are sufficient to authorize the appropriation of funds for the operation, maintenance or establishment of additional national cemeteries.

You initially raise the following question:

"Does your letter of August 1, 1975, purport to state an opinion as to whether the existing language of the National Cemeteries Act is sufficient to constitute an authorization of an appropriation within the meaning of subsection 2 of Rule XXI of the Rules of the House of Representatives?"

In this regard, you note a portion of our August 1975 response, in which we stated:

"* * * 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.* * *

You then quote additional language from our August 1975 response as follows:

"* * * If the proposed appropriation * * * is enacted and there is no departure from the intent to use it for cemetery construction * * * we would have no objection to such expenditures.* * *"

We do not feel that these two statements are inconsistent. The first statement notes that we cannot express an opinion on the propriety of the proposed appropriation under Rule XXI of the Rules of the House of Representatives. The second statement merely sets forth the well established principle that an appropriation, once enacted, makes funds available for expenditure for the purposes of the appropriation, whether or not a legislation authorization preceded it. 55 Comp. Gen. 289 1975); B-160199, October 11, 1966. Similarly, our statement that "* * * we are aware of no legal requirement for specific appropriation authorization * * *" was not intended to express an opinion with

regard to the propriety of any appropriation under the House rules, but was directed toward the legality of the appropriation, once enacted.

Second, you request our opinion as to whether the authority of the Administrator of Veterans' Affairs, under 38 U.S.C. Sec. 1004(a), to "* * * designate those cemeteries which are considered to be national cemeteries," consitutes authority to establish new national cemeteries. we believe that it does.

As you observe, Pub. L. No. 93-43 does explicitly authorize the establishment by the Administrator of new national cemeteries. However, the National Cemetery System, which is established by 38 U.S.C. Sec. consists of both national cemeteries and cemeteries which, although part of the National Cemetary System, are not themselves national cemeteries as that term is used in the statute. This interpretation is confirmed by several sections of the Act. Thus, 38 U.S.C. Sec. 1003(c) speaks of "All national and other veterans' cemeteries in the National Cemetery System includes any cemetery, memorial, or monument transferred to the Veterans Administration by the National Cemeteries Act of 1973, and section 6(a) of the 1973 act, 38 U.S.C. Sec. 1004 nt, which transfers from the Secretary of the Army to the Administrator of Veterans' Affairs all Jurisdiction over (A) all national cemeteries (with exceptions not here relevant) and (B) any other cemetery, memorial, or monument under the jurisdiction of the Secretary of the Army immediately preceding June 18, 1973, the effective date of the section (again with an irrelevant exception).

Pursuant to the portion of section 1004(a) which you cite, the Congress intended that the Administrator might "* * * designate cemeteries under his jurisdiction as national cemeteries.* * *" H.R. Rep. No. 93-131, 17 (1973). When the Administrator exercises this authority--that is, when he designates a cemetery within his jurisdiction, but which is not then a national cemetery. It is in that sense that, in our earlier letter, we described such an section by the Adminstrator as "* * * a clear example of the establishment of new national cemeteries without further legislation.* * *" thus, while you are correct that there is no language contained in Pub. L. No. 93-43 which specifically authorizes the Administrator to "establish" new national cemeteries, the effect of a designation by the Administrator of a cemetery within his jurisdiction as a national cemetery is to create, or "establish," a new national cemetery.

Moreover, as indicated in our response to your earlier question as to whether adequate authority exists under the Act for the Administrator to establish new national cemeteries, we consider the provisions of title 38 enacted by Pub. L. No. 93-43, taken as a whole, to constitue a statutory grant of authority to the Administrator to establish new cemeteries as necessary, either by designation, as discussed above, or by acquisition or development.

Under the provisions of 38 U.S.C. Sec. 1004(a), the Administrator is granted wide ranging authority with regard to the National Cemetary System:

"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.

Included among the provisions for which the Administrator is authorized to promulgate rules and regulation as set forth above, is 38 U.S.C. Sec. 1000, which establishes the National Cemetery System within the Veterans' Administration. Under section 1000(3), the System is to consist, inter alia, of:

"(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." (Emphasis added.)

Also included among the "provisions of this chapter," referred to in section 1004(a), is 38 U.S.C. Section 1006, which provides:

"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."

There provisions, granting the Administrator the authority to acquire or develop cemeteries after the initial establishment of the National Cemetery System pursuant to the National Cemeteries Act of 1973, and to acquire new lands for national cemeteries are unequivocal, and uncontradicted by anything in the Act or its legislative history. Similarly, section 2004(a), authorizing the Administrator to make necessary or appropriate rules and regulations to effectuate these provisions and to designate those cemeteries to be considered national cemeteries, is unrestricted and provides the Administrator with authority to establish new cemeteries as part of the National Cemetary System. Thus, the absence of any specific language in the 1973 act authorizing the establishment of new national cemeteries is not, in our view, a bar to their establishment, either by acquisition or development or by designation.

We hope this serves to clarify our previous response.

Sincerely yours,

Comptroller General of the United States