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

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November 21, 1973

The Honorable Donald E. Johnson
Administrator, Veterans Administration

Dear Mr. Johnson:

Your letter of October 4, 1973, requests our views as to whether appropriations to the Veterans Administration (VA) to provide medical care to eligible veterans may be expended as a necessary component of the VA's treatment and rehabilitation program to add central air-conditioning to an eligible disabled veteran's home under the special circumstances set forth in your letter.

Your letter discloses that certain disabled veterans suffer from a severe impairment of the heat regulatory mechanisms of their bodies to such an extent that their body temperatures can only be safely maintained in an artifically controlled physical environment. In the past, the Veterans Administration has attempted to meet this need by installing a room air-conditioning unit in the veteran's home. However, your letter indicates that this was not sufficient to resolve the problem in that it proved to be unduly restricting for some veterans to be confined to only one room of the house and such limited mobility affected their rehabilitation adversely or the noise of the unit prevented the disabled veteran from getting essential rest. Thus it appears that even if multiple room units were to be installed, this would not be an acceptable solution because of the noise of individual units.

You advise that a special committee has considered these problems and recommended that a policy be adopted under which central air-conditioning would be provided when medically prescribed in a particular case, if legally permissible.

The legal problem arises because the installation of central air-conditioning in the veteran's home would constitute a permanent improvement to privately owned property. As you point out, it is a well-established rule that appropriations may not be used for permanent improvements of private property in the absence of specific legislative authority for such use. See 5 Comp. Dec. 478 (1899); 6 id. 295 (1899); 2 Comp. Gen. 606 (1923); 19 id. 528 (1930). This rule is based upon the fact that

[Propriety of VA Use of Appropriated Funds To Add Central Air Conditioning]

PUBLISHED DECISION
53 Comp. Gen.
#160247

no Government official, in the absence of specific legislation, is authorized to give away Government property. See 38 Comp. Gen. 143 (1958).

A number of limited exceptions to the rule have been made over the years when it appeared that the granting of such an exception would prove particularly advantageous to the Government. However generally all such exceptions have involved permanent improvements to premises or unimproved real property leased by the Government or improvements (to a contractor's property) incidental to but necessary to give full force and effect to research contracts made by the Government with private parties. See 16 Comp. Gen. 644 (1937); 18 Comp. Gen. 144 (1938); 20 id. 927 (1941); 31 id. 364 (1952); 38 id. 143 (1958); 42 Comp. Gen. 480 (1963); 46 id. 25 (1966). In each instance, before granting the exception, we determined that (1) the improvements were incidental to and essential for the accomplishment of the purpose of the appropriation; (2) the cost of the improvement was in reasonable proportion to the overall cost of the lease or contract price; (3) the improvements were used for the principal benefit of the Government; and (4) the interest of the Government in the improvements was fully protected.

The general rule mentioned above is one of policy and not of positive law. As we have stated on several occasions, the facts and circumstances of each particular case must be considered in determining the propriety of granting exceptions to the prohibition against expending appropriations to make permanent improvements to private property. 42 Comp. Gen. 484 (1963). The instant case is distinguishable from those cited above in that the improvement involved is primarily for the benefit of the disabled veteran rather than the United States. Thus, all the principles set forth above would not be met in the instant case.

However, the appropriation for medical care for the current fiscal year (the Department of Housing and Urban Development, Space, Science, Veterans, and Certain Other Independent Agencies Appropriation Act, 1973, approved August 14, 1972, Pub. L. 92-383, 86 Stat. 547) under the heading "Veterans Administration" and the subheading "Medical Care," provides:

> "For expenses necessary * * * for furnishing, as authorized by law, inpatient and outpatient care and treatment to beneficiaries of the Veterans Administration * * *."

The definition of "medical services," contained in your authorizing legislation (38 U.S.C. 601(6), as amended by section 101(c) of the Veterans Health Care Expansion Act of 1973, Pub. L. 93-82, approved August 2, 1973)

now includes, in addition to authority for medical examination and treatment,

> "* * * such home health services as the Administrator determines to be necessary or appropriate for the effective and economical treatment of a disability * * *."

The purpose of that and other amendments made by Pub. L. 93-82, according to Senator Vance Hartke, Chairman of the Subcommittee on Readjustment, Education, and Employment of the Veterans Affairs Committee, was to —

> "* * * Permit(s) the furnishing of medical services on an outpatient or ambulatory basis for any veteran eligible for hospital care under veteran laws, where such care is reasonably necessary to obviate the need for hospital admission * * *." (Emphasis added.) (Cong. Rec. of July 26, 1973, at page S14770; see also House Rept. 93-368.)

Moreover, the Senate Committee, in rebuttal of Presidential objections to the added costs of "liberalizing" features of the amendments, contained in the President's veto message of October 27, 1972, of an earlier version of the legislation (Veterans Health Care Expansion Act of 1972, H.R. 10880), stated:

> "The Committee believes several principles should guide the VA medical program in producing first quality care for the nation's veterans. Among these are treating the veteran as a whole patient, treating the veteran as part of a family unit, and treating the veteran as a member of his community.
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> "Along these same lines, the bill expands authorities for outpatient care when needed to obviate hospital care. Such ambulatory care will permit the veteran to receive necessary treatment while still remaining with his family and many times without causing an interruption of his employment responsibilities." (Emphasis added.) (S. Rept. 93-54, March 2, 1973, pp. 19-20).

In view of the above, it appears that the Congress clearly intended that funds appropriated for medical care be used to facilitate and

emphasize nonhospital based care offered in the veteran's own home and community wherever possible and appropriate, where such care is reasonably necessary to obviate the need for hospital admission. It is a settled rule of statutory construction that where an appropriation is made for a particular object, purpose, or program, it is available for expenses which are reasonably necessary and proper or incidental to the execution of the object, purpose or program for which the appropriation was made, except as to expenditures in contravention of law or for some purpose for which other appropriations are more specifically available. 6 Comp. Gen. 621 (1927); 17 id. 636 (1938); 29 id. 421 (1950); 44 id. 312 (1964); 50 id. 534 (1971).

According to your letter, it has been administratively determined that home medical care for certain veterans can only be provided if central air-conditioning is made available, less permanent alternatives having been tried and found unsatisfactory. We assume that if central air-conditioning is not provided these veterans at home it would be necessary to admit them to a hospital. We are not aware of any provisions of law specifically prohibiting the installation of central air-conditioning under these special circumstances nor are we aware of any other appropriation making more specific provision for such expenditures than the medical care appropriation cited previously. The proposed use of appropriated funds appears to be reasonably related to and, under the circumstances, essential to carry out one of the purposes of the appropriation; namely, the medical rehabilitation of a veteran in a nonhospital setting who otherwise would have to be admitted to a hospital. In fact it appears from your letter that there is no alternative to the provision of central air-conditioning if the veteran is to receive care and treatment in his own home.

In light of the foregoing the funds appropriated to VA for medical care of veterans may be used to provide central air-conditioning in the homes of certain disabled veterans under the limited circumstances described above upon an administrative determination that central air-conditioning is necessary for the effective and economical treatment of such disabled veterans.

Sincerely yours,

[H. F. Koller

Deputy] Comptroller General
of the United States