

**Department of
Veterans Affairs**

Memorandum

Date: MAR 20 2015
From: General Counsel (02)
Subj.: Authority to Solicit Gifts under 38 U.S.C. § 8301
To: Secretary (00)

VAOPGCPREC 2-2015

Question Presented:

Does VA's express statutory authority to accept gifts, contained in section 8301, Title 38, United States Code, include the implied authority to solicit gifts?

Conclusion:

VA's express statutory authority to accept gifts under 38 U.S.C. § 8301 includes the implied authority to solicit gifts.

Discussion:

1. You asked whether the express grant of authority to the Secretary in 38 U.S.C. § 8301 to accept gifts, devises, and bequests that will enhance the Secretary's ability to provide services or benefits includes the authority to actively solicit such donations. Prior to its amendment in 1991, VA's gift acceptance statute, 38 U.S.C. § 8301 [previously 38 U.S.C. § 5101], in general only permitted the Secretary to accept gifts, devises, and bequests that were for the benefit of patients and VA hospitals and homes. The 1991 amendment added: "The Secretary may also accept, for use in carrying out all laws administered by the Secretary, gifts, devises, and bequests which will enhance the Secretary's ability to provide services or benefits." P.L. 102-86, § 504. The Office of General Counsel (OGC) concluded that this expanded grant of authority authorizes the Secretary to "accept gifts for the benefit of any VA entity, its employees, or the veterans served by it." VAOPGCADV 04-93.¹ Based on our prior guidance that statutes authorizing Departmental acceptance of donations and support include the authority to actively solicit same, as discussed below, we conclude that section 8301's express and broad grant of authority to accept donations that support VA's mission contains implied authority for the Secretary and any appropriately designated employees to solicit such donations.²

¹ We note that donations accepted under section 8301 must be deposited in the General Post Fund, 38 U.S.C. § 8302, and that funds in the General Post Fund are appropriated funds. VAOPGCADV 4-2000.

² Departmental gift acceptance authority is unrelated to the general prohibition against the acceptance or solicitation of gifts by individual Federal employees.

2.

Secretary (00)

2. VA policy has generally prohibited active solicitation of donations under section 8301, but allowed the Secretary and any employees with delegated gift acceptance authority to bring VA's needs to the attention of potential donors and let them know that Congress has authorized VA to accept donations for meeting those needs. VHA Directive 4721 § (b)(2)(c)(2007); VHS & RA Supplement to MP-4, Part VII, para. 4.04k (1988). Under VA's current policies, active solicitation is precluded. "Making VA's needs known," on the other hand, is allowed.

3. General Counsel has questioned the rationale for these policy restrictions: "The breadth of this authority [VHS & RA Supplement to MP-4, Part VII, para. 4.04k] is not entirely clear ... *We have previously questioned the rationale underlying these restrictions on soliciting. They are not dictated by law and so could be modified or deleted by amending the manual.*" VAOPGCADV 67-90 (emphasis added). It was later noted that the only limitations on VA's gift acceptance authority under section 8301 are that the Secretary must determine that the gift will enhance VA's ability to furnish services and benefits to veterans and is for use in carrying out a law or laws administered by VA. Beyond these limitations, the extent to which the Secretary chooses to exercise this authority is a question of policy. VAOPGCADV 4-93.

4. In 2001, the Office of Legal Counsel (OLC) of the Department of Justice found that the broad statutory authority granted by Congress to the Office of Government Ethics to accept gifts implies the authority to solicit for gifts. 25 Op. OLC 55, January 19, 2001. However, even before this opinion, the VA General Counsel recognized that premise. In 1994, when interpreting the Secretary's authority under section 521 (b) to accept, from any appropriate source, contributions of funds and other assistance for use in supporting the provision of national recreational activities that further the rehabilitation of disabled veterans, the General Counsel wrote that this specific grant of authority to accept contributions included the power to solicit those same contributions. OGC White Paper, July 2, 1994. Such solicitation must be done on behalf of the Department and in the soliciting employee's official capacity so that the solicitation will result in the Department's acceptance of the gift. It is noted that the Secretary's authority to accept donations under section 8301 is broader than the authority granted under section 521(b).

5. OGC has not previously concluded that the law prevents VA from soliciting gifts. We now conclude that the Secretary's broad gift acceptance authority under 38 U.S.C. § 8301 includes the implied authority under this law to actively solicit gifts consisting of funds and other assistance to support VA in accomplishing its mission.



Leigh A. Bradley