DATE**:** 03-11-91

CITATION: VAOPGCPREC 9-91
Vet. Aff. Op. Gen. Couns. Prec**.** 9-91

TEXT:

SUBJECT: Gratuitous Benefits, PL 86-146--Memorandum from the General Counsel to Chief Medical Director, dated September 13, 1960 (Op.G.C. 28-60).

(This opinion, previously issued as Opinion of the General Counsel 10-61, dated August 4, 1961, is reissued as a Precedent Opinion pursuant to 38 C.F.R. §§ 2.6(e)(9) and 14.507. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

To: Chief Benefits Director

1. Reference is made to your memorandum suggesting reconsideration of the above-entitled opinion of this office in the light of the comments made in your memorandum.

2. You state, in effect, that we may wish to determine that once there was an investment in U.S. Savings Bonds by VA Managers from gratuitous benefits deposited by the VA in PFOP accounts, such bonds or the money redeposited in PFOP by the VA from a redemption of such bonds should not be considered subject to the decedent distribution provisions of PL 86-146 on the premise that there was a change in the character of the gratuitous VA benefits by the act of investing in the bonds. You point out that such a conclusion would be subject to the criticism that it might not be giving full effect to the Congressional intent expressed in PL 86-146 to prevent money accumulated from gratuitous VA benefits from passing upon the death of the veteran to relatives having no claim against the Government on account of the veteran's military service. You then suggest that an appropriate method of complying with the indicated Congressional intent would be to amend VA Regulation 4800(A) by adding at the end thereof the following:

"United States Savings Bonds purchased by VA hospital Managers from gratuitous funds deposited by the VA to the patient's trust fund should not be considered as 'personal effects,' but shall retain their identity as gratuitous funds, and upon the death of the veteran, under the conditions stated, shall revert to the Treasury."

3. We are not unmindful of the possible surface persuasiveness of a contention that gratuitous VA benefits changed in character, i.e., lost their specific identity as

such, when invested in U.S. Savings Bonds, in view of court decisions holding that VA benefits lost their identity for the taxation and creditor's claims exemption status provided by 38 U.S.C. § 3101 when the VA benefits were invested or when property was wholly purchased or in part out of such benefits. See generally the decisions cited in Note 65 to 38 U.S.C. § 3101. However, we believe that such decisions, and the underlying principle upon which those decisions are based, are not controlling with regard to the instant questions for the reasons discussed below.

4. PL 86-146 represents a major change in the law as to the disposition of gratuitous VA benefits on deposit in PFOP accounts at the time of death of incompetent or insane veterans. It is clear that the primary purpose of the Congress was to prevent the accumulation and inheritance of large estates derived from gratuitous VA benefits in the case of certain veterans, where there is no widow, child or dependent parent to inherit the estate. The conclusion reached in the opinion of September 13, 1960 Op.G.C. 28-60, that amounts derived from gratuitous benefits which were originally deposited in PFOP by the VA do not lose their identity as to source and nature of deposit, for PL 86-146 purposes, where withdrawn from PFOP and used to purchase bonds, if they are returned to PFOP and remain on deposit at the time of the veteran's death, is in basic accord with the stated primary purpose of the legislation. An opposite conclusion to this question would have to be based upon a strict construction of the provisions of 38 U.S.C. § 3202(d) which, as discussed in paragraph 11 of Op.G.C. 28-60, would not appear to be consistent with the main intent of the Congress. Incidentally, we cannot concur in the statement made in your memorandum that the effect of the opinion is to make it prudent for potential heirs to have a guardian appointed, since the underlying cause for such indicated action by potential heirs is PL 86-146 itself.

5. We have reconsidered the agove-mentioned premises and feel that they are basically sound. Since it remains our view that there is contemplated by the history as well as by the language of PL 86-146 an intent to include any money identifiable as having its source or origin in gratuitous VA benefits which is in PFOP at the time of a veteran's death by reason of having been deposited therein by the VA, it is my opinion that there is adequate statutory authority for concluding that the principle of loss of identity as VA benefits mentioned in paragraph 3 hereof does not have any controlling effect upon the disposition of such money under the provisions of 38 U.S.C. § 3202(d), as added by PL 86-146.

6. There remains for reconsideration the conclusions that U.S. Savings Bonds which were purchased by a Manager with money withdrawn from a PFOP account of an incompetent or insane veteran and which are in the form of bonds at the time of the death of a veteran subsequent to November 30, 1959 can not be considered on deposit in a PFOP account within the meaning of PL 86-146 and Instruction I to that Act and, hence, must be considered "effects" within the

meaning of VA Regulation 4800(A). These conclusions were reached in Op.G.C. 27-60 and were affirmed in Op.G.C. 28-60.

7. Your suggested amendment to VA Regulation 4800(A) would change the classification of such bonds from "effects" to "funds" for disposition purposes under the regulation, with the contemplated result that such bonds would be subject to the interest of the United States pursuant to PL 86-146. Under such a proposal, the question arises whether such "funds", i.e., U.S. Savings Bonds, could be considered "deposited ... in the personal funds funds of patients trust fund" within the meaning of that law. As was pointed out in Op.G.C. 27- 60, the history of 38 U.S.C. s 3204 and of Chapter 3 of VA Manual, MP-4 (DM & S Supplement, Part I) show that the PFOP trust fund has been a depository for money, including checks for collection, and that bonds and certain other types of assets have not been deposited in or considered to be deposited in such trust fund. The fact that U.S. Savings Bonds have not in the past been deposited in such trust fund does not, alone, preclude such bonds from being so considered prospectively if the administrative definition or concept of such trust fund is expanded accordingly. However, the question remains whether U.S. Savings Bonds in existence as such at the time of the death of a veteran could be said to be on deposit in the PFOP trust fund within the intendment of PL 86-146. We believe this question would have to be answered in the negative, absent specific legislative authority to the contrary, since it is our view that the language of Section 3202(d) of Title 38 U.S.C., as added by PL 86-146, i.e., "deposited ... in the personal funds of patients trust fund", was specifically used by the Congress with the realization of the then existing interpretation of what constitutes such trust fund and, hence, that only money (including checks deposited for collection) representing gratuitous benefits deposited by the VA in a PFOP account, and being on deposit in such trust fund at the death of an incompetent or insane veteran subsequent to November 30, 1959, would be subject to the decedent distribution provisions of P.L. 86-146. furthermore, the basic concept of the PFOP account is that deposits may be made therein and that there may be withdrawals in amounts according to the needs of a particular veteran or his immediate family. It is apparent that bonds do not lend themselves to a procedure for "withdrawing" only a part of the value of an individual bond.

8. There is another factor for consideration in connection with the immediate above-discussed question. U.S. Savings Bonds purchased by VA Managers from PFOP are registered in the name of the veteran and neither a co- owner nor a beneficiary may be designated by the Manager. Paragraph 3.11c(2)(c) of VA Manual, MP-4, supra. Under existing Department of Treasury Regulations, 31 C.F.R. §§ 315.55 and 315.70, a savings bond registered in the name of a natural person, without a co-owner or beneficiary, is considered as belonging to the owner's estate upon his death. Under these regulations, the bonds will generally be reissued or paid to the person or persons entitled to receive the decedent's estate under the applicable state law. In addition, there is no provision under which such bonds will revert to the U.S. Treasury. Hence, it does not appear that

the Department charged with the administration of the U.S. Savings Bonds laws could, under the present regulations, be in agreement with the legal premise underlying your proposed amendment to VA Regulation 4800(A), i.e., that bonds in existence as such at the death of the veteran owner could be considered not subject to disposition under the above- mentioned Department of Treasury Regulations.

HELD:

9. In summary, it is the opinion of this office that the basic conclusions reached in our opinion of September 13, 1960 Op.G.C. 28-60, are legally correct. The opinion is, therefore, affirmedThe suggested amendments to VA Regulation 4800(A) is legally objectionable for the reasons discussed in paragraphs 7 and 8 hereof.

VETERANS ADMINISTRATION GENERAL COUNSEL
Vet. Aff. Op. Gen. Couns. Prec. 9-91