

DATE: 07-18-90

CITATION: VAOPGCPREC 59-90
Vet. Aff. Op. Gen. Couns. Prec. 59-90

TEXT:

Subject: Power of Attorney to Flight School to Cash Government Checks for Educational Assistance Allowance

(This opinion, previously issued as General Counsel Opinion 3-69, dated September 3, 1969, 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.)

QUESTION PRESENTED:

Does a requirement by a flight school for veteran- students enrolled in flight training under chapter 34 of title 38 to execute a power of attorney authorizing the school to cash their Government checks for educational assistance allowance violate the provisions of section 3101 of title 38, United States Code?

COMMENTS:

There were furnished with the submission two types of documents, the first entitled "Special Power of Attorney." The person executing the document appoints the " * * * " as his true and lawful attorney to cash his government checks issued by the Veterans Administration. The second type of document entitled "Assignment and Power of Attorney" assigns to " * * * " all funds due the signatory under Public Law 90-77 and appoints " * * * " attorney in fact, authorizing him to endorse checks received from the Government for educational assistance allowance. We are advised that such documents will generally be accompanied by a request from the veteran to have his checks mailed to the flight training school.

Section 3101(a) of title 38 provides in pertinent part:

"Payments of benefits due or to become due under any law administered by the Veterans' Administration shall not be assignable except to the extent specifically authorized by law, ..."

The general rule is that this provision precludes any assignment of benefits under which the Veterans Administration will make payment directly to the assignee. In Op.G.C. 3-58, this office stated the following:

"6. Regarding a voluntary assignment or setoff in favor of private creditors, 23 Op.G.C. 251, the then General Counsel stated in part:

' * * * it is not the policy of the Bureau that the District Offices should act as collection agents in matters relating to the private debts of its trainees. The same instructions rejecting this policy in the case of trainees would also govern in the case of employees or others who are receiving compensation from the Bureau.'

"8. A written authorization given by a veteran to pay from benefits payable to him a private debt would, if given effect, virtually make of the VA a collection agency and would partake of the nature of an assignment prohibited by Section 3, Public Law 262, 74th Congress (38 U.S.C. § 454a). Such a written authorization should not be honored."

The Comptroller General of the United States, in a letter to the Administrator of Veterans Affairs, dated May 29, 1959, opinion B-105303, stated in part:

"Based on the information furnished and informal discussions between our respective representatives we feel that the adoption of a procedure for payment of education and training allowances 'to an agent or attorney in fact,' as proposed by the suggested change in the regulations, which it is understood implements the particular correspondence school plan presently under consideration, would be in contravention of the purpose and intent of the provisions of Chapter 33, 38 U.S.C. § 1631 which provide for payment of such allowances direct 'to each eligible veteran' upon receipt of the certifications required. It might also be in violation of Treasury Department Regulations, section 5, Department Circular No. 21, as revised March 13, 1957, and the provisions of 38 U.S.C. § 3101 prohibiting the assignment of benefit payments. It appears that the plan proposed by the school would be available to veterans only and, therefore, it may also contravene the provisions of 38 U.S.C. § 1632 (e) providing that the allowance 'shall be computed on the basis of the established charge which the institution requires nonveterans to pay for the course or courses pursued by the eligible veteran.' The plan obviously is designed for the primary benefit and convenience of the school and might prove detrimental to the interests of the veterans. Furthermore, it is our view that the adoption of the plan as proposed by this institution, if approved, might lead to widespread use of similar plans by many other institutions including those offering residence courses, and would, therefore, greatly add to the administrative problems incident to the administration of the program."

In an opinion dated November 8, 1962, this office said:

"3. In a letter to the Administrator dated October 30, 1942, concerning the endorsement of recurring insurance checks under powers of attorney, the Comptroller General of the United States specified the following requisites:

'(1) The agent must be a responsible bank or trust company.

'(2) The power of attorney must recite that it is not given to carry into effect an assignment of the right to receive the insurance payments, either to the agent or to any other person.

'(3) The power of attorney must be limited to the endorsement of checks for 12 months, specifically, naming the month and year, or years covered.' "

These requirements as set out by the Comptroller General are, in essence, contained in the present provisions of VA Manual MP-4, Part IV, and Treasury Department Circular 21.

It is apparent from the a-forecited opinions that any attempt to assign veterans benefits in a manner which would require the Veterans Administration or the Treasury Department to make payment directly to the assignee is clearly barred by section 3101 of title 38. Moreover, powers of attorney in the form involved in the instant cases do not meet the requirements set out by the Comptroller General and now contained in VA Manual MP-4, Part IV and Treasury Department Circular 21.

The matter now before us, however, differs in that in neither case is any document presented to the Veterans Administration in an attempt to secure payment directly to the attorney in fact or the assignee. There is, instead, an attempt to accomplish the same result by two steps, i.e., (1) the veteran has submitted to the Veterans Administration a request that his educational assistance allowance be mailed to him in care of the flying school and (2) has authorized the flying school to negotiate his check by a "special power of attorney" in one case and an "assignment and power of attorney" in the other case. Insofar as the change of address filed by the veteran is concerned, since section 3020 of title 38 provides for the payment of monetary benefits under laws administered by the Veterans Administration, by check, and that such check shall be transmitted by mail to the payee thereof, at his last known address, we see no choice but to transmit the veteran's check by mail to the address that the veteran has provided.

HELD:

The combination of circumstances existing in the present cases, i.e., the direction by the veteran to mail his check in care of the flying school and his execution of a "special power of attorney" or an "assignment and power of attorney" authorizing the flying school to negotiate such check, results in what is tantamount to an assignment of veterans educational assistance allowance to the flying school in contravention of section 3101 of title 38, United States Code.

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