

DATE: 03-11-91

CITATION: VAOPGCPREC 18-91
Vet. Aff. Op. Gen. Couns. Prec. 18-91

TEXT:

SUBJECT: Authority of Veterans Administration to Inspect Packages.

(This opinion, previously issued as Opinion of the General Counsel 3-71, dated February 16, 1971, 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: Administrator

QUESTION PRESENTED:

Whether the Veterans Administration may require inspection of packages being brought into a Veterans Administration facility.

COMMENTS:

This office has had occasion in the past to consider the question of the authority of Veterans Administration guards to search vehicles entering or leaving a Veterans Administration facility, and other questions related to search and seizure. The precedential opinions of this office in this particular area of searches and inspection have for the most part been concerned primarily with the protective requirements of the Fourth Amendment of the Constitution as they pertain to the admissibility of evidence in criminal matters.

Op.G.C. 5-63, a comprehensive opinion, sets forth the basic constitutional principles involved in any attempted search of an automobile, with or without a warrant. That opinion concluded that the fundamental protection afforded by the Fourth Amendment, which has been zealously guarded by the courts, precluded a search of an automobile, in the absence of consent voluntarily given, except when it is impractical under the circumstances to secure a warrant and there is probable cause for a reasonably prudent person to conclude that the automobile to be searched contains property stolen or embezzled in violation of the law of the United States. We adhere to the legal tenets contained in Op.G.C. 5-63 and reaffirm our conclusions reached therein. We think, however, that a distinction can and should be made between the admissibility of evidence of a possible criminal act, where the aforementioned constitutional protections must be paramount, and the imposition of reasonable safeguards to protect the lives of

Federal employees, the safety of others, and the Government's interests in property.

The Congress has imposed upon the Administrator certain obligations, duties, and responsibilities. Among those related to the subject at hand are the following:

(1) 38 U.S.C. § 210, in pertinent part--

"(b) The Administrator, under the direction of the President, is responsible for the proper execution and administration of all laws administered by the Veterans' Administration and for the control, direction, and management of the Veterans' Administration.

"(c) The Administrator has authority to make all rules and regulations which are necessary or appropriate to carry out the laws administered by the Veterans' Administration and are consistent therewith ..."

(2) 38 U.S.C. § 621--

"The Administrator shall prescribe—

(1) such rules and procedure governing the furnishing of hospital and domiciliary care as he may deem proper and necessary;

(2) limitations in connection with the furnishing of hospital and domiciliary care; and

(3) such rules and regulations as he deems necessary in order to promote good conduct on the part of persons who are receiving hospital or domiciliary care in Veterans' Administration facilities."

(3) 38 U.S.C. § 625--

"For the purpose of maintaining law and order and of protecting persons and property at hospitals and domiciliaries of the Veterans' Administration, the Administrator may designate at such hospital and domiciliaries persons who shall have authority to make arrests for any crime or offense against the United States committed on the reservation of the hospital or domiciliary. Any person so arrested shall be taken forthwith before the nearest United States magistrate within whose jurisdiction the hospital or domiciliary is located."

The foregoing statutory provisions, directly, and the provisions of sections 4115 and 5001(a) of title 38, U.S.C., by implication, clearly charge the Administrator with the protection of patients, visitors, and employees, and of Government property. Although section 625 sets forth the authority and procedure to

be followed in making arrests, the methods otherwise to be employed in meeting these responsibilities are left to the discretion of the Administrator. At the present time, there is for serious consideration the fact that there have been, and probably will be in the future, attempts at physical assaults on governmental institutions and personnel, commonly referred to as the "establishment". With this in mind the safety of personnel and patients and the protection of property require measures more extensive than those considered adequate in the past.

The Administrator of General Services Administration has been given certain responsibilities for protecting public buildings, property, and grounds under his charge and control by the Federal Property and Administrative Services Act of 1949, as amended. GSA has recently issued instructions designed to tighten security in Federal buildings to minimize the possibility of damages from bombs or other acts of violence. One of the steps recommended is the inspection of packages, with admittance to be denied to any person who refuses to voluntarily submit packages for examination.

In our opinion, the Administrator of Veterans Affairs has a responsibility for protection of Government property under his jurisdiction which is comparable to that imposed on the Administrator of GSA. Moreover, the additional responsibility on the Veterans Administration for the health, safety, and welfare of patients, warrants measures beyond those required for the protection of property only.

HELD:

In the light of the cited statutory provisions; supra, and the foregoing discussion, it is our view that if the Administrator determines the inspection of packages of those entering a Veterans Administration facility will enable him to carry out his obligations and responsibilities, he has the authority to impose such a condition on those seeking admission to the facility. Such inspection may be to minimize danger to life or property or to prevent contra-indicated materials from reaching patients. Veterans Administration inspection of packages and vehicles leaving the reservation should continue to be controlled by the principles set forth in Op.G.C. 5-63.

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