

DATE: 03-11-91

CITATION: VAOPGCPREC 26-91
Vet. Aff. Op. Gen. Couns. Prec. 26-91

TEXT:

SUBJECT: Advisory Committee on Cemeteries and Memorials.

(This opinion, previously issued as Opinion of the General Counsel 4-74, dated April 10, 1974, 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: Director, National Cemetery System

QUESTION PRESENTED:

Is it mandatory that the report of the Committee be made directly to the Congress simultaneously with a report to the Administrator, or must the report be submitted to the Administrator who, in turn, will forward it to the Congress with his recommendations?

COMMENTS: Section 1001, chapter 24, title 38, reads as follows:

"There shall be appointed by the Administrator an Advisory Committee on Cemeteries and Memorials. The Administrator shall advise and consult with the Committee from time to time with respect to the administration of the cemeteries for which he is responsible, and with respect to the selection of cemetery sites, the erection of appropriate memorials, and the adequacy of Federal burial benefits. The Committee shall make periodic reports and recommendations to the Administrator and to Congress."

Public Law 92-463, the "Federal Advisory Committee Act," provides, in part, as follows:

"APPLICABILITY

Sec. 4. (a) The provisions of this Act of any rule, order, or regulation promulgated under this Act shall apply to each advisory committee except to the extent that any Act of Congress establishing any such advisory committee specifically provides otherwise.

(b) Nothing in this Act shall be construed to apply to any advisory committee established or utilized by—

(1) the Central Intelligence Agency; or

(2) the Federal Reserve System."

Since Public Law 93-43, which established the Advisory Committee on Cemeteries and Memorials, does not specifically provide procedures with respect to the handling of the periodic reports and recommendations, we must look to the Federal Advisory Committee Act for guidance.

The "Federal Advisory Committee Act" further provides, in part, as follows:

"FINDINGS AND PURPOSES

Sec. 2. (a) The Congress finds that there are numerous committees, boards, commissions, councils, and similar groups which have been established to advise officers and agencies in the executive branch of the Federal Government and that they are frequently a useful and beneficial means of furnishing expert advice, ideas, and diverse opinions to the Federal Government.

(b) The Congress further finds and declares that--

(6) the function of advisory committees should be advisory only, and that all matters under their consideration should be determined, in accordance with law, by the official, agency, or officer involved.

"ESTABLISHMENT AND PURPOSE OF ADVISORY COMMITTEE

Sec. 9. (a) * * *

(b) Unless otherwise specifically provided by statute or Presidential directive, advisory committees shall be utilized solely for advisory functions. Determinations of action to be taken and policy to be expressed with respect to matters upon which an advisory committee reports or makes recommendations shall be made solely by the President or an officer of the Federal Government." (Underscoring supplied)

HELD:

The language in 38 U.S.C. § 1001 requiring the Committee make periodic reports and recommendations might be literally interpreted as requiring such reports and

recommendations to be submitted directly to the Congress. However, the above-cited provisions of the Federal Advisory Committee Act clearly show a different intent on the part of the Congress with respect to the functions and authority of Advisory Committees. The Congress has in this legislation said that--

(a) the function of an advisory committee is advisory only; and

(b) all matters under consideration should be determined in accordance with the law by the appropriate executive official. There is only one way the Administrator, the responsible executive official, can determine all matters under consideration by the Committee in accordance with the law. He must receive, for transmission to the Congress, the recommendations and report of the Committee, and transmit same with his determinations with respect thereto. It is only in this manner that he can assure compliance with the provisions of Public Law 92-463 and Executive Order 11686, as implemented by OMB Circular No. A-63 and MP-1, Part 1, Chapter 12.

VETERANS ADMINISTRATION GENERAL COUNSEL
Vet. Aff. Op. Gen. Couns. Prec. 26-91