

DATE: 05-14-91

CITATION: VAOPGCPREC 55-91  
Vet. Aff. Op. Gen. Couns. Prec. 55-91

**TEXT:**

**VIRGIN ISLANDS-STATE HOME CONSTRUCTION**

(This opinion, previously issued as Opinion of the General Counsel dated January 29, 1986, 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:**

May the Veterans Administration extend financial assistance to the Virgin Islands for purposes of construction of a State home facility?

**COMMENTS:**

1. You have asked that we reexamine our opinion whether the VA may extend financial assistance to the Virgin Islands to construct a State home facility in light of our April 2, 1980, opinion on the same issue regarding Puerto Rico. For reasons discussed below, we believe that as in the case of Puerto Rico, recently expressed legislative intent in this specific area has provided authority for the VA to extend such assistance to the Virgin Islands as well.

2. At the outset, it should be noted that, at the time these earlier opinions were written, the lack of any clear indication of Congressional intent contributed significantly to the difficulty in construing pertinent provisions of law in this area.

As you know, in earlier opinions pertaining to the question whether the Virgin Islands and Puerto Rico may be considered a "State" within the meaning of subchapter III of chapter 81, title 38, United States Code, for the purposes of receiving financial assistance to construct a State nursing home facility, we expressed the view that sections 101(19) and 101(20) of title 38, United States Code, defining, respectively, the terms "State home" and "State" were not applicable in this particular situation since 38 U.S.C. § 5031(b) was the more appropriate and specific provision. That definitional provision reads as follows:

"(b) The term 'State' does not include any possession of the United States."

Section 101(19) defines "State home" as: (19) The term "State home" means a home established by a State (other than a possession) ... and

(20) the term "State" means each of the several States, Territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

3. By excluding the latter provisions of section 101 which permit eligibility for those entities not ordinarily considered or accepted as "States," we concluded, based on the definition found in section 5031(b), that Puerto Rico and the Virgin Islands were not a "State" for purposes of subchapter III of chapter 81, title 38, U.S.C. However, the Congressional Research Service (CRS) in its memorandum of January 3, 1979, in response to a Congressional inquiry pertaining to our legal opinion regarding Puerto Rico, stated:

It is again to be noted that sections 101(19) and 101(20), which define respectively "State home" and "State," are definitions applicable to the entirety of Title 38, U.S.Code, unless otherwise modified in specific context.... The conclusion in the opinion of the General Counsel that these sections are not applicable to the question as to the scope of section 5031(b) since that section, which is stated to be later and more specific, must govern, does not appear to be supportable. First, section 5031(b) is not later since it was enacted concurrently with an amendment to section 101(19) that did not modify its provisions which are here relevant ... and concurrently enacted section 101(20), where "State" for the purposes of title 18 (sic) is defined as "each of the several States, Territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.... Finally, a review of the legislative history of P.L. 95-62, the "State Veterans' Home Assistance Improvement Act of 1977" provided.... The basic purpose of the bill was, however, to expand existing Veterans' Administration programs of grant assistance to State home extended-care facilities for veterans which currently exist in 30 States and the District of Columbia (also expressly listed in the definition contained in Section 101(20)). (Emphasis added).

4. Subsequently, on December 20, 1979, Pub.L. No. 96-151 was enacted when the President signed H.R. 3892, as amended. In the context of discussing essentially unrelated amendments to the subchapter on State home grants, the committees "volunteered" comments on the question of Puerto Rico's eligibility for such grant assistance. Apparently reflecting the CRS position as presented in the previous paragraph, the committees declared that Puerto Rico was eligible for participation in our State veterans' home financial assistance program. In the explanation at 125 Cong.Rec. S. 17995 (daily ed. December 6, 1979) (remarks by Senator Cranston) the Committees directed that, "in light of this expression of congressional intent, the General Counsel (VA) will issue an opinion confirming the eligibility of Puerto Rico." Indeed, our research has disclosed that there are many other situations where, as in this context, in defining the term "State," for purposes covering particular areas of Federal activity, it has been defined to include other entities such as, the Virgin Islands and "any other

territory or possession over which the United States has jurisdiction." (42 U.S.C. § 9601(27), 7 U.S.C. § 183).

5. Thus, the term "State" is not a term that must necessarily be narrowly construed, but may be applied, depending on a particular purpose or activity, to describe various entities. It has always been our position in previous opinions that the Virgin Islands are an "unincorporated territory of the United States of America." 48 U.S.C. § 1541. Her status as a territory was also noted in Harris v. Municipality of St. Thomas and St. John et al., 111 F.Supp. 63, "The Virgin Islands consisting of the two bodies political (1) St. Thomas and St. John and (2) St. Croix constitutes a territory of the United States." This being the case and, in light of the general acceptance of the broader interpretation of the meaning of "State" by the CRS, namely, that in order to define this term, in this specific context, we are to read section 5031(b) together with section 101(20), then, like Puerto Rico, the territory of the Virgin Islands would be eligible to receive VA financial assistance to construct a State home facility.

**HELD:**

The VA may extend financial assistance to the Virgin Islands to construct a State home facility. The Opinion of the General Counsel 3-77, dated October 12, 1976 reissued as O.G.C.Precedent 38-91, is hereby overruled.

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