

EXECUTIVE CORRESPONDENCE

AUG 15 1991

OFFICE OF GENERAL COUNSEL
RECEIVED
LAW LIBRARY

2/1-11

023

SEP 5 1991

VA District Counsel (301/02)
Aronov Building
474 S. Court Street
Montgomery, Alabama 36104

PRECEDENT AND LAW FILES

Subj: RMEC Nonprofit Corporations

1. We have reviewed your inquiries regarding the VA Southeastern Region Medical Education Center's request to establish a nonprofit corporation. This corporation would be similar to those at other VA medical centers. As discussed below, we find no authority for the VA Southeastern Region Medical Education Center to establish a corporation as proposed.

2. You have furnished us with a document on Cooperative Health Manpower Education Programs (CHEPs) which the Southeastern Region Medical Education Center gave you. The document appears to be a draft of a memorandum prepared by the Office of Academic Affairs to "Selected VA Medical Centers." The document states: "A CHEP should be a non-profit corporation. . . ." We find no evidence, however, that this document was ever officially issued by VA. For your information, current VA policy on CHEPs does not recommend forming a nonprofit corporation:

CHEPs work through consortium arrangements with community educational and health care institutions under their own administrative structures. It is recommended that the administrative authority be vested by member institutions in an executive committee and delegated to a full-time coordinator.

VHA Manual M-8, Part IV, Chapter 3, Paragraph 3.04c.

3. You have also furnished legal documents relating to nonprofit corporations established at other VA medical centers. One set of documents includes the bylaws and certificate of incorporation (dated 1972) for the Tuskegee Area Health Education Center, and a one-page paper entitled "TAHEC CORPORATE GOALS." These documents indicate that this Center is

VA - Project Kalle... Corporation

X 03 District Counsel, Montgomery, AL

VA District Counsel (301/02)

a nonprofit corporation composed of health-involved institutions, agencies, or groups in the Tuskegee area including Tuskegee VAMC. The corporation's goals are:

- to promote sharing of scarce health care resources;
- to promote cooperation among area facilities and agencies to establish more effective health care delivery systems;
- to encourage coordination of education programs for health care personnel;
- to develop and maintain inventories of health care resources and needs; and
- to promote health education programs for area residents.

In the corporation's certificate of incorporation (dated October 1972), the VAMC Director is listed as one of the incorporators. In addition, the VAMC is listed as the corporation's initial registered agent.

4. Another document shows that VAMC Dublin participated in forming the Georgia Cooperative Health Manpower Education Program, Inc. in 1986. This corporation's purpose is to serve as a coordinating mechanism to improve the competencies and performance of practicing health care personnel in geographic areas that are underserved by the health care system. To achieve this purpose, the bylaws establish the following purposes for the corporation:

- support education and training programs for students in the medical and health professions;
- support continuing education for health care personnel in the area;
- facilitate consumer and patient health education and promotion activities, and
- facilitate the integration of VA educational programs and resources with community educational programs and resources.

The bylaws state that the corporation's offices shall be at the Dublin VAMC. The VAMC director is listed as an ex-officio member of the corporation.

3.

VA District Counsel (301/02)

5. A nonprofit corporation was also recently established at VAMC Perry Point. The District Counsel in Baltimore has requested our advice regarding that corporation and has furnished us with further details on VA's involvement in it. We will examine that corporation in a separate memorandum to the District Counsel in Baltimore.

6. "[A]n administrative agency is a creature of statute, having only those powers expressly granted to it by Congress or included by necessary implication from the Congressional grant." Soriano v. United States, 494 F.2d 681, 683 (9th Cir. 1974). As an administrative agency, VA, therefore, has authority to take only such actions as are permitted by statute. Our review of VA's statutory authority, however, does not reveal any statute that would permit the VA Southeastern Region Medical Education Center or any other VA facility or entity to establish a corporation as proposed.

7. In fact, government agencies are specifically prohibited from establishing or acquiring a corporation to carry out government business without specific statutory authorization. 31 U.S.C. § 9102. (The VA research corporation authority is an example to this general rule. 38 U.S.C. §§ 7361-7368 [formerly sections 4161-4168]. It does not appear that the corporation proposed by the VA Southeastern Region Medical Education Center meets the requirements for a research corporation.)

8. We also examined VA's authority to participate in cooperative health-care personnel education programs:

[VA] is authorized to enter into agreements with public and nonprofit private institutions, organizations, corporations, and other entities in order to participate in cooperative health-care personnel education programs within the geographical area of any [VA] health-care facility located in an area remote from major academic health centers.

38 U.S.C. § 8154(c) (formerly section 5054(c)). As you note, this authority only permits VA to enter into agreements with nonprofit corporations. It does not authorize VA to form such corporations.

9. Although VA may not establish or acquire a corporation, VA may, under section 8154(c), enter into agreements with existing corporations to participate in those corporate activities which are considered to be of substantial benefit to VA in accomplishing its mission. VA employees may participate in such activities as part of their official duties. VA Manual MP-5,

4.

VA District Counsel (301/02)

Part I, Chapter 630, Paragraph 21.a(1); see O.G.C. Advisory 47-89 (VA staff may participate in McPherson Square Business Association on VA's behalf). In addition, VA facilities (in their institutional names only) may join and pay membership fees in organizations (not corporations) if the Director determines the organizations have resources which can be used to the substantial benefit of the facility as a whole as opposed to the benefit of individual VA staff members. VHA Manual M-1, Part I, Chapter 1, Paragraph 1.50; see 61 Comp. Gen. 542 (1982) (appropriated funds may be used to pay an agency's membership fees in a private organization).

Robert E. Coy
Acting General Counsel

PRECEDENT OPINION	_____
CONCLUSIVE OPINION	_____
ADVISORY OPINION	_____ ✓
REASON	REC _____ ✓ 07

cc: Academic Affairs (145B); District Counsel, Atlanta;
District Counsel, Baltimore

ER
ERAUN: 7/31/91 W 0220 [initials]