

## ESTABLISHING AND PROVIDING FOR THE MAINTENANCE AND OPERATION OF A VETERANS' CANTEEN SERVICE IN THE VETERANS' ADMINISTRATION

JULY 11 (legislative day, JULY 5), 1946.—Ordered to be printed

Mr. JOHNSON of Colorado, from the Committee on Finance, submitted the following

### REPORT

[To accompany S. 2354]

The Committee on Finance, to whom was referred the bill (S. 2354) to establish and provide for the maintenance and operation of a Veterans' Canteen Service in the Veterans' Administration, and for other purposes, having considered the same, report favorably thereon, with the following amendments, and recommend that the bill, as so amended, do pass.

On page 5, strike out lines 12 to 19, inclusive.

On page 5, line 20, strike out the figure "5" and insert "4".

On page 6, line 10, strike out the figure "6" and insert "5".

On page 6, line 17, strike out the figure "7" and insert "6".

On page 7, line 3, strike out the figure "8" and insert "7".

On page 7, line 9, strike out the figure "9" and insert "8".

#### EXPLANATION OF THE BILL

This legislation was recommended by the Administrator of Veterans' Affairs in a letter dated June 19, 1946, addressed to the President pro tempore of the Senate.

The bill authorizes the establishment, maintenance, and operation of a canteen service in the Veterans' Administration to the end that our hospitalized and domiciled veterans may have the same high standards of canteen service to which they became accustomed while serving in the armed forces.

In the course of the investigation of hospitals and homes by this committee, it was disclosed that many of the canteens operated by concessionaires were deficient in various respects. The committee believe that the bill will provide the Administrator of Veterans' Affairs with the necessary authority to overcome these deficiencies by

the establishment of that high type of canteen service to which our veterans are entitled.

A letter from the Veterans' Administration, which was approved by the Bureau of the Budget and forwarded to the President pro tempore of the Senate, requesting this legislation, is self-explanatory and is as follows:

JUNE 19, 1946.

The PRESIDENT PRO TEMPORE OF THE SENATE,  
*The Capitol, Washington, D. C.*

SIR: There is enclosed a draft of a proposed bill entitled, "A bill to establish and provide for the maintenance and operation of a Veterans' Canteen Service in the Veterans' Administration, and for other purposes," with the request that the same be introduced and considered for enactment as soon as possible. It is regretted that circumstances have prevented an earlier submission of this proposal. However, it presents a matter of considerable importance to the proper care of hospitalized veterans. It is hoped that it may be considered before adjournment.

It is essential to the welfare of veterans hospitalized and domiciled in Veterans' Administration hospitals and homes that they have readily, available to them for purchase, at reasonable cost, certain items of merchandise such as toilet articles, tobacco products, articles of general use, miscellaneous food items including such things as are sold at snack bars and cafeterias, and certain services such as those offered by barber shops, beauty shops, shoeshine parlors, tailors, etc. Such merchandise and services are now provided by canteens operated privately for profit on a concessionaire basis.

Many complaints have been made by recognized veterans' organizations and other agencies interested in the welfare of veterans as well as by individual veterans, concerning the inadequate and unsatisfactory service rendered at these privately operated canteens and the excessive prices charged for many items. An investigation disclosed that these complaints were generally justified. Another compelling reason for concern over the present canteen system is the fact that the hospitalized or domiciled veteran cannot understand why the same high standards of canteen service to which he had become accustomed while serving in the armed forces should not be available to him while in the care of another Federal agency, i. e., the Veterans' Administration.

Upon the establishment of the Office of Special Services, which includes the Canteen Service, in the organizational structure of the Veterans' Administration, a vigorous campaign to improve the existing concessionaire canteen system was initiated and is still in progress. It became apparent early in the program, however, that such efforts were necessarily limited, by the very nature of the operation, to timely suggestions to and requests for the cooperation of the individual concessionaire. Appreciable improvement, uniform in scope throughout the various hospitals and homes, can scarcely be achieved when it is necessary to supervise the activities of individual, unrelated concessionaires who are motivated, naturally, by the desire to conduct a business as personally profitable as possible.

It has been determined that the responsibility of the Administrator of Veterans' Affairs to provide the type of canteen service to which the hospitalized veteran is entitled can be discharged most effectively if he is authorized by law to establish, maintain, and operate canteens which shall be under his direct supervision. The attached draft bill is designed to accomplish that purpose. The provisions of the bill are explained in detail in the enclosed statement.

The draft bill last submitted to the Bureau of the Budget contained two sections (secs. 4 and 10) to which that agency took exception, section 10 of which has been eliminated from the draft herewith submitted. The pertinent part of the Budget Bureau's letter is as follows:

"I appreciate the full extent to which you have modified the earlier draft to conform to the views and suggestions contained in my letter of April 22. I am confident this proposed bill now provides a Canteen Service program which will be equipped both to perform its objective effectively and, at the same time, to conform to proper budgetary administration and the over-all governmental structure.

"With regard to that portion of section 4 which provides for exemption of the Canteen Service from State and local taxes, I must advise you that it has been the consistent policy of the administration in recent years not to seek immunities from such taxes.

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"Except for these provisions [secs. 4 and 10] of the bill, you may regard this revised draft as completely in accord with the program of the President."

It is the understanding of the Veterans' Administration that section 4 merely authorizes tax exemptions accorded, under existing law, to instrumentalities of the United States engaged in activities similar to those to be performed by the Service and, therefore, does not provide for any immunities from taxes to which it would not otherwise be entitled if such section 4 were omitted from the bill. However, it is deemed desirable to set forth such exemptions specifically in order to preclude misunderstanding by local taxing authorities with respect to the amenability of the Service to State or local taxes.

Respectfully,

OMAR N. BRADLEY,  
*General, United States Army,*  
*Administrator.*

#### EXPLANATORY STATEMENT

A bill to establish and provide for the maintenance and operation of a Veterans' Canteen Service in the Veterans' Administration and for other purposes.

Section 1 establishes in the Veterans' Administration a Government instrumentality known as the Veterans' Canteen Service for the primary purpose of making available to patients and members in Veterans' Administration hospitals and homes, at reasonable prices, merchandise and services essential to their comfort and well-being. The establishment of the Veterans' Canteen Service (hereinafter called the Service) as a part of Veterans' Administration will permit necessary administrative supervision of the operation to be exercised by the Administrator and assure coordination with related Veterans' Administration activities.

Section 2 authorizes the Administrator of Veterans' Affairs to do the things necessary for the establishment, maintenance, and continued operation of the Canteen Service.

Subsection (a) authorizes the Administrator to establish canteens at Veterans' Administration hospitals and homes and at other Veterans' Administration establishments under certain circumstances. The latter is considered essential because adequate commercial facilities are not now reasonably available to personnel employed at some regional and branch offices.

Subsection (b) provides that the Administrator may establish, maintain, and operate warehouses and storage depots in order to take advantage of centralized large-scale procurement.

Subsection (c) provides that the Administrator may furnish the Service, without charge, certain space, buildings, and structures which he has determined to be available and necessary in the canteen operations.

Subsection (d) provides that the Administrator may furnish the Service, without charge, such equipment, utilities, and service as may be available and necessary for use in the canteen operations. It is intended, and this subsection so provides, that electricity and gas furnished for cooking, refrigeration, and power will be paid for by the Service. The equipment intended to be made available to the Service is only such equipment as may be on hand.

Subsection (e) authorizes the Administrator to employ, without regard to civil-service laws and regulations, except insofar as they provide for retirement benefits, personnel required at the operating or store level. Each canteen will be a comparatively small operation

with most of the employees in lower salary brackets. The wages to be paid these employees will necessarily be the prevailing wage for such work in the community concerned. Just as in similar privately operated businesses there will be a large turn-over of employees. Often it will be necessary to hire employees for part time and temporary service. This subsection also provides that personnel above the operating and sales-store level may be employed and paid from Veterans' Administration appropriations for salaries and expenses and assigned to the Service without reimbursement. To require the Service to bear the expense of this personnel might seriously interfere with the accomplishment of its primary objective, i. e., to furnish adequate and satisfactory service at low cost, on a self-sustaining basis.

Subsection (f) provides that necessary purchase and sales contracts may be made without regard to section 3709 of the Revised Statutes of the United States. It is believed to be apparent that a retail operation of this nature could not operate successfully on an advertising and competitive-bid basis.

Subsection (g) authorizes the Administrator to fix the prices of merchandise and services in the canteens. This is obviously necessary.

Subsection (h) authorizes the Administrator to accept gifts and donations of merchandise, fixtures, equipment, and supplies for the use and benefit of the Service. In order to provide for maximum flexibility of operation, it is believed desirable to permit the Service to accept donations of merchandise and equipment for its use in accordance with customary business practices.

Subsection (i) authorizes the Administrator to make necessary rules and regulations.

Subsection (j) authorizes the Administrator to delegate such duties and powers to employees as he considers necessary or appropriate to carry out the provisions of the proposed act.

Section 3 specifically limits the persons to whom canteen sales and services may be furnished.

Subsection (a) provides that canteens at hospitals and homes are primarily for the use and benefit of patients and members but extends canteen privileges also to persons employed at the hospital or home and to relatives and friends of patients and members while visiting them. Such privileges are also made available to families of such employees who reside at the station and to persons visiting the station on official business. Persons who do not reside at the station are limited to sales of merchandise and services for consumption or use on the premises. Many patients and members will often have relatives and friends visit them at the hospital or home and it is considered essential that they be permitted to use the canteen service when they are at the station.

Subsection (b) limits the Canteen Service at Veterans' Administration establishments other than hospitals and homes to personnel employed at such establishments, their visitors and other persons at the establishment on official business. Sales of merchandise and services are further limited to items for consumption or use on the premises. The inclusion of visitors and other persons at the establishment on official business is considered desirable because persons having official business with the Veterans' Administration will often be at the branch office or regional office at mealtime and have the same need for the Service as employees.

Section 4 provides that the Service is to be financed by appropriated funds which, together with all income derived from operations, will be administered as a revolving fund. The fact that the Service is a Federal instrumentality and that it is engaged in a retail operation makes this type of financing the most feasible.

Section 5 provides that the revolving fund shall be deposited in a checking account with the Treasurer of the United States and that operating accounts for the various canteens may be deposited in other depositories selected by the Administrator. Because of the nature of the contemplated operations on the Service, subsidiary or operating accounts in local banks are necessary.

Section 6 provides that an annual budget estimate shall be prepared and submitted by the Service in the same manner as provided for wholly owned Government corporations by the Government Corporation Control Act (31 U. S. C. 1940 ed., Supp. V, 841 et. seq.). No substantial profits are anticipated for the reason that the Service furnished must be at a minimum cost. Actually there may be relatively small deficits during the first 2 or 3 years of operation. It is not intended or expected, however, that losses will continue beyond the initial years of operation and thereafter, even though sales prices are held at a minimum, reasonable profits can be expected. As provided in this section any income which increases the revolving fund beyond estimated annual budget requirements will be returned to the Treasury. Any depletion of the revolving fund which may occur will be analyzed annually in the budget program which will be transmitted to the Congress by the President as a part of the annual Budget.

Section 7 provides that the Service shall maintain an integral set of accounts which shall be audited by the General Accounting Office in accordance with the principles and procedures applicable to commercial transactions as provided by the Government Corporation Control Act and that no other audit shall be required. This commercial-type audit will be in lieu of the governmental-type audit usually applicable to appropriated funds.

Section 8 declares the purpose of the act to be that the Service shall function as an independent unit within the Veterans' Administration and have exclusive control over all of its operations. The Veterans' Administration now operates 107 hospitals and homes at each of which there is need for canteen service. When the current hospital program is complete the number will be substantially increased. The Service as a whole is to function as a unit and each sales store and service outlet will be an integral part thereof. Since the Service is to function as a unit and its operations are of a commercial nature, it is considered essential that it have maximum direct control over its activities.

The letter from the Treasury Department, recommending that section 4 be stricken from the bill, is self-explanatory and is as follows:

TREASURY DEPARTMENT,  
Washington, July 10, 1946.

HON. WALTER F. GEORGE,  
Chairman, Committee on Finance,  
United States Senate, Washington, D. C.

MY DEAR MR. CHAIRMAN: The attention of the Treasury Department has been directed to certain provisions of S. 2354, a bill introduced by Senator Johnson, to establish and provide for the maintenance and operation of a Veterans' Canteen Service in the Veterans' Administration, and for other purposes, and which has been referred to the Committee on Finance.

On April 11, 1946, this Department, in response to a request from the Director of the Bureau of the Budget, communicated to the Director its views regarding a draft of similar legislation then being prepared by the Veterans' Administration. Section 4 of S. 2354, relating to immunity of the proposed Veterans' Canteen Service from taxation, is broader in certain respects than the corresponding provision of the draft of legislation adversely commented upon by the Treasury Department in the report to the Bureau of the Budget on April 11, 1946. Section 4 would entitle the Service, its franchise, its assets, its income, and its canteens "to all of the immunities from taxation accorded to instrumentalities of the United States Government" and would provide that the Service "shall not be subject to sales, use, or other taxation, either directly or indirectly, by any State, Territory, possession, or subdivision thereof, or the District of Columbia: *Provided*, That the immunity from taxation shall not apply to Federal excise taxes."

With respect to exemption from State and local taxation, the Treasury Department believes it desirable to make every reasonable effort to cooperate with State and local governments in the administration of their revenue systems. Thus, it has encouraged the Government agencies concerned with the sale of surplus property to explore with the States the possibilities of collecting State sales and use taxes on sales of surplus property. In the field of intergovernmental immunity from taxation, it has been the policy in recent years for the Federal Government to assert only those immunities from taxation afforded by the Constitution. For example, section 4 of the Public Salary Tax Act of 1939 expressly consented to the taxation of compensation received after December 31, 1938, for personal services as an officer or employee of the United States, any territory or possession or political subdivision thereof, or any agency or instrumentality of any one or more of the foregoing, by any duly constituted tax authority having jurisdiction to tax such compensation, if such taxation does not discriminate against such officer or employee because of the source of such compensation. In the case of *Alabama v. King & Boozer* (314 U. S. 1 (1941)), the principle of application of a State sales tax upon purchases of lumber by cost-plus-a-fixed-fee contractor with the United States was upheld, notwithstanding that such a tax might impose an economic burden on the Government in the form of higher construction costs.

It is not clear to what extent, if at all, section 4 is intended to increase the exemption from State taxation provided under the Constitution for a Federal instrumentality. For the reasons herein stated, a long-range program of acquiescence by the State and Federal Governments in the nondiscriminatory application of the taxes of each to the instrumentalities of the other appears the sound course in this field of intergovernmental immunities. In any event, it is difficult to perceive why the proposed Veterans' Canteen Service should be entitled to any greater immunity than post exchanges and ships' stores of the War Department and Navy Department, respectively, which are entitled only to the constitutional immunity. Since legislative action by the Congress is unnecessary to invoke the immunity afforded by the Constitution, it is suggested that the reference to exemption from State and local taxation be deleted from the bill.

Should the Congress determine, nevertheless, to grant additional immunities, it may be desirable to define more precisely the scope of exemption granted. Whether the application of a State "sales, use, or other" tax under specific circumstances would be considered a levy "either directly or indirectly" upon the Veterans' Canteen Service would be exceedingly difficult of ascertainment, and would very probably lead to extensive litigation. For example, would a State be permitted to collect a manufacturer's excise tax on articles sold to a canteen? Would a tax upon the salary of employees of the Service be considered an indirect burden on the Service itself, notwithstanding the Public Salary Tax Act of 1939 expressly consenting to taxation by States of the income of Federal employees? In view of the diverse types of State and local taxes, the manifold problems arising from an exemption in such ambiguous terms are readily apparent.

The Treasury Department is in accord with the policy expressed in that part of section 4 which relates to Federal excise taxes. The proposed Veterans' Canteen Service under existing law would not be relieved from the obligation of compliance with the collection of Federal excise taxes. In order to make clear, however, that no departure is contemplated from the policy of the Revenue Act of 1943, which removed, in general, the exemption from retailers' and manufacturers' excises, and the taxes imposed by subchapters B, C, and E of chapter 30 of the Internal Revenue Code with respect to goods sold or services rendered to the United States, consideration might be given to the insertion of a statement in the committee report that the Canteen Service will not be immune from Federal excise taxes, rather than to include the present proviso in section 4.

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For the foregoing reasons, it is recommended that section 4 of S. 2354 be stricken in its entirety.

The Acting Director, Bureau of the Budget, has advised the Treasury Department that there is no objection to the presentation of this report.

Sincerely yours,

O. MAX GARDNER,  
*Acting Secretary of the Treasury.*

In deleting section 4, it is not intended by the committee to make the Veterans' Canteen Service, which would be established primarily for the benefit of our hospitalized veterans, amenable to the taxes from which it, as an instrumentality of the United States, would be immune under the provisions of the Constitution of the United States. In view of the constitutional immunity, it is not deemed necessary to provide expressly therefor in the text of the bill. Likewise, the proviso contained in section 4 is unnecessary for the reason that the Service would not be immune from Federal excise taxes under existing law.

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