



THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE DEPARTMENT

STATE HOUSE • BOSTON 02133

(617) 725-4000

MITT ROMNEY
GOVERNOR

KERRY HEALEY
LIEUTENANT GOVERNOR

February 3, 2006

BY HAND

Secretary Thomas Kelley
Massachusetts Department of Veterans' Services
600 Washington Street, Suite 1100
Boston, MA 02111

Dear Secretary Kelley:

You have asked whether in light of Goodridge v. Department of Public Health, 440 Mass. 309 (2003), the Massachusetts Department of Veterans' Services ("DVS") is permitted to bury the same-sex spouse of a veteran in the veterans' cemetery in Agawam or Winchendon, Massachusetts. My conclusion is that the DVS is not permitted to bury the same-sex spouse of a veteran in either veterans' cemetery unless the spouse is independently eligible for burial under existing federal law and regulations.

Consequently, on behalf of the Governor, the DVS is instructed to deny any application of a same-sex spouse for burial in the Agawam or Winchendon veterans' cemetery unless that individual is independently eligible for burial on a basis recognized by federal law.

I have reached this conclusion for the following reasons.

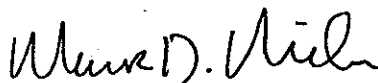
First, federal law and regulations prohibit the burial of same-sex spouses in a veterans' cemetery. See 38 U.S.C. §§ 101(3), 2408(c); 38 C.F.R. § 39.5(a); 1 U.S.C. § 7. This interpretation is confirmed by a legal opinion prepared by the U.S. Department of Veterans Affairs, which is the federal agency in charge of promulgating rules and regulations governing veterans' cemeteries. Notably, the federal agency concluded that if a same-sex spouse were to be so buried in Agawam or Winchendon, the cemetery would cease to operate as a veterans' cemetery and the Commonwealth could stand to lose grant funding previously provided by the federal government to the Commonwealth for cemetery construction and expansion. See 38 U.S.C. § 2408(b)(3). DVS has estimated that this amount could exceed \$20 million.

Second, state law (as set forth in § 354 of the 1999 fiscal year budget) provides that interment eligibility shall be in accordance with federal law and regulations. See 1998 Mass. Acts 194 (approved by the Governor on July 30, 1998). The DVS "Interment Registration Instructions and Requirements for Agawam and Winchendon" likewise explicitly provide that the cemeteries will abide by all federal regulations that govern the operation of veterans' cemeteries without exception.

Third, I am mindful that if the Commonwealth were to take a position contrary to federal law, it would upset the long-held expectations of veterans who expected to be buried in a veterans' cemetery governed by strict federal regulations as to protocol, eligibility, design, and maintenance, among other things. This is unacceptable and unfair to veterans currently interred at Agawam or Winchendon.

Thank you for your prompt attention to this matter.

Sincerely,



Mark D. Nielsen
Chief Legal Counsel