



WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

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VETERANS:

**Whether State Controlled University
or College or Community College can
Be Held Liable For Veterans' Scholarships**

James R. Washburn
Director
Department of Veterans' Affairs
126 West Jefferson Street
P. O. Box 5054
Springfield, Illinois 62705

Dear Director Washburn:

I have your letter in which you ask:

Where a duly qualified veteran is granted a scholarship under section 4.1 of "AN ACT creating the Department of Veterans' Affairs" (P.A. 80-1031, to be codified at Ill. Rev. Stat. 1977, ch. 126 1/2, par. 96.1), but appropriated funds are insufficient to permit the Department of Veterans' Affairs to reimburse the University for the cost of the scholarship, does liability for such cost rest with the University or with the veteran?

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Section 4.1 was previously section 10 of "AN ACT creating the Illinois Veterans' Commission and defining its powers and duties". (Ill. Rev. Stat. 1975, ch. 126 1/2, par. 44a.) The provision in question reads as follows:

"Any person who served in the armed forces of the United States, not including members of the Student Army Training Corps, who at the time of entering service was an Illinois resident or was an Illinois resident within 6 months of entering such service, and who after leaving service returned to Illinois within 6 months, and who has been honorably discharged from such service, and who possesses all necessary entrance requirements shall, except as otherwise provided in this Act, upon application and proper proof, be awarded an Illinois Veteran's Scholarship consisting of the equivalent of 4 calendar years of full-time enrollment including summer terms, to the State-controlled college or university or community college of his choice. * * *

* * *

The holder of a Veteran's Scholarship to the State-controlled college or university or community college of his choice as authorized under this Section, shall not be required to pay any matriculation or application fees, tuition, activities fees, graduation fees, or other fees, except multi-purpose building fees or similar fees for supplies and materials.

Any veteran who has been or shall be awarded a Veteran's Scholarship shall be reimbursed by the appropriate college or university or community college for any fees which he has paid and for which exemption is granted under this Section, if application for such reimbursement is made within 2 months following the school term for which the fees were paid.

* * *

The benefits of this Section shall be administered by and paid for out of funds made available to the Illinois Department of Veterans' Affairs, hereinafter called the Department. The amounts that become due to any State-controlled college or university or community college shall be payable by the Comptroller to such institution on vouchers approved by the Department. The Department, or its designated representative at such institution, shall determine the eligibility of the persons who make application for the benefits provided for in this Section.

* * *

The statute states in clear language that the holder of a veteran's scholarship is not to be required to pay tuition or certain fees; and if a veteran is awarded a scholarship, he is to be reimbursed by the college or university for any fees which he has paid. The legislative intent of the above statute is to provide a tuition-free education to a qualified veteran while he attends a State-controlled college or university or community college. However, since the language of the statute also provides that the benefits of this section are to be paid for out of funds made available to the Department of Veterans' Affairs, there is a question as to with whom primary responsibility for the cost of tuition and fees lies if adequate appropriations are not made to the Department.

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It is my opinion that the primary responsibility lies with the State-controlled college or university or community college. Any veteran awarded a veteran's scholarship is expressly exempted from having to pay tuition and fees, and the appropriate college or university is bound to reimburse the veteran for any fees which he has paid. A close reading of the last paragraph of the quoted provision reveals that the obligation to pay for the cost of the scholarship runs not from the veteran to the institution, but rather from the Comptroller from funds appropriated to the Department of Veterans' Affairs, to the institution. Therefore, the veteran cannot be held liable for tuition and fees, and the college or university must absorb the cost of the veteran's scholarship until funds are made available to the Department of Veterans' Affairs by the legislature as mandated in the statute, or directly to the universities as may be authorized by law.

Prior to 1951 the Auditor of Public Accounts was required to draw warrants on the State Treasurer in favor of those universities and colleges which admitted veterans on scholarships, for the amount of fees and tuition. This provision was deleted by House Bill 745, 67th A. (Laws 1951,

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p. 951.) The colleges and universities then absorbed the cost until the General Assembly began appropriating money for the scholarships to the Illinois Scholarship Commission. When this practice began no substantive changes in the right of a veteran to a scholarship were made.

When the administration of the scholarship program was shifted to the Veterans' Commission by Public Act 79-372, the provision that the benefits should be paid out of funds appropriated to the Commission was added. I do not think that the General Assembly meant by this action to limit the number of scholarships or require a veteran, otherwise qualified for a scholarship, to be denied one for lack of appropriated funds. This was an accounting or budgeting device to show what veterans' scholarships were costing the State. Otherwise, the true cost was lost in the budgets of the various State universities. The General Assembly has previously recognized its obligation to pay the full amount of veterans' scholarships. See P.A. 77-2831.

An argument can be made that veterans' scholarships should be limited to the amount appropriated to the Department. Section 30 of "AN ACT in relation to State finance" (Ill.

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Rev. Stat. 1975, ch. 127, par. 166) provides as follows:

"No officer, institution, department, board or commission shall contract any indebtedness on behalf of the State, nor assume to bind the State in an amount in excess of the money appropriated, unless expressly authorized by law."

However, the provision for awarding scholarships falls within the exemption as "expressly authorized by law". This section is based on section 19 of article IV of the Constitution of 1870. In interpreting that section, the Supreme Court stated in Fergus v. Brady (1917), 277 Ill. 272, 279:

" * * * [B]y the plain language of the constitution every claim or contract is utterly void if not within the amount of appropriations already made, unless there is express authority of law for the creation of the debt or claim or the making of the contract. In section 19 claims under any agreement or contract made by express authority of law are excepted, and if there is some particular and specific thing which an officer, board or agency of the State is required to do, the performance of the duty is expressly authorized by law. That authority is express which confers power to do a particular, identical thing set forth and declared exactly, plainly and directly, with well defined limits, and the only exception under which a contract exceeding the amount appropriated for the purpose may be valid is where it is so expressly authorized by law. An express authority is one given in direct terms, definitely and explicitly, and not left to inference or to implication, as distinguished from authority which is general, implied or not directly stated or given. An example of such express authority is found in one of the deficiency appropriations to the Southern Illinois penitentiary which had been paid, and serves only as an illustration. The authorities in control of the penitentiary are required by law to receive, feed, clothe and guard prisoners convicted of crime and placed in

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their care, involving the expenditure of money, which may vary on account of the cost of clothing, food and labor beyond the control of the authorities, and which could not be accurately estimated in advance for that reason or by determining the exact number of inmates. * * *

Similarly, the Department is required to award scholarships to veterans. While the scholarship is awarded for four years of full-time enrollment, the veteran has a period of twelve years in which to use it. Thus, there may be a number of outstanding scholarships which are not currently being used. The Department cannot control the use and thus cannot accurately anticipate the amount of funds which should be appropriated. See also Antle v. Tuchreiter (1953), 414 Ill. 571 at 579 and 581, wherein the court stated that where a statute categorically commands the performance of an act, so much money as is necessary to pay the command may be disbursed without explicit appropriation.

I therefore am of the opinion that veterans are not liable for fees and expenses covered by a veteran's scholarship even if the General Assembly fails to appropriate enough funds.

Very truly yours,

A T T O R N E Y G E N E R A L