OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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FILE NO. 02-003

SPECIAL SERVICES:
Residency Requirement for
Veterans' Educational Benefits

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The Honorable Joseph P. Hettel
State's Attorney, LaSalle County
707 East Etna Road, Room 251
Ottawa, Illinois 61350

Dear Mr. Hettel:

I have your letter wherein you inquire regarding the constitutionality of section 30-14.2 of the School Code (105 ILCS 5/30-14.2 (West 2000)), to the extent that it conditions the award of POW/MIA scholarships upon the residency of a veteran or serviceperson at or near the time that he or she entered service. For the reasons hereinafter stated, it is my opinion that because such conditions in similar statutes of other jurisdictions have been held to be unconstitutional on equal protection and other grounds by the Supreme Court, the restriction in the Illinois statute is likewise invalid.

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Section 30-14.2 of the School Code provides, in pertinent part:

> "(a) Any spouse, natural child, legally adopted child, or any step-child of an eligible veteran or serviceperson who possesses all necessary entrance requirements shall, upon application and proper proof, be awarded a MIA/POW Scholarship consisting of the equivalent of 4 calendar years of full-time enrollment including summer terms, to the state supported Illinois institution of higher learning of his choice, subject to the restrictions listed below.
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> 'Eligible veteran or serviceperson' means any veteran or serviceperson who has been declared by the U.S. Department of Defense or the U.S. Department of Veterans' Affairs to be a prisoner of war, be missing in action, have died as the result of a service-connected disability or be permanently disabled from service-connected causes with 100% disability and who at the time of entering service was an Illinois resident or was an Illinois resident within 6 months of entering such service.
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> * * * "
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> (Emphasis added.)

In several reported cases, the Supreme Court has decided challenges to statutes conditioning the distribution of benefits upon State residence at a fixed point in the past. Two of those cases concerned the distribution of benefits to military veterans. All hold that such provisions violate the equal protection clause of the United States Constitution (U.S. Const., amend. XIV).

In Hooper v. Bernalillo County Assessor (1985), 472 U.S. 612, 105 S. Ct. 2862, the Court held that a New Mexico statute that granted a property tax exemption only to Vietnam veterans who had resided in the State before May 8, 1976, violated the equal protection clause. The Court rejected as irrational the claim that the statute encouraged veterans to settle in the State, since the statute was enacted long after May 8, 1976, and migration cannot be encouraged retroactively. The State also argued that the statute expressed the State's appreciation to "its own" for their military service. The Court responded that while it is legitimate to compensate all veterans for their past contributions, it is not legitimate for the State to single out established residents and reward only them. Newcomers, by establishing bona fide residence in the State, become the State's "own" and may not be discriminated against solely on the basis of the date of their arrival in the State. Hooper v. Bernalillo County Assessor (1985), 472 U.S. 612, 623, 105 S. Ct. 2862, 2868.

New York's restriction of its civil service preference to veterans who entered the armed forces while residing in New York was held unconstitutional in Attorney General of New York v. Soto-Lopez (1986), 476 U.S. 898, 106 S. Ct. 2317. Four justices concluded that the prior residency requirement violated both the

constitutionally protected right to travel and the equal protection clause. Two justices concluded that it was invalid because it failed to meet the rational basis test under the equal protection clause. New York offered four interests in justification of its fixed point residence requirement: (1) encouragement of New York residents to join the armed forces; (2) compensation of residents for service by helping them reestablish themselves upon their return; (3) inducement of veterans to return to the State after service; and (4) employment of a uniquely valuable class of public servants. The Court observed that each goal could be fully served by granting bonus points to all veterans, not just those who were residents of New York at the time they entered service. Further, the first justification was hollow because the statute applied to inductees as well as to enlistees. The second was unavailing because the points were available long after a veteran's return to the State. The third suggested that the State's principal interest was rewarding its residents for service, a goal held to be improper in Hooper v. Bernalillo County Assessor. Lastly, all veterans, not just those who had been residents of New York when they entered service, possessed useful experience that could be valuable to the State. (Attorney General of New York v. Soto-Lopez (1986), 476 U.S. 898, 909-10, 106 S. Ct. 2317, 2324-25.) The court further observed that

members of the armed forces serve the nation as a whole; a State benefits equally from the contributions to national security made by all service personnel. Prior residence has only a tenuous relationship, if any, to the benefit a State receives from all armed forces personnel, and is therefore not a legitimate characteristic upon which to discriminate among them. Attorney General of New York v. Soto-Lopez (1986), 476 U.S. 898, 911, 106 S. Ct. 2317, 2325.

In Zobel v. Williams (1982), 457 U.S. 55, 102 S. Ct. 2309, the non-veteran's benefit case, residents of Alaska challenged a statute that distributed income derived from exploitation of its natural resources to its residents in amounts dependent upon the duration of their residence. The court determined that the statute did not reasonably further a legitimate State purpose, and that the justifications offered by the State were not rationally related to the distinction between recent and long-term residents. Significantly, the court held that the claimed objective of rewarding residents for past contributions is not a legitimate State purpose; the equal protection clause prohibits such an apportionment of State services. Zobel v. Williams (1982), 457 U.S. 55, 63, 102 S. Ct. 2309, 2314.

At least one State court has also invalidated such conditions. In Del Monte v. Wilson (1992), 1 Cal. 4th 1009, 824

P. 2d 632, cert. denied, 506 U.S. 984, 113 S. Ct. 490 (1992), the California Supreme Court held that certain statutes conditioning distribution of State veterans' benefits on California residency at the time of entry into service violated the right to equal protection of the laws because the limitation was not rationally related to a legitimate State purpose. The State sought to justify the residency limitation based upon the State's choice to take care of its own, and because it allegedly compensated and provided assistance to those returning residents who must reintegrate into the civilian economy. The court pointed out that both justifications were specifically rejected in Hooper v. Bernalillo County Assessor and Attorney General of New York v. Soto-Lopez, and noted that benefits under the California statute could be claimed up to 30 years after discharge from service, long after the period of actual disruption and reintegration, and even into the second generation. Del Monte v. Wilson (1992), 1 Cal. 4th 1009, 1021, 824 P. 2d 632, 639, cert. denied, 506 U.S. 984, 113 S. Ct. 490 (1992).

The limitation in section 30-14.2 of the School Code conditioning benefits upon residence in Illinois at or near the time of entry into service does not differ materially from those invalidated in the State statutes discussed in the cases cited above. Section 30-14.2 bases the awarding of scholarships to the

dependents of veterans and servicepersons upon the residency of the veteran or serviceperson at the time of, or within six months of, their entry into service. The Supreme Court has held in each of the three cases in which the issue was considered that a State has no legitimate interest in rewarding long-time residents, to the exclusion of newcomers, for past contributions. The section permanently excludes from its benefits the dependents of veterans who may have chosen to relocate to Illinois even a month or two following the serviceperson's disappearance, death or return with disability.

Based upon the cases cited above, it is my opinion that the provisions of section 30-14.2 of the School Code that condition distribution of scholarships to the dependents of veterans and servicepersons based upon residency in this State at the time the veteran entered service violate the Federal constitutional right to equal protection of the laws.

Sincerely,

JAMES E. RYAN
Attorney General