

1978 S.C. Op. Atty. Gen. 245 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-213, 1978 WL 22681

Office of the Attorney General

State of South Carolina

Opinion No. 78-213

DECEMBER 29, 1978

***1 SUBJECT: Armed Forces, Education**

Veterans must be rated by the Veterans' Administration as permanently and totally disabled in order for their children to qualify for free tuition benefits.

TO: Hoyt B. Hill, Jr.
Director
Department of Veterans' Affairs

QUESTION PRESENTED:

Can the children of veterans who have been rated permanently and totally disabled by the Social Security Administration, Civil Service Administration, State Retirement System, or the Medical Retirement Boards of the various Armed Forces, etc., but not by the Veterans' Administration, qualify for free tuition benefits?

CITATION OF AUTHORITIES:

Act No. 1007 of 1940;

Act No. 114 of 1941;

[Sections 9-1-1540, 42-9-10, and 59-111-20, South Carolina Code of Laws \(1976\);](#)

[10 U.S.C. § 1201;](#)

[42 U.S.C. § 1382c\(a\)\(3\)\(A\) and \(B\);](#)

[Harling v. Board of Commissioners of Police Insurance and Annuity Fund, 205 S.C. 319, 31 S.E.2d 913 \(1944\);](#)

[Jones v. S. C. State Highway Department, 247 S.C. 132, 146 S.E.2d 166 \(1966\);](#)

Army Regulation 535-40, Appendix B;

73 Am.Jur. (2), Statutes, § 194 (1974).

DISCUSSION:

[Section 59-111-20\(5\) of the South Carolina Code of Laws \(1976\)](#), provides for free tuition benefits to children of certain veterans who are 'permanently and totally disabled, as determined by the Veterans' Administration from any cause.'

The question presented is whether the legislature intended for the children of veterans rated as totally and permanently disabled by other agencies, but not by the Veterans' Administration, to qualify.

[Section 59–111–20](#), as quoted above, clearly and unambiguously requires the determination of disability be made by the Veterans' Administration.

A statute is open to construction only where the language used therein requires interpretation or may reasonably be considered ambiguous. Thus, where no ambiguity appears, it has been presumed conclusively that the clear and explicit terms of a statute express the legislative intention. A plain and unambiguous statute is to be applied, and not interpreted, since such a statute speaks for itself, and any attempt to make it clearer is a vain labor and tends only to obscurity. 73 Am.Jur. (2d), [Statutes](#), § 194 (1974); [See, Jones v. S. C. State Highway Department](#), 247 S.C. 132, 146 S.E.2d 166 (1966); [Harling v. Board of Commissioners of Police Insurance and Annuity Fund](#), 205 S.C. 319, 31 S.E.2d 913 (1944).

Since [Section 59–111–20](#) specifies the Veterans' Administration as the rating authority, it must be concluded that the legislature did not intend that ratings by agencies other than the Veterans' Administration should be considered in determining entitlements.

It is obvious that the various agencies have different standards and requirements for determining total and permanent disability. [See, e.g., 42 U.S.C. § 1382c\(a\)\(3\)\(A\) and \(B\)](#) [defining disabled for Social Security benefits]; [Section 9–1–1540, South Carolina Code of Laws \(1976\)](#) [disability retirement under S. C. Retirement System]; Army Regulation 635–40, Schedule B and [10 U.S.C. § 1201](#) [retirement or separation from armed forces for physical disability]; [Section 42–9–10, South Carolina Code of Laws \(1976\)](#) [defines total disability under S. C. Workmen's Compensation Act]. Since an individual may be found totally disabled under, for example, the workmen's compensation laws, but not under the Social Security Act, and vice versa, it is apparent that the legislature, by referring specifically in the statute to a Veterans' Administration determination, was restricting the definition of 'total disability' to one easily ascertained standard, thus avoiding the uncertainties and ambiguities inherent if more than one standard were applicable. It should be noted that the first legislative enactment providing for free tuition benefits to children of totally disabled veterans, Act No. 1007 of 1940, merely provided that:

*2 . . . the Boards of Trustees of all State colleges shall grant free tuition . . . to the children of any such veteran who is totally and permanently disabled.

Act No. 114 of 1941 amended the 1940 Act to provide, *inter alia*, that:

The Boards of Trustees of all State supported education institutions shall grant free tuition to children of World War Veterans who have established legal residence in South Carolina prior to the year 1932, and who have been or may hereafter be declared by the Veterans' Administration to be permanently and totally disabled . . . (Emphasis Added)

If the legislature had intended that total disability could be determined by agencies other than the Veterans' Administration, then certainly it would not have amended Act 1007 of 1940 to provide that the determination was to be made by the Veterans' Administration.

CONCLUSION:

In order for children of a veteran to receive free tuition benefits under [Section 59–111–20](#), the veteran must be rated as totally and permanently disabled by the Veterans' Administration. Absent further legislative enactment, the ratings of other agencies cannot be considered as a basis for granting free tuition under this statute.

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