



ALAN WILSON
ATTORNEY GENERAL

October 30, 2018

S.C. Department of Administration
Howard Metcalf, Director
Division of Veterans' Affairs
1205 Pendleton St., Suite 463
Columbia, SC 29201

Dear Director Metcalf:

We received your letter dated October 19, 2018 for a response. The following is this Office's understanding of your question and our opinion based on that understanding.

Issue (as quoted from your letter):

"Section 59-111-20 provides that qualified children of certain military veterans may receive free tuition at state supported institutions of higher education. Assuming that requirements regarding military service and state residency are met, Section 59-111-20(A) provides in pertinent part that "[a] child of a wartime veteran, upon application to and approval by the South Carolina Department of Veterans Affairs, may be admitted to any state-supported college, university, or post high school technical education institution free of tuition so long as his work and conduct is satisfactory to the governing body of the institution." Additionally, Section 59-111-20(8) requires that the recipient of free tuition "is pursuing any type of undergraduate degree." No money is appropriated by the General Assembly to fund the benefit provided by Section 59-111-20. Rather, the institutions of higher education absorb any costs associated with providing free tuition to the students.

In performing its duties under Section 59-111-20, Veterans Affairs has interpreted the statute to require a child of a veteran to have his or her high school diploma, GED or equivalent to be eligible to receive this benefit. Veterans Affairs' application for the benefit indicates that the "Student must have received High School Diploma, GED, or equivalent PRIOR to submitting this application or the application is invalid and will be discarded" (emphasis in original). While the statute doesn't specifically mention a requirement for a "High School Diploma, GED, or equivalent," Veterans Affairs' position is supported by what seems to be an inherent requirement that a person have completed high school before that person can attend an institution of higher education for the purpose of "pursuing any type of undergraduate degree."

The early college credit programs (sometimes referred to as dual-enrollment programs) at our state's technical colleges allow qualified high school students to receive college credit for certain classes while still attending high school. Even though the students have not completed high school and, as Veterans Affairs understands it, would not be eligible for admission to a degree granting program within an institution of higher education, the credits earned in these early college credit programs can be transferred to four-year colleges upon admission and count towards the credit needed to earn a

bachelor's degree. The credits can also count towards a two-year associates degree. The technical colleges charge tuition for classes taken in early college credit programs. In some cases, the student is responsible for paying the tuition and, apparently, in some cases the student's home school district pays on the student's behalf. Given the above interpretation of Section 59-111-20, Veterans Affairs has determined that high school students enrolled in early college credit programs are not entitled to the free tuition benefit provided for therein.

Because of the uncertainty in the application of Section 59-111-20 to early college credit programs and because our decision could impact the budgets of the colleges involved, we are asking for an opinion clarifying the application of this statute. Specifically, we ask for an opinion on the following question: is a student, prior to graduating from high school, who is admitted to an early college credit or dual-enrollment program at a technical college, eligible for free tuition pursuant to S.C. Code Ann. Section 59-111-20?"

Law/Analysis:

Let us begin by examining the statute South Carolina Code Ann. § 59-111-20 which states that:

(A) A child of a wartime veteran, upon application to and approval by the South Carolina Department of Veterans Affairs, may be admitted to any state-supported college, university, or post high school technical education institution free of tuition so long as his work and conduct is satisfactory to the governing body of the institution, if the veteran was a resident of this State at the time of entry into service and during service or has been a resident of this State for at least one year and still resides in this State or, if the veteran is deceased, resided in this State for one year before his death, and provided the veteran served honorably in a branch of the military service of the United States during a war period, as those periods are defined by Section 101 of Title 38 of the United States Code and:

- (1) was killed in action;
- (2) died from other causes while in the service;
- (3) died of disease or disability resulting from service;
- (4) was a prisoner of war as defined by Congress or Presidential proclamation during such war period;
- (5) is permanently and totally disabled, as determined by the Veterans Administration from any cause;
- (6) has been awarded the Congressional Medal of Honor;
- (7) is missing in action;
- (8) the applicant is the child of a deceased veteran who qualified under items (4) and (5); or
- (9) has been awarded the Purple Heart for wounds received in combat."

(B) The provisions of this section apply to a child of a veteran who meets the residency requirements of Chapter 112 of this title, is twenty-six years of age or younger, and is pursuing any type of undergraduate degree.

Credits

HISTORY: 1962 Code § 22-56; 1952 Code § 22-56; 1942 Code § 5711; 1932 Code § 5711; 1930 (36) 1287; 1938 (40) 1882; 1940 (41) 1911; 1941 (42) 148; 1947 (45) 41; 1965 (54) 330; 1968 (55) 2821; 1969 (56) 126; 1972 (57) 2163; 1974 (58) 2077; 1976 Act No. 727, § 1; 1978 Act No. 445, § 1; 1993 Act No. 151, § 1; 2001 Act No. 39, § 2.

S.C. Code Ann. § 59-111-20 (1976 Code, as amended) (emphasis added). This Office has examined this statute and its previous versions in prior opinions. See, e.g., Ops. S.C. Att’y Gen., 1993 WL 379441 (S.C.A.G. August 18, 1993); 1983 WL 182052 (S.C.A.G. November 10, 1983); 1982 WL 189266 (S.C.A.G. April 26, 1982); 1978 WL 22681 (S.C.A.G. December 29, 1978). As a background regarding statutory interpretation, the cardinal rule of statutory construction is to ascertain the intent of the General Assembly and to accomplish that intent. Hawkins v. Bruno Yacht Sales, Inc., 353 S.C. 31, 39, 577 S.E.2d 202, 207 (2003). The true aim and intention of the legislature controls the literal meaning of a statute. Greenville Baseball v. Bearden, 200 S.C. 363, 20 S.E.2d 813 (1942). The historical background and circumstances at the time a statute was passed can be used to assist in interpreting a statute. Id. An entire statute’s interpretation must be “practical, reasonable, and fair” and consistent with the purpose, plan and reasoning behind its making. Id. at 816. Statutes are to be interpreted with a “sensible construction,” and a “literal application of language which leads to absurd consequences should be avoided whenever a reasonable application can be given consistent with the legislative purpose.” U.S. v. Rippetoe, 178 F.2d 735, 737 (4th Cir. 1950). The dominant factor concerning statutory construction is the intent of the Legislature, not the language used. Spartanburg Sanitary Sewer Dist. v. City of Spartanburg, 283 S.C. 67, 321 S.E.2d 258 (1984) (citing Abell v. Bell, 229 S.C. 1, 91 S.E.2d 548 (1956)).

South Carolina Code Ann. § 59-111-20 dates back to 1930. See S.C. Act No. 765, p.1287 (1930 Acts & Resolutions). This Office has previously opined regarding § 59-111-20 that it “is grounded upon principles of a humane public policy, and it unquestionably has a benevolent purpose, i.e., to assist in obtaining a college education for the children of South Carolinians who, for example, were killed in action while in the military service of this country during a time when it was at war” and that “[a] liberal construction is generally accorded statutes which are regarded ... as humanitarian and beneficial, ... or which have a benevolent ... purpose Such a statute should be given a favorable construction to the end that its manifest humanitarian and benevolent purpose may be effectuated to the fullest extent compatible with its terms. [50 Am. Jur. Statutes § 396 at 420–421].” Ops. S.C. Att’y Gen., 1993 WL 379441 (S.C.A.G. August 18, 1993) (quoting Ops. S.C. Att’y Gen., 1980 WL 120758 (S.C.A.G. June 30, 1980); 1970 WL 12176 (S.C.A.G. April 29, 1970)). Further quoting from the April 29, 1970 opinion, we previously opined that:

A liberal construction of the terms of [the statute] would effectuate its ‘manifest humanitarian and beneficent purpose.’ On the other hand, a strict construction of the statute’s terms would thwart its purpose, and possibly, even defeat it.

Op. S.C. Att’y Gen., 1970 WL 12176 (S.C.A.G. April 29, 1970). We believe that same benevolent purpose of providing for the undergraduate higher education of children of wartime veterans who were killed in battle (or otherwise qualify as outlined in the statute) exists today as the purpose of the statute. S.C. Code Ann. § 59-111-20.

This Office previously noted that as of June 14, 1993, § 59-111-20 limited free tuition to the pursuit of an undergraduate degree. Op. S.C. Att’y Gen., 1993 WL 379441 (S.C.A.G. August 18, 1993); 1993 S.C. Act No. 151, § 1. It appears the original 1930 statute was titled:

“AN ACT to Exempt Orphan Children Whose Father were Soldiers and Died in the World War From the Payment of Tuition in Any of the Public or State Supported Schools, Colleges, and Universities of South Carolina, and to Provide for the Aid for Such Children in Securing an Education.”

S.C. Act No. 765, p.1287 (1930 Acts & Resolutions). The original statute read as follows (in part):

Section 1. Purpose of Sum Provided—Children of World War Veterans Who Died During Certain Period to Get Free Tuition.—Be it enacted by the General Assembly of the State of South Carolina r: The sum provided in this Act shall be used for the sole purpose of providing for board and room rent, and books and supplies, for the use and benefit of the children of those who entered the service of the United States from South Carolina and were killed in action or died from other cause within the period from April 6, 1917, to July 2, 1921, while service in the Army, Navy, Marine Corps or other branch of the military service of the United States ; which children are attending or may attend a State College or University. Said children, upon recommendation of the State Board of Education, shall be admitted to any State supported college or university fee of tuition.

§ 2. Appropriation.—The sum of Two Thousand (\$2,000.00) Dollars, if so much be needed, shall be included in each annual appropriation bill from the year 1930 to the year 1942, inclusive, for the purpose of carrying out the provisions hereof.

§ 3. Eligibility.—The State Board of Education shall determine the eligibility of any child who applies for aid hereunder, and before allowing such aid shall ascertain that such applicant is in need of such financial assistance.

§ 4. Limit Per Child per Year.—Not more than the sum of One Hundred and Fifty Dollars shall be paid under the provisions hereof for any one such child during any one year, and any fund paid out under the provisions hereof shall be payable to such college or university as such child may attend on vouchers approved by the State Board of Education.

§ 5. Scholarship of a Child.—If any child receiving such aid shall fail to pass one or more subjects while in attendance upon any college or university, the State Board of Education shall thereafter deny aid to such child. ...

S.C. Act No. 765, p.1287 (1930 Acts & Resolutions). It appears from reading the language in the original Act, the General Assembly intended to pay not only tuition but room, board, books and supplies with a per capita annual limit of one hundred fifty (\$150/person). Id. Examining the current version of the statute, it reads as follows: “admitted to any state-supported college, university, or post high school technical education institution free of tuition so long as his work and conduct is satisfactory to the governing body of the institution,” and the requirement is that the student “is pursuing any type of

undergraduate degree.” S.C. Code Ann. § 59-111-20 (emphasis added). Please note there is not a per capita annual limit on assistance listed in the current version of the statute. *Id.* The statute, in its current version, clearly requires the “pursuit of any type of undergraduate degree.” S.C. Code Ann. § 59-111-20. This Office believes one could legally argue a high school student is enrolled in a dual enrollment program with a college and a high school at the same time with the intention of using the credits earned toward the pursuit of an undergraduate degree. Nevertheless, where a student is not “enrolled” in an undergraduate program such as in a dual enrollment program, we do not believe a court would find the student to be “pursuing any type of undergraduate degree.” S.C. Code Ann. § 59-111-20. Conversely, see South Carolina Code Ann. § 59-111-110 regarding the children of firemen, law-enforcement officers and government employees totally disabled or killed in line of duty (“[t]he tuition authorized to be paid by this section applies only to undergraduate courses or curriculum and may be paid for a period not exceeding four years, regardless of the number of state-supported colleges, universities, or state-supported vocational or technical schools the child attends.”). S.C. Code Ann. § 59-111-110 (emphasis added).

Nevertheless, even with the disappearance of the per capita monetary annual limit as shown in the current version of § 59-111-20, there seems to be an implicit requirement, as expressed by the language in the current version of the statute that “so long as his work and conduct is satisfactory to the governing body of the institution” that the tuition waiver be granted for good faith work toward an undergraduate degree. *Id.* The fact that the current version of the statute requires no annual monetary limit per student, nonetheless, does not negate that the General Assembly intends an unlimited and unchecked pursuit of an undergraduate degree. It is clear from the current version of the statute that the General Assembly intends that the “governing body of the institution” bears the onus of monitoring the student’s “work and conduct” to its implicitly subjective satisfaction. S.C. Code Ann. § 59-111-20. And certainly, as we noted regarding this statute in our August 18, 1993 opinion, “deference is given to a state agency charged with the responsibility of interpreting and applying the laws under which it operates.” *Op. S.C. Att’y Gen.*, 1993 WL 379441 (S.C.A.G. August 18, 1993). Lastly, this Office previously opined that “[o]n April 23 Representative Molly Spearman introduced and explained an Amendment to subsection (B) [of § 59-111-20], that replaced the word “Baccalaureate” with “any type of undergraduate” when referring to the degree that could be pursued.” *Id.* Thus, the legislative history, as understood and articulated in the August 18, 1993 opinion, supports enrollment at any “state-supported college, university, or post high school technical education institution” in South Carolina. *Id.*; S.C. Code Ann. § 59-111-20.

Conclusion:

Yes, this Office believes a court will find, in the absence of legislative clarification to the contrary, that South Carolina Code Ann. § 59-111-20 has a benevolent purpose, which is to provide financially for the tuition for the undergraduate higher education of children of a wartime veteran who have a parent who was killed in action (or otherwise meets the qualifications of South Carolina Code Ann. § 59-111-20) and as such, should construe a liberal and favorable construction of § 59-111-20 to children of a wartime veteran to conclude that each “enrollment” program, such as in a dual enrollment program where the child is enrolled in high school and college at the same time for a class or classes, should qualify for free tuition as “pursuing any type of undergraduate degree” on a case-by-case basis as determined by the “governing body of the institution” as long as the class is in further pursuit of “any type of undergraduate degree” and as long as the student’s[s] “work and conduct is satisfactory to the governing body of the institution.” S.C. Code Ann. § 59-111-20. In reaching this conclusion, we considered, among other things, the following:

Howard Metcalf, Director
Page 6
October 30, 2018

- 1) the benevolent purpose of § 59-111-20;
- 2) the fact that the statute does not limit its tuition waiver to four years as in § 59-111-110 regarding the children of firemen, law-enforcement officers and government employees totally disabled or killed in line of duty; and
- 3) that the legislative history supports tuition waiver for enrollment at any “state-supported college, university, or post high school technical education institution” in South Carolina.

Id. Nevertheless, this Office certainly welcomes legislative clarification in this matter, as we are merely attempting to interpret the intent of the General Assembly regarding this issue. Moreover, this Office is only issuing a legal opinion based on the current law at this time and the information as provided to us. This opinion is not an attempt to comment on any pending litigation or criminal proceeding. Until a court or the General Assembly specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter. This opinion only addresses some of the sources in the subject area, but we can address other authority or additional questions in a follow-up opinion. Additionally, you may also petition the court for a declaratory judgment, as only a court of law can interpret statutes and make such determinations. See S.C. Code Ann. § 15-53-20. If it is later determined otherwise, or if you have any additional questions or related issues, please let us know.

Sincerely,



Anita (Mardi) S. Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General