



ALAN WILSON
ATTORNEY GENERAL

July 1, 2020

Mr. Joseph S. McLamb
Chief of Staff
South Carolina Department of Veterans' Affairs
1205 Pendleton Street, Suite 369
Columbia, SC 29201

Dear Mr. McLamb:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter asks the following:

Please accept this request for an opinion from your office regarding the interpretation of S.C. Code Ann. § 112 as it pertains to establishing residency as required in Section 59-111-20(B).

Mr. [H] is an employee of the Citadel, which qualifies his daughter ... for in-state tuition rates (59-112-20(B)). He argues that the residency requirements for the free tuition for certain veterans' children program (Free Tuition) are the same as those for in-state tuition. While we agree that [the employee's daughter] is entitled to in-state tuition, we are uncertain that qualifying for in-state tuition because Mr. [H] is a state employee would be enough to settle the residency requirements under the Free Tuition Program.

This Office understands the issue is essentially whether meeting the requirements of S.C. Code § 59-111-20(B), including establishing under residency according to Chapter 112 of Title 59, alone qualifies an applicant to attend a college, university, or post high school technical education institution free of tuition.

Law/Analysis

It is this Office's opinion that a court would likely find that establishing eligibility to attend a state supported college, university, or post high school technical education institution free of tuition under the provisions of S.C. Code § 59-111-20 requires an applicant to meet the criteria of both subsections (A) and (B) thereunder. Section 59-111-20 reads as follows:

(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.

This statute providing admission free of tuition for the children of certain veterans has been amended several times since its enactment in 1930. See 1930 (36) 1287. Act 765 of 1930 originally applied only to “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 serving in the Army, Navy, Marine Corps, or other branch of the military service of the United States.” This limited class was expanded over the years and by 1978 included not only the children of a veteran who was killed in action or died from other causes in the service, but also included children of those veterans who were prisoners of war,

missing in action, permanently and totally disabled, or had been awarded the Congressional Medal of Honor. See S.C. Code § 59-111-20 (Supp. 1979).

Subsection (B) was added to section 59-111-20 in 1993. Rather than expanding eligibility, subsection (B) established an age limit and additionally restricted the free tuition benefit to undergraduate degrees. See 1993 Act No. 151, § 1. Attorney General Medlock's August 18, 1993 opinion to Bill J. Sams, Director of the South Carolina Department of Veteran's Affairs discussed the 1993 amendment's impact on section 59-111-20:

Briefly stated, § 59-111-20 provides free tuition benefits to the children of certain war veterans, who must qualify under the provisions of that law. The tuition is allowed at State supported colleges, universities and technical schools. Under the statute, prior to June 14, 1993, a student could attend both undergraduate and graduate work. The new amendment contains a new subparagraph limiting the type of degree, and inserting for the first time the age requirement:

B. The provisions of this section apply to a child of a veteran who ... is twenty-six years of age or younger, and is pursuing any type of undergraduate degree.

Op. S.C. Att'y Gen., 1993 WL 379441, 1 (August 18, 1993).

Effective June 14, 1993 the Governor approved the General Assembly's revision of the law. The new statute requires an eligible child to be of a "wartime" veteran, and specifically states that the application must be made to and approved by the Department. It codifies the age limit of twenty-six years. The list of criteria the veteran must meet are the same in the new statute. However, § 59-111-20(B) limits, for the first time, the free tuition to an undergraduate degree.

Id. at 3. The opinion interpreted subsection (A) to establish a list of criteria that the veteran must meet and subsection (B) included separate criteria for the child of the veteran must also meet to qualify for tuition free admission under the statute. Id. This conclusion is supported by the title of the 1993 amendment which reads:

AN ACT TO AMEND SECTION 59-111-20, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO FREE TUITION FOR CERTAIN VETERANS' CHILDREN, SO AS TO REQUIRE THAT THE VETERAN WAS A WARTIME VETERAN, TO DELETE THE EIGHTEEN-YEAR RESIDENCY REQUIREMENT OF THE VETERAN, AND TO APPLY THE FREE TUITION TO A STUDENT WHO IS UNDER TWENTY-SIX YEARS OF AGE WHO

ALSO MEETS THE RESIDENCY REQUIREMENTS OF EDUCATIONAL
PURPOSES AND IS PURSUING AN UNDERGRADUATE DEGREE.

1993 Act No. 151 (emphasis added). The emphasized portion of the title references the amendments to subsection (A) and described those changes as applying to requirements “of the veteran.” In contrast, the three requirements in subsection (B), (1) meeting the residency requirements of Chapter 112 of Title 59, (2) being twenty-six year of age or younger, (3) pursuing any undergraduate degree, apply to the child of the veteran.

The scenario recounted in the request letter states that the Department determined that a child of a veteran qualifies for in-state tuition rates under S.C. Code § 59-112-20(B). While this determination would satisfy one of the requirements of subsection 59-111-20(B), namely meeting the residency requirements of Chapter 112 of Title 59, to qualify for admission free of tuition, the child of the veteran would also have to be twenty-six years of age or younger, be pursuing an undergraduate degree, and the veteran would also have to satisfy the requirements of subsection 59-111-20(A). The residency requirement in subsection (A) is distinct from that in subsection (B). Specifically, the veteran must have been “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.” *Id.* Therefore, determining a child of a veteran’s eligibility for admission free of tuition at a state supported college, university, or post high school technical education institution under S.C. Code § 59-111-20 requires meeting additional requirements beyond establishing residency under S.C. Code § 59-112-20.

Conclusion

It is this Office’s opinion that a court would likely find that establishing eligibility to attend a state supported college, university, or post high school technical education institution free of tuition under the provisions of S.C. Code § 59-111-20 requires an applicant to meet the criteria of both subsections (A) and (B) thereunder. Attorney General Medlock’s August 18, 1993 opinion to Bill J. Sams, Director of the South Carolina Department of Veteran’s Affairs discussed the 1993 amendment to Section 59-111-20 which added subsection (B). Op. S.C. Att’y Gen., 1993 WL 379441 (August 18, 1993). Therein, we interpreted subsection (B) to incorporate the residency requirements from Title 59, Chapter 112, establish an age restriction of twenty-six years, and limit free tuition to undergraduate degrees. *Id.* at 3. While the child of a veteran must satisfy the requirements of subsection (B), the opinion also concluded that the veteran must satisfy the service requirement and the separate residency criteria listed in subsection (A). *Id.* (“The list of criteria the veteran must meet are the same in the new statute.”); S.C. Code § 59-112-20(A) (The veteran must have been “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

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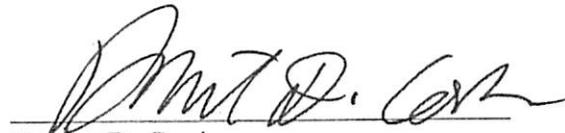
still resides in this State or, if the veteran is deceased, resided in this State for one year before his death.”).

Sincerely,



Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General