

Opinion No. 75-07

January 30, 1975

BY: OPINION OF TONEY ANAYA, Attorney General

TO: Honorable Thomas J. Horan State Representative Legislative-Executive Building
Santa Fe, New Mexico 87503 Honorable Thomas P. Foy State Representative
Legislative-Executive Building Santa Fe, New Mexico 87503

QUESTIONS

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Does House Bill 57 creating a Vietnam veterans' scholarship program satisfy the constitutional requirements of Article IX, Section 14?

CONCLUSION

No.

OPINION

{*39} ANALYSIS

The 1971 amendment to Article IX, Section 14 of the New Mexico Constitution permits the establishment of a Vietnam veterans' scholarship program consistent with the limitations of the antidonation policy set forth therein, to wit:

"Sec. 14 [Aid to private enterprise.]

Neither the state, nor any county, school district, or municipality, except as otherwise provided in this Constitution, shall directly or indirectly lend or pledge its credit, or make any donation to or in aid of any person, association or public or private corporation, . . . Provided, nothing herein shall be construed to prohibit . . . the state from establishing a veterans' scholarship program for Vietnam conflict veterans who are post-secondary students at educational institutions under the exclusive control of the state by exempting such veterans from the payment of tuition. . . ."

The amendment does, however, list with notable particularity the requirements and conditions of a qualifying program. It is our opinion that any scholarship program enacted pursuant to the amendment must conform substantially to the particular terms of the amendment. These terms dictate essentially (1) the class of educational institutions to which scholarships may be given; (2) the nature of the scholarship aid itself; and (3) the persons eligible to receive scholarships.

(1) The amendment to Article IX, Section 14 limits the institutions at which the scholarship program may be established to those "under the exclusive control of the state." House Bill 57, as drafted, permits applying the scholarship "at any accredited educational institution in this state" (Section 3.A.). The language of the Article IX, Section 14 {40} amendment was obviously designed to conform to the Aid of Charities provision of the New Mexico Constitution, Article IV, Section 31, which requires that

"No appropriation shall be made for charitable, educational or other benevolent purposes to any person, corporation, association, institution or community, **not under the absolute control of the state**, but the legislature may, in its discretion, make appropriations for the charitable institutions and hospitals, for the maintenance of which annual appropriations were made by the legislative assembly of nineteen hundred and nine." (emphasis supplied)

While there is no constitutional or statutory definition of "accredited institutions," the term is generally used to describe any educational institutions approved by the North Central Association, a quasi-public regional accrediting agency. It is reasonable to assume, however, that the class of "accredited institutions" is larger than the class of institutions under the "exclusive control of the state," and, that Article IX, Section 14, is clearly intended to apply only to the more restrictive classification.

It is our opinion, therefore, that Section 2.A. of House Bill 57 must be amended to read: " 'educational institution' means any postsecondary educational institution in New Mexico under the exclusive control of the state." We suggest further that the term "accredited" be appropriately defined and that the term "educational institution" be substituted for the term "institution" in line 11 on page 2 (Section 3.A.).

(2) With respect to the nature of the donation itself, Article IX, Section 14, specifies that the scholarship be in the form of an exemption from tuition. House Bill 57, on the other hand, provides for direct payment to the veteran of a tuition voucher equivalent to as much as \$ 250.00. Although the House Bill procedure for awarding the scholarship does not necessarily conflict substantively with the terms of the amendment to Article IX, Section 14, it is our opinion that the bill be redrafted to include a more direct tuition exemption procedure. This suggestion is based on two considerations. First, that in construing the anti-donation clause, courts are more prone to find a violation when the "donation" is in the form of an outright cash gift. See **State v. Hannah**, 63 N.M. 110, 314 P.2d 714 (1957) and **State v. Axtell**, 74 N.M. 339, 393 P.2d 451 (1964). While the amendment to Article IX, Section 14 clearly authorizes scholarship aid to veterans, it is still an exception to the anti-donation clause and should be held to conform as much as is practicable to the principle expressed by that clause and the interpretation given it by the courts.

Secondly, a grant procedure which may have been necessary for a program applicable at any accredited institution, is not necessary in light of the restriction limiting the program to institutions under the exclusive control of the state. With this restriction, tuition exemption is the more appropriate procedure.

(3) House Bill 57 conforms in all necessary respects with the terms of the amendment to Article IX, Section 14, designating those persons eligible for scholarship aid and we find no difficulties in this regard.

While we conclude here that a {*41} strict construction of the amendment to Article IX, Section 14 is necessary, we are, of course, mindful that the anti-donation clause itself must generally admit a construction "more in keeping with the theory of a growing, living constitution." **State v. Lavender**, 69 N.M. 220, 230, 365 P.2d 652 (1961). Whatever arguments may be made in favor of a less literal construction, permitting a broader scholarship program on the grounds of progress, relevancy or public interest cannot be sustained in this case because of the very particular limitations of the amendment. When in the context of a constitutional provision, a restricted meaning is so clearly intended, it cannot be ignored. **Wylie Bros. C.C. v. Albuquerque-Bernalillo C.A.C.B.**, 80 N.M. 633, 639, 459 P.2d 159 (1969).

By: Jill Z. Cooper

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