

Opinion No. 88-60

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OPINION OF: HAL STRATTON, Attorney General

BY: E. Maine Shafer, Jr., Assistant Attorney General

TO: Ms. Ida Fernandez, Regent, Eastern New Mexico University, P.O. Box 27020, Albuquerque, New Mexico 87125-27020

QUESTIONS

Is the New Mexico Educational Assistance Foundation authorized under the Educational Assistance Act to make insured student loans to nonresidents who are enrolled in eligible educational institutions within New Mexico?

CONCLUSIONS

Yes.

ANALYSIS

The Higher Education Act of 1965 ("Act"), Pub. L. No. 89-329, 79 Stat. 1240, as amended, provides various incentives for states and nonprofit organizations to make student loans. 42 U.S.C. § 1071. In particular, the Act authorizes the United States Secretary of Education to subsidize interest payments on loans that are insured under a state's or nonprofit organization's student loan program. 42 U.S.C. § 1078(b). Before the Secretary will subsidize interest payments, however, the Act requires that the program must provide "no restrictions with respect to the insurance of loans for students who are otherwise eligible for loans under such a program if such a student is accepted for enrollment in or is attending an eligible institution within the state." Id. § 1078(b)(1)(S). We believe this provision prohibits subsidies where the program will not insure loans issued to students of an in-state educational institution who are not residents of that state.

The purpose of the Educational Assistance Act, Section 21-2A-1 to 21-21A-23 NMSA 1978, is "to promote the public welfare and prosperity of the people of New Mexico by stimulating the availability of financial assistance for post-secondary education so as to give the people of New Mexico greater higher education opportunities." Section 21-21A-2. Section 21-21A-5 authorizes a majority of the state's four-year institutions of higher education to form a nonprofit foundation, and states:

[T]he purpose of the foundation authorized pursuant to this section is to improve the educational opportunities of residents of New Mexico, who are citizens of the United States, by providing financial assistance to qualified persons, including but not limited to

a program of making, financing, purchasing, holding and selling insured educational loans.

Pursuant to Section 21-21A-5, a number of New Mexico higher education institutions formed the New Mexico Educational Assistance Foundation.

Section 21-21A-6(F) directs the Foundation to adopt by-laws "governing the conduct of the foundation in the performance of its duties under the Educational Assistance Act ... and the federal Higher Education Act of 1965, as amended." Section 21-21A-7 states:

The foundation shall have all the powers necessary and convenient to carry out its purposes under the Educational Assistance Act [21-21A-1 to 21-21A-23 NMSA 1978], including the following powers:

- A. To make or participate in the making of insured student loans...;
- B. To sell or participate in the sale of insured student loans to the student loan marketing association or to other purchasers, in conformity with the Higher Educational Act of 1965, as amended...;

....

- G. To adopt and publish rules and regulations ... respecting the foundation's insured student loan program and such other rules and regulations as are necessary to effectuate the program's purposes and the functions and duties of the foundation....

We understand and assume that making insured student loans, and providing a secondary market for them, is the primary service that the Foundation provides to New Mexicans.

The question is whether the "purpose" language in Sections 21-21A-2 and 21-21A-5 prohibits the Foundation from making insured student loans to nonresidents attending New Mexico educational institutions, and thus bars the Foundation from participating in the federal interest subsidy program. For three reasons, we conclude it does not. First, these sections simply state that the purpose of the Educational Assistance Act is to increase financial assistance opportunities for New Mexico students. They do not, by their terms, prohibit the foundation from making loans to nonresidents, and such a construction would be self-defeating where one means of increasing such opportunities is to participate in the federal program.

Second, each part of a statute should be construed with every other part to ascertain the legislative intent and to make the whole act consistent. *Reed v. Styron*, 69 N.M. 262, 269, 365 P.2d 912, 917 (1961). A statute must, if possible, be construed to give effect to all of its provisions so that one part will not destroy another. *State ex rel. Maloney v. Neal*, 80 N.M. 460, 462, 457 P.2d 708, 710 (1969); *Martinez v. Research Park*, 75 N.M. 672, 677, 410 P.2d 200, 203 (1965), overruled on other grounds, sub nom. *Lakeview*

Invs., Inc. v. Alamogordo Lake Village, Inc., 86 N.M. 151, 520 P.2d 1096 (1974). Interpreting Sections 21-21A-2 and 21-21A-5 to prohibit the Foundation from making or insuring loans to qualified nonresidents would conflict with the intent manifest in Sections 21-21A-6(F) and 21-21A-7(B) that the Foundation participate in the federal program.

Third, a statement-of-purpose clause, or "preamble," such as the purpose statements in Sections 21-21A-2 and 21-21A-5, is a declaration by the legislature of the reasons for passing the statute, and as such it can clarify any ambiguities in the statute. Griffith v. New Mexico Pub. Serv. Comm'n, 86 N.M. 113, 115, 520 P.2d 269, 271 (1974); Continental Oil Co. v. Santa Fe, 25 N.M. 94, (1918). The stated policy reasons behind a statute are to be considered in interpreting an act, but they are not meant to create a limitation that the Act does not otherwise contain. Griffith, 86 N.M. at 115, 520 P.2d at 271. See also 2A N. Singer, Sutherland Statutory Construction 47.04 (4th ed. 1984). Because we believe other parts of the Educational Assistance Act reveal an intent to authorize the Foundation to participate in the federal program, we will not construe Sections 21-21A-2 and 21-21A-5 to prohibit such participation.

Accordingly, we conclude that the Educational Assistance Act does not prohibit the Foundation from making insured student loans to otherwise eligible nonresidents enrolled in eligible New Mexico educational institutions.

ATTORNEY GENERAL

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