

Opinion No. 45-4758

July 19, 1945

BY: C. C. McCULLOH, Attorney General

TO: Mr. D. K. Dalager, Manager Veterans' Administration Albuquerque, New Mexico

{*108} In your letter dated July 3, 1945, you refer to Part VIII of Public Law 346, 78th Congress, commonly known as the "G. I. Act," and also refer to service letter dated March 7, 1945, issued by the Administrator regarding payments under this law. You inquire whether the University of New Mexico is authorized to charge resident veterans of the State tuition rates applicable to non-resident students.

Under Section 55-2410 of the 1941 Compilation it is provided:

"The University shall be open to the children of all residents of this state, and such others as the Board of Regents may determine, under such rules and regulations as may be prescribed by said board, whenever the finances of the institution shall warrant it, and it is deemed expedient by said Board of Regents."

{*109} Section 55-2802 of the 1941 Compilation fixes a minimum charge which may be required by the Board of Regents for resident students, and a minimum charge for non-resident students.

In Veterans' Administration, Instruction No. 6, Section 2, subsection (A) (2), this language appears:

"Institutions which have non-resident tuition may, if they so desire, charge for each veteran enrolled under Part 8, such customary tuition and resident fees as are applicable to all non-resident students, provided that the charges are not in conflict with existing laws or other legal requirements."

Since the Board of Regents of the University has broad powers to make contracts and manage the institution generally, and since there is no statutory or constitutional prohibition against classifying all veterans who participate under the training program of the G. I. Bill, and at the expense of the Federal Government, in a single category. I am of the opinion that the Board of Regents can legally make a contract with the Federal Government and charge all veteran trainees a tuition fee equal to the non-resident fee ordinarily charged. Of course, if a veteran presents himself as a resident in his own behalf, the University could only charge him a resident tuition, the same as other resident students; but where a large influx of students is likely to result from the training program sponsored and financed by the Federal Government under the G. I. Bill, it seems to me that the Board of Regents is justified in classifying all veteran trainees, whether resident or non-resident, in the same category. This is especially true where the non-resident tuition fee charged at the present time is far below the actual cost of

instruction given at the University and, under the present circumstances, I believe the Board of Regents would be justified in negotiating a contract with the Administrator, whereby the Federal Government would pay actual costs, as defined and interpreted under the G. I. Bill.