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ATTORNEY GENERAL OPINION NO. 87-106

Mr. Stan Teasley
Executive Director
Kansas Commission on Veterans' Affairs
Jayhawk Tower, Suite 701
700 SW Jackson
Topeka, Kansas 66603

Re: Soldiers, Sailors and Patriotic Emblems -- Kansas
Commission on Veterans' Affairs -- Retroactive
Reimbursement for Dependents

Synopsis: K.S.A. 73-1218 provides that every state-supported institution of post-high school education "shall" provide enrollment, without charge of tuition or fees, to any eligible dependent of a person who died as a result of a service-connected disability suffered during the Vietnam conflict. The legislature's intent and purpose for drafting this statute was to allow all eligible dependents to attend state postsecondary institutions free of charge. Neither K.S.A. 73-1218, nor K.A.R. 97-5-1, the regulation which addresses the procedure to be followed in applying for benefits under K.S.A. 73-1218, contains language setting a date by which an application for benefits must be submitted. Accordingly, an eligible dependent who applies for retroactive educational benefits under K.S.A. 73-1218 must be reimbursed for fees and tuition, subject only to continued appropriations by the legislature. Cited herein: K.S.A. 73-1217; 73-1218; K.A.R. 97-5-1.

Dear Mr. Teasley:

As Executive Director of the Kansas Commission on Veterans' Affairs (K.C.V.A.), you request our opinion regarding K.S.A. 73-1218. Specifically, you inquire about the legality of retroactively reimbursing an eligible dependent under K.S.A. 73-1218 for fees and tuition incurred during six semesters of postsecondary education in Kansas institutions.

You inform us that the individual is presently enrolled at a state university for the 1987 summer session. The university has been notified that the individual is eligible to receive educational benefits under K.S.A. 73-1218 for this summer and subsequent semesters, not to exceed twelve semesters. However, no determination has been made on the individual's eligibility to receive retroactive benefits under the statute. K.S.A. 73-1218 provides:

" . . . [T]he governing body of every . . . institution of post-high school education which is supported by any state moneys shall provide for enrollment without charge of tuition or fees for any dependent of a person who died as the result of a service-connected disability suffered during the Vietnam conflict as a result of such conflict, so long as such dependent is eligible, but not to exceed twelve (12) semesters of instruction or the equivalent thereof at all such institutions for any person. . . ."
(Emphasis added).

The statute provides that every state-supported institution of post-high school education "shall" provide enrollment without charge of tuition or fees to any eligible dependent. We believe use of the word "shall", rather than "may", reflects legislative intent that all eligible dependents of deceased Vietnam veterans be allowed to attend postsecondary institutions free of charge. This conclusion is supported by the supplemental information the Senate Committee on Education provided with the bill, which states:

"S.B. 764 provides that dependents of persons who were residents of Kansas at the time of entry into the armed services and who were killed in action during the Vietnam conflict, as a result of that

conflict, are to be admitted to publicly supported Kansas postsecondary institutions without having to pay tuition or fees. . . ." (Emphasis added).

The supplemental information gives no indication that the committee intended to limit educational benefits to those persons who apply for them prospectively. Nor does K.S.A. 73-1218 contain any date by which an application for benefits must be submitted.

In addition to K.S.A. 73-1218, a Kansas Administrative Regulation exists which addresses the procedure to be followed in applying for benefits under K.S.A. 73-1218. K.A.R. 97-5-1 provides in part:

"Persons interested in applying for benefits provided by this chapter shall initiate a formal application to the executive director, Kansas veterans' commission. . . . The application must be complete and documented to establish legal relationship between applicant and parent. . . ."

We note that, like its authorizing statute, this regulation makes no reference to a date by which dependents must make application for benefits to the K.C.V.A.

After considering the language in K.S.A. 73-1218, the supplemental information to 1976 Senate Bill No. 764, and K.A.R. 97-5-1, we conclude that any qualified individual who applies for benefits under K.S.A. 73-1218 is entitled to reimbursement for tuition and fees, not to exceed 12 semesters of instruction, even if said payment must be made retroactively. In our opinion, allowing an individual to be retroactively reimbursed under K.S.A. 73-1218 is consistent with legislative intent.

While there have been no cases in Kansas or in the 10th Circuit addressing this issue, the legislature has granted retroactive reimbursement upon request to several eligible individuals. 1976 House Bill No. 3077 of the Joint Committee on Special Claims Against the State appropriated funds for retroactive reimbursement of fees and tuition for two dependents attending Butler County Community College.

The retroactive nature of the payments, though not mentioned in the bill, is indicated by correspondence between Leonard McKinney, registrar of the college, and Wayne Garret, former director of the K.C.V.A. The letter dated November 7, 1975 states:

"We have met with the Claims and Accounts Committee of the Legislature regarding the retroactive claims for these two former students. I am happy to tell you that the Committee unanimously approved payments of these claims."

A similar retroactive claim was honored through an appropriation in 1976 Senate Bill No. 1009 for a dependent attending Wichita State University.

We are aware that these claims were made under K.S.A. 73-1217, rather than under K.S.A. 73-1218. However, in our opinion the reasoning used by the legislature in making retroactive payments under K.S.A. 73-1217 applies to the case at hand, since the statutes differ only with respect to whether the applicant is a dependent of a prisoner of war or a person missing in action, or alternatively, a dependent of a Vietnam veteran.

1976 House Bill No. 2920 amended K.S.A. 73-1217 by providing that the governing body of an institution which grants tuition or fees without charge to a dependent under this act may file a claim with the Kansas veterans' commission, rather than with the Kansas legislature. Subsequent to that amendment, a line item appropriation from the legislature to the K.C.V.A. was made, and continues to be made on an annual basis, to the commission's educational grant fund.

The K.C.V.A. allowed retroactive payments out of this fund for a claim made under K.S.A. 73-1218 in 1977. In a letter to a Mr. Beardsley at Fort Hays University, dated November 1, 1977, Wayne Garret stated his basis for approving the payments:

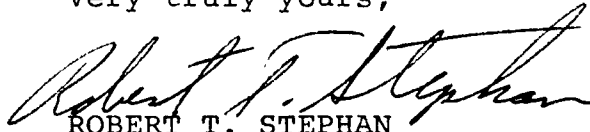
"I recognize that it is unusual for the state to be involved in retroactive payments of this nature, but this has happened on 2 or 3 prior occasions and we have a firm mandate from the Legislature that the student will not be punished due to a lack of information on applying for

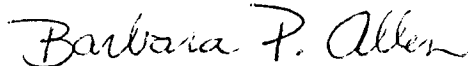
benefits under the bill and that
retroactive payments should be made."
(Emphasis added).

Mr. Garret's use of the phrase "firm mandate" plainly indicates his belief that retroactive payments under K.S.A. 73-1218 are not only permissible, but are mandatory. We note also that in every instance in which retroactive reimbursement has been requested, it has been granted.

As this opinion previously indicated, we believe that the legislature's intent and purpose for drafting K.S.A. 73-1218 was to allow all eligible dependents to attend state postsecondary institutions free of charge. Neither K.S.A. 73-1218 nor K.A.R. 97-5-1 contains language setting a date by which an application for benefits must be submitted. Further, the legislature and the K.C.V.A. have previously appropriated funds for the purpose of retroactively reimbursing dependents of veterans who were residents of Kansas. Based on this information, it is our opinion that an eligible dependent who applies for retroactive educational benefits under K.S.A. 73-1218 must be reimbursed by the Kansas Commission on Veterans' Affairs for fees and tuition, subject only to continued appropriations by the legislature.

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



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