

Date Issued: June 14, 1982 (AGO 82-44)

Requested by: State Senator Bryce Streibel

- QUESTION PRESENTED -

Whether the waiver of tuition and fees of dependents of certain veterans provided for in section 15-10-18.3 of the North Dakota Century Code includes flying "fees" charged by the Aviation Department at the University of North Dakota.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that the waiver of tuition and fees for dependents of certain veterans provided for in section 15-10-18.3, N.D.C.C., does not include flying "fees" charged by the Aviation Department at the University of North Dakota.

- ANALYSIS -

Section 15-10-18.3, N.D.C.C., provides:

15-10-18.3. FREE TUITION IN NORTH DAKOTA INSTITUTIONS OF HIGHER EDUCATION. Any dependent, as defined in section 15-10-18.2 upon being fully accepted for enrollment into any North Dakota state-supported institution of higher education or state-supported technical or vocational school, shall be allowed to obtain a bachelor's degree, or certificate of completion, for so long as he is eligible, free of any tuition and fee charges, except those charged to retire outstanding bonds; provided, however, that such bachelor's degree or certificate of completion is earned within a thirty-six month or eight-semester period or its equivalent. Once a person qualifies as a dependent under sections 15-10-18.2 and 15-10-18.3, there shall be no removal from the benefits of this section due to such an occurrence as the return of the prisoner of war or person missing in action. (Emphasis supplied).

These fees paid by the students constitute a substantial part of the Aviation Department's budget. For instance, during the 1981-82 school year only two percent of the department's budget came from funds appropriated by the State Legislature. The flight program is entirely funded by student fees. A waiver of these flight fees for any student causes an increased burden on the remaining students since the total costs of the flight program are fixed by the use and demand on the services provided. All of which must be paid for entirely by student flight fees. If some students pay no fees, the cost of the services provided to them must be paid through higher fees charged to the remaining students since the flight program is funded entirely by student flight fees.

Necessarily implicit in the enactment of section 15-10-18.3, N.D.C.C., is the assumption that when fees are waived for the dependents of certain veterans that the lost revenue will

be absorbed in and offset by other appropriated funds. The Legislature has no authority to waive fees for one member of a class of persons at the added expense of the remaining members of the same class of persons.

The only way these flight fees can be waived by law is if the fees so waived are made up by an appropriation for flight fees sufficient to cover the fees waived so that none of the expense of the waiver of these flight fees must be borne by the remaining flight students through increased fees. A waiver of fees is in effect a payment of the fees waived out of legislative appropriations. A waiver of flight fees would only be appropriate under section 15-10-18.3, N.D.C.C., if the Legislature appropriated the money to pay these fees out of the funds available to the Legislature and not out of the pockets of the remaining students.

- EFFECT -

This opinion is issued pursuant to section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

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