



TYRONE C. FAHNER
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

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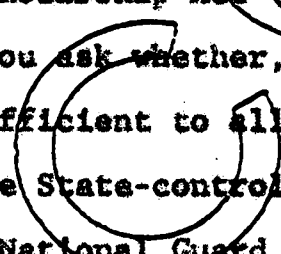
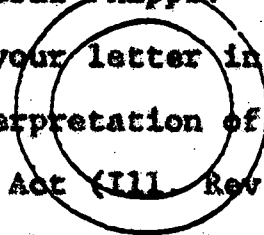
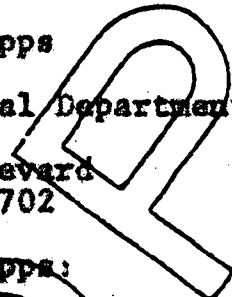
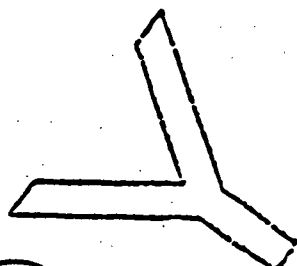
FILE NO. 81-027

**UNIVERSITIES AND COLLEGES:
National Guard Scholarships**

Major General John R. Phipps
The Adjutant General
Illinois Military and Naval Department
Camp Lincoln
1301 North MacArthur Boulevard
Springfield, Illinois 62702

Dear Adjutant General Phipps:

I have your letter in which you request my opinion regarding the interpretation of section 4 of the National Guard Scholarship Act (Ill. Rev. Stat. 1979, ch. 129, par. 424). You ask whether, in the event that appropriated funds are insufficient to allow the State Scholarship Commission to reimburse State-controlled colleges and universities for the cost of National Guard scholarships, the holder of the scholarship is liable for the payment of his or her tuition and fees. It is my opinion that a qualified National Guard scholarship holder is exempted from the payment of tuition and fees while attending a State-controlled college or



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university, and under these circumstances may not be held liable for such payment.

Section 4 of the National Guard Scholarship Act provides:

"Any enlisted person or any company grade officer, including warrant officers, First and Second Lieutenants and Captains in the Army and Air National Guard; and Ensigns, Lieutenant Junior Grade and Lieutenants in the Naval Militia, who has served at least one year in the Illinois National Guard or Naval Militia and who possesses all necessary entrance requirements shall, upon application and proper proof, be awarded a scholarship to the State-controlled university or community college of his or her choice consisting of exemption from tuition and fees for not more than the equivalent of 4 years of full-time enrollment in relation to his or her course of study at such institution while he or she is a member of the Illinois National Guard or Naval Militia. If the recipient of any scholarship awarded under this paragraph ceases to be a member of the Illinois National Guard or Naval Militia while enrolled in a course of study under such scholarship, the scholarship shall be terminated as of the date membership in the Illinois National Guard or Naval Militia ended and the recipient shall be permitted to complete the school term in which he or she is then enrolled only upon payment of tuition and other fees allocable to the part of the term then remaining.

The scholarships authorized by this Section shall be paid out of the funds available to the State Scholarship Commission and be subject to the 'State Scholarship Law'."

The language of section 4 of the Act clearly and unambiguously states that a qualified member of the Illinois National Guard or Naval Militia, upon application and proof of qualifications, shall be awarded a scholarship consisting of exemption from

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payment of tuition and fees for up to four years of full-time enrollment at the State-controlled community college or university of his or her choice.

It is an established rule of statutory construction that an unambiguous statute must be construed to mean what it plainly expresses, and it is not proper to depart from plain language by reading into a statute exceptions, limitations, or conditions which conflict with the clearly-expressed legislative intent. (Certain Taxpayers v. Sheaben (1970), 45 Ill. 2d 75, 84.) Although the word "shall" may be construed to have a directory rather than mandatory meaning if necessary to effectuate the legislative intent, it cannot be given a permissive meaning where a right or benefit depends upon giving the word a mandatory meaning. (Andrews v. Foxworthy (1978), 71 Ill. 2d 13, 21.) In construing the language of section 4 of the Act, it is apparent that the General Assembly intended that the award of National Guard scholarships be dependent only upon the qualification of the member, and that upon qualification the member is entitled to the award of the scholarship exempting him or her from the payment of tuition and fees.

This construction is supported by reference to debates in the General Assembly concerning the passage of Senate Bill 24, which was subsequently enacted as Public Act

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79-1180, creating the National Guard Scholarship Act. Senator Wooten, sponsor of Senate Bill 24, speaking on the third reading of the bill, stated:

" * * * What this bill proposes to do very simply is to allow the Guard to offer an inducement of full or part-time attendance at an undergraduate institution, at an institution of learning fully supported by the State of Illinois or at a community college. * * * In order to be eligible, you must have served in the Guard for one year, then, you may start attending classes. As long as you are a member of the Guard, you may continue to attend classes. * * * "

Senator Shapiro, speaking in opposition to the passage of Senate Bill 24, summarized its contents as follows:

" * * * Senate Bill 24 provides that any person who has served as an enlisted personnel in the Illinois National Guard or the Illinois Naval Militia for at least one year is entitled to the equivalent of four years of full-time attendance at any public university or community junior college within the State. These scholarships, I want to repeat, are good for the equivalent of a full time attendance. * * * "

Nor does the last paragraph of section 4 of the Act, which requires the scholarships to be paid from funds available to the State Scholarship Commission, affect the right of a scholarship holder to exemption from tuition and fees. Clearly, the obligation to pay the costs of National Guard scholarships is an obligation owed to State-controlled colleges and universities by the State Scholarship Commission, not the scholarship holder. If appropriated funds are insufficient to reimburse educational institutions for costs of tuition and fees, the obligation to pay is not transferred to the

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scholarship holder. Rather, the State-controlled colleges and universities must continue to furnish educational services to scholarship holders free of charge for tuition and fees regardless of whether appropriated funds are sufficient for reimbursement.

Therefore, it is my opinion that National Guard scholarship holders are not liable for costs exempted by such scholarships even if insufficient funds are appropriated to reimburse State-controlled colleges and universities for such costs.

Very truly yours,

A T T O R N E Y G E N E R A L