

Opinion No. 121.

Veterans—GI Bill of Rights—Service-
men's Readjustment Act—Education—
Schools—University of Montana—
Tuition—Fees.

Held: Persons "who qualify" under the Servicemen's Readjustment Act of 1944, and acts supplementary and amendatory thereof, as that term is used in Chapter 44, Laws of 1945, are persons who are eligible to receive educational benefits under that federal legislation—and as such they are excepted from the operation of Chapter 44, Laws of 1945.

February 8, 1946.

Mr. J. B. Speer
Comptroller
Montana State University
Missoula, Montana

Dear Mr. Speer:

You have presented the following problem for my decision:

"In Chapter 44, Laws of the 1945 Legislative Session, the provision for fee exemptions of veterans is qualified by the statement that 'the provisions of this act shall not apply to persons who qualify . . .' under the GI bills. Certain veterans who have enrolled at the University have not applied for the benefits of the GI bills, but ask for fee exemptions under Chapter 44. Although eligible for the benefits of the GI bills, they have not sought them, the reason usually being that they plan to save their benefits under the GI bills while later attending institutions outside the state where the fees are higher than at this institution.

"While the clause 'who qualify' is somewhat ambiguous we assume that the legislature does not mean to exempt from the payment of fees those who are qualified irrespective

of whether they apply for the educational benefits of the GI bill. Since, however, the matter is one common to all the units of the University we would appreciate an opinion from your office on the matter."

Chapter 44, Laws of 1945, provides:

"All honorably discharged persons who served with the United States forces in any of its wars and who were bona fide residents of the State of Montana at the time of their entry into said United States forces shall have free fees and tuition in any and all of the units of the university of Montana. Including the law and medical departments, and for extra studies in any of the units of the university of Montana, **provided, however, that the provisions of this act shall not apply to persons who qualify under the provisions of the 'servicemen's readjustment act of 1944', being 'public law 346 of the seventy-eighth congress, chapter 268, second session' and 'public law 16 of the seventy-eighth congress, chapter 22, first session', and all acts supplementary and amendatory thereof.**" (Emphasis mine.)

In construing a statute, the intention of the legislature is the controlling consideration, and, to ascertain the reason and meaning of particular provisions of doubtful meaning, courts may resort to the history of the times and the cause of necessity influencing the passage of the act. (State ex rel. Williams v. Kamp, et al., 106 Mont. 444, 446, 78 Pac. (2d) 585.)

The act here under consideration originally contained no limitations regarding veterans eligible to avail themselves of its benefits (Chapter 194, Laws of 1943). The Twenty-ninth Legislative Assembly in 1945 amended the original act by adding the portion which I have emphasized. In 1944 the Congress of the United States had enacted the Servicemen's Readjustment Act, popularly known as the GI Bill of Rights, which extended to certain veterans of World War II certain educational benefits. The federal act, among other things, provided for payment of tuition and fees to educational or training institutions at which veterans who came within the provisions of the act enrolled or registered.

At the time the Legislative Assembly convened in 1945 the situation was this: Under Chapter 194, Laws of 1943, all honorably discharged persons who served with the United States in any of its wars and were bona fide residents of Montana at the time of their entry into such service were eligible to have free fees and tuition in any and all of the units of the university of Montana. At the same time, under the Servicemen's Readjustment Act of 1944, the federal government would pay the costs of tuition and fees for veterans who met the requirements of the federal act. The federal act at that time did not embrace all veterans within its provisions. The 1945 Legislature promptly excepted persons qualified under the federal law from the operation of the Montana law; and the reason, although not expressed in Chapter 44, Laws of 1945, is obvious: The legislative intent was to relieve the State of Montana's educational burden to the extent of the fees and tuition which the federal government would pay for veterans eligible under the Servicemen's Readjustment Act.

The Legislative Assembly was not insensible to the educational needs of this state's veterans of World War II, for it merely attempted to declare that if they qualified under the federal act they should not be recipients of the same benefits under Montana law. On the other hand, the Legislative Assembly appears to have been keenly conscious of the economic problem involved in financing the units of our university and desirous of securing for them federal monies which would be forthcoming under the Servicemen's Readjustment Act.

When our assembly used the term "persons who qualify" in Chapter 44, Laws of 1945, its design was to point out which persons should not be eligible to receive the benefits of the Montana legislation. It was not concerned with the manner in which veterans of World War II might avail themselves of the educational privileges provided by the so-called GI Bill of Rights; but it intended to except from the provisions of the Montana act those persons who by reason of their service in the armed forces acquired a parallel right to free fees and tuition under the federal act.

Webster's New International Dictionary, second edition, 1941, declares the word "qualify", in its intransitive function, means "to be fit, as for an office or employment; to become capable; to obtain legal or competent power or capacity by taking the oath, or complying with the necessary forms or conditions, as on assuming an office." Under the Servicemen's Readjustment Act honorably discharged veterans with more than ninety days' service are eligible for education or training as provided by the act. In other words, they "qualify" under the act by reason of their service—not by reason of their assertion of their legal right thereafter.

It is therefore my opinion those persons "who qualify" under the Servicemen's Readjustment Act of 1944, and acts supplementary and amendatory thereof, as that term is used in Chapter 44, Laws of 1945, are persons who are eligible to receive educational benefits under that federal legislation—and as such they are excepted from the operation of Chapter 44, Laws of 1945.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General