

Opinion No. 68.

Veterans—Benefits, veterans—Education, veterans—Schools, veterans Legislation, discriminatory and class.

Held: Chapter 44, Laws of 1945, is not discriminatory class legislation and is valid and constitutional.

September 19, 1945.

Dr. H. C. Watts, Manager
Veterans Administration
Fort Harrison, Montana

Dear Dr. Watts:

You have requested my opinion concerning Chapter 44, Laws of 1945, and in your letter you suggest that the exclusion of some veterans from receiving the benefits of the act would invalidate the act in that the law is discriminatory.

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 person 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."

Chapter 44 amended Chapter 194, Laws of 1943, by the addition of the provision which precludes the application of the act to persons who qualify under the Servicemen's Readjustment Act of 1944, Public Law 346, 78th Congress, Chapter 268, Second Session, and Public Law 16, 78th Congress, Chapter 22, First Session.

The applicable part of the Constitution of the United States to the question presented is the Fourteenth Amendment which reads in part as follows:

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Section 26 of Article V of the Montana Constitution prohibits special laws in cases which are enumerated and also provides:

"In all other cases where a general law can be made applicable, no special law shall be enacted."

The above quoted constitutional provisions prohibit discriminatory class legislation by a state legislature and it then must be determined if Chapter 44, Laws of 1945, is invalid by reason of these constitutional prohibitions.

In 12 Am. Jur. 129, the text considers the "equal protection" clause of the Fourteenth Amendment and states:

"The guiding principle most often stated by the court is that this constitutional guaranty requires that all persons shall be treated alike, under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed."

Applying the above principle of similar treatment to all persons to Chapter 44, it is apparent that there is no basis in fact from the view point of the veteran in finding that there is any discriminatory treatment. The act in effect states that the State of Montana gives free tuition to all veterans who do not have their tuition paid by the federal government.

All honorably discharged servicemen and women may attend any of our schools of higher learning free of tuition. There is no discrimination by the State of Montana against any group of veterans so that they do not receive free tuition. Thus the "guiding principle" of treating all alike is not violated.

12 Am. Jur., page 156, also states:

"The Fourteenth Amendment in requiring equal protection of the laws is not to be construed as introducing a factitious equality without regard to practical differences that are best met by corresponding differences of treatment."

It cannot be logically argued that the paying of the tuition by the federal government or the grant of free tuition by the State of Montana is a material discrimination against one group or the other. The state, by Chapter 44, more comprehensively grants relief to all veterans from payment of tuition, but it relieves itself of such a gratuity in those cases which are entitled to have their tuition paid by the United States through the Veterans Administration. The ultimate result from the view point of the veteran is the same.

Another statement of the principle involved here is found in 12 Am. Jur. 224:

"The constitutional mandate is satisfied, however, if there is no manifest intent to discriminate and if the provisions of the restrictive act are in fact open to all citizens who may bring themselves within its terms."

The Montana Supreme Court in *Hill v. Rae*, 52 Mont. 378, 158 Pac. 826, said:

"In the application of the Fourteenth Amendment to the Constitution of the United States no distinction is to be observed between the effect of privileges conferred and the effect of burdens imposed. A privilege conferred upon one class is a discrimination in favor of that class and against all others not similarly endowed, as a burden upon one class is a discrimination against it and in favor of all others not similarly afflicted. But a discrimination is not necessarily unlawful merely because it is a discrimination. Indeed, the greater part of all legislation is discriminatory either in the extent to which it operates, the manner in which it applies, or the objects sought to be attained by it; and we are commanded by the highest judicial authority of the land 'to be cautious about pressing the broad words of the Fourteenth Amendment to a dryly logical extreme. Many laws which it would be vain to ask the courts to overthrow could be shown, easily enough, to transgress a scholastic interpretation of one or another of the great guaranties in the Bill of Rights.' (Noble State Bank v. Haskell, 219 U. S. 104, Ann. Cas. 1912A, 487, 32 L. R. A. (n. s.) 1062, 55 L. Ed. 112, 31 Sup. Ct. Rep. 186.) A privilege,

or a burden, is or is not a denial of the equal protection of the law, according to whether the discrimination relates to a matter upon which classification is legally permissible, and, if so, whether the classification is a reasonable one."

The classification contained in Chapter 44 does not evidence any manifest intent to discriminate and it is reasonable in that all servicemen and women receive identical treatment, free tuition, although the manner of receiving it is not the same in the two classes.

The question of the unconstitutionality of the act upon the grounds of discrimination may only be raised by a member of the class discriminated against, (*Spratt v. Helena Power Transmission Co.*, 37 Mont. 60, 94 Pac. 631) and "class legislation discriminating against some and favoring others is what is prohibited by the equal protection clause of the Fourteenth Amendment to the Constitution." (12 Am. Jur. 140.) There is no favoritism in the final analysis between the veterans and as a result, no objectional discrimination.

In *State v. Loomis*, 75 Mont. 88, 242 Pac. 244, the rule is well stated as follows:

"It is not necessary that classification depend 'on scientific or marked differences in things or persons or in their relations. It suffices if it is practical and it is not reviewable unless palpably arbitrary.'"

Again, our Supreme Court has aptly held that when the classification of a statute is not capricious, arbitrary or without proper basis, the statute is not unconstitutional as "special law."

"Nevertheless it is the duty of the courts to uphold the constitutionality of a statute unless its invalidity is made manifest beyond a reasonable doubt."

Blackford v. Judith Basin County, 109 Mont. 578, 98 Pac. (2d) 872.

It is therefore my opinion that Chapter 44, Laws of 1945, is not discriminatory or class legislation and is valid and constitutional.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General