

Held: The use of the method of payment provided by Alternative 3, of the rules and regulations of the Veterans Administration promulgated in pursuance to the provisions of Public Laws 16 and 346, 78th Congress, to non-profit institutions for veterans enrolled, does not violate any of the laws or other legal requirements of the State of Montana.

January 5, 1945

Mr. Claude Meredith, Manager
Veterans Administration
Helena Regional Office
Fort Harrison, Montana

Dear Mr. Meredith:

You have called my attention to resolution of the State Board of Education dated April 28, 1947, numbered Item 12201, as follows:

"THAT, Effective with the Fall Quarter, 1947, nonresident fees for students attending Montana State University or Montana State College be increased from \$25 per quarter to \$100 per quarter for the regular academic year.

"(The regular academic year does not include the summer session term.)"

and advise that under its rules and regulations, the Veterans Administration has authorized four different methods of payment to non-profit institutions for veterans enrolled under the provisions of Public Laws 16 and 346, 78th Congress, as amended. One of these methods of payment is as follows:

"**Alternative 3:** Nonresident tuition for all veterans in lieu of but not in addition to customary tuition, provided that the amount of the non-resident tuition does not exceed the estimated cost of teaching personal and supplies for instruction and provided further that the charges are not in conflict with existing state laws or other legal requirements."

You further advise me that the question has arisen in your office whether or not the method of payment set out in Alternative 3 above, is in conflict with Section 866, Re-

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vised Codes of Montana, 1935. You state that it is the belief of your office that the non-resident tuition fee authorized on April 28, 1947 by the State Board of Education, is a charge to the resident veteran student and is therefore in conflict with Section 866, Revised Codes of Montana 1935, and thus cannot be paid by the Veterans Administration.

After a careful study and consideration of the applicable statutes, both state and federal, and the rules and regulations of the Veterans Administration, particularly Alternative 3, above, I am of the opinion that the use of the method of payment thereunder, would not violate any of the laws or other legal requirements of the State of Montana.

It was the evident purpose and intent of Congress by the enactment of legislation providing for education of veterans to assume the cost of such education on a national basis. In other words, the federal government but reimburses the state government for the cost of education of the veteran. In Part VIII, Par. 5, c. 268, Title II, Sec. 400(b), 58 Stat. 287, as amended by c. 588, Sec. 5(d), 59 Stat. 624, it is provided:

"The Administrator shall pay to the educational or training institution for each person enrolled in full time or part time course of education or training, the customary cost of tuition, . . . And provided further, that any institution may apply to the Administrator, for an adjustment of tuition and the Administrator, if he finds that the customary tuition charges are insufficient to permit the institution to furnish education or training to eligible veterans, or inadequate compensation therefor, may provide for the payment of such fair and reasonable compensation as will not exceed the estimated cost of teaching personnel and supplies for instruction; . . ." (Emphasis mine).

While the term "tuition" is used, the language clearly indicates that regardless of the amount set by the institution as tuition, the federal government's payment is only a reimbursement in an amount to cover the actual cost of education. It is not,

strictly speaking, tuition, but, as provided by Alternative 3, "in lieu of" tuition. As a matter of fact, payment by the federal government is not made until after the services are rendered, and under Alternative 3, the amount paid cannot exceed "the estimated cost of teaching personnel and supplies for instruction." This clearly shows that the tuition is but a yard stick used by the federal government to determine the amount to be paid. The state furnishes the services, pays the cost thereof out of the appropriation and is reimbursed therefor by the federal government.

In view of what I have said above, it seems clear to me that there can be no conflict with the provisions of Section 866, Revised Codes of Montana, 1935, as amended by Chapter 115, Laws of 1947, or with any other law of the State of Montana.

It is therefore, my opinion that the use of the method of payment provided by Alternative 3, of the rules and regulations of the Veterans Administration promulgated in pursuance to the provisions of Public Laws 16 and 346, 78th Congress, does not violate any of the laws or other legal requirements of the State of Montana.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General