

VOLUME NO. 37

OPINION NO.167

ARMED FORCES - Veteran's fee waivers for extra studies offered in university system; FEES - University system, waivers for veterans for extra studies; STATE BOARD OF REGENTS - Fee payment by veterans for extra studies, power

to require; UNIVERSITY OF MONTANA - Fee waivers for veterans for extra studies; REVISED CODES OF MONTANA, 1947 - Section 75-8611; MONTANA CONSTITUTION, 1972 - Article II, section 35; Article X, section 9(2)(a).

HELD: The Board of Regents may not require veterans qualifying under the provisions of section 75-8611, R.C.M. 1947, to pay fees for extension or continuing education courses offered by units of the Montana University System.

9 November 1978

The Montana University System
Lawrence K. Pettit
Commissioner of Higher Education
33 South Last Chance Gulch
Helena, Montana 59601

Dear Commissioner Pettit:

You have requested my opinion on the following question:

May the Board of Regents require veterans to pay fees for extension or continuing education courses offered by units of the Montana University system?

Free tuition and fees for veterans are mandated by section 75-8611, R.C.M. 1947, which provides, in pertinent part:

All honorably discharged persons who served with the United States forces in any of its wars and who were bona fide residents of this state at the time of their entry into the United States forces shall have free fees and tuition in any 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. (Emphasis added.)

The language concerning "extra studies" clearly encompasses extension and continuing education courses offered by units of the System.

Although the Board of Regents is a constitutional body vested with the government and control of the Montana University System, Montana Constitution, Article X, section 9(2)(a), it is nevertheless subject to the Legislature's appropriation power and the "public policy of this state."

Board of Regents of Higher Education v. Judge, 168 Mont. 433, 449, 543 P.2d 1323, 1332 (1975). Montana's public policy as to veterans is clearly expressed in Article II, section 35 of the Montana Constitution, which states: "The people declare that Montana servicemen, servicewomen and veterans may be given special considerations determined by the legislature." The question presented here involves the construction and reconciliation of two co-equal constitutional provisions. In view of the strong statement of public policy in Article II, section 35 and the special power thereby vested in the legislature to effectuate that policy, it is clear that section 75-8611, R.C.M. 1947, is a permissible intrusion into the general powers of the Board of Regents to manage and control the university system.

In 1977, the Montana Legislature rejected the Regents' proposal that extension courses be state-supported in the same manner as regular academic courses. Instead, the appropriations committee directed that "continuing education" be set up in an account with fees matching expenditures. Therefore, the question arises whether the Legislature's failure to make appropriations for extension courses implicitly repealed section 75-8611's requirement of fee waivers for veterans.

The failure of a legislature to make appropriations necessary to the continued existence of an institution or program of its own creation may in fact result in the cessation of operation of that institution or program. The absence of appropriations may also impliedly repeal those laws which established the institution or program and those laws integrally dependent upon the program or institution for their continuing validity and practicability. See Ex parte Williamson, 116 Wash. 560, 200 P. 329, 330 (1921); 19 OP. ATT'Y GEN. NO. 513 at 883, 885 (1942). It should be noted, however, that implied repeal of valid legislation is not favored by the law and therefore must be manifest from legislative enactment or intent. In regard to the question presented here, it is clear, from the specific recommendation by the appropriations committee as to continuance of extra studies, that the Legislature did not intend to terminate continuing education programs or to repeal by implication any laws relating to such programs. Furthermore, legislative failure to appropriate will generally be viewed as terminating programs and institutions or as repealing existing laws only when those programs, institutions, or laws could not exist absent funding by the Legisla-

ture--that is, only when they have not been and could not be self-supporting or independent of state appropriations.

Continuing education and extension courses in units of the university system are not necessarily dependent upon legislative funding for their existence. Despite the absence of appropriations, the Board of Regents has chosen to continue to offer such extra courses on a self-supporting basis, with fees from students covering the expenses of the program. The Regents contend that, regardless of their decision to maintain continuing education courses in the system, the Legislature's explicit fee waiver for honorably discharged veterans was repealed by the lack of state funding. I do not agree.

Section 75-8611, R.C.M. 1947, specifically requires that tuition and fees be waived for veterans in all "extra studies in any of the units of the university of Montana," without reference to the method or source of funding for those studies. Although under the Montana Constitution the Legislature probably cannot require the continued offering of extra studies by the Board of Regents, once the board chooses to offer such programs, section 75-8611 becomes applicable and mandates a fee waiver for veterans. The people of Montana have expressly voiced their desire that special consideration be given to veterans; the Legislature has implemented that desire by endowing veterans with special educational benefits. The Board of Regents, while vested with control over university policies, cannot ignore such a clear and strong statement of public policy in Montana. Therefore, as long as extra studies are offered by units of the university system, no matter how financed, honorably discharged veterans are entitled, by virtue of section 75-8611, to participate in those courses without payment of fees or tuition.

It should be noted that the fee waiver provision of section 75-8611, R.C.M. 1947, is a limited one. For instance, it does not apply to those veterans who qualify for veterans' educational benefits from the federal government under the Servicemen's Readjustment Act of 1944 and supplementary federal legislation. Therefore, unless a veteran's eligibility under the G.I. Bill has expired or otherwise terminated, he may not take advantage of Montana's fee waiver provision. Moreover, qualifying veterans under section 75-8611 must have been honorably discharged; they must actually have served in the United States forces during a war; and they must have been residents of Montana when they entered the service. Section 75-8611, R.C.M. 1947.

THEREFORE, IT IS MY OPINION:

The Board of Regents may not require veterans qualifying under the provisions of section 75-8611, R.C.M. 1947, to pay fees for extension or continuing education courses offered by units of the Montana University System.

Very truly yours,

MIKE GREELY
Attorney General