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June 15, 1972

Kermit S. Nickerson, Deputy
Commissioner
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Education
Attorney General

Questions Relating to Administration of Financial Assistance to
Orphans Pursuant to 20 M.R.S.A. § 3211-3214.

SYLLABUS:

To the extent that there exists an unused balance of the maximum yearly grant, an eligible orphan may legally receive financial assistance for summer session studies or continuing education studies provided that such studies occur within the statutory time limits. Whether the University of Maine is legally obligated to accept orphans pursuant to 20 M.R.S.A. §§ 3211-3214 on a tuition-free basis for summer session studies or continuing education studies is a question for the Trustees of the University; but because orphan funds are involved, the Trustees should be asked to examine the question whether fees for such courses are tuition fees exempted by the law regarding orphans. It is our opinion that such fees are exempt. While the extent of Federal assistance received by an orphan may be considered as a resource of the orphan, the weight to be given such factor, when determining the amount of State assistance, is an administrative matter. Neither commuting expenses to school nor board and room costs at the home of a parent of an orphan qualify as "tuition, matriculation fees, board, room rent, books and supplies." Apartment rent of an orphan, not paid to the orphan's parent, does qualify as "room rent". The statutory cash allowance for one year may be utilized during a period of one semester if such be the need of the orphan. The Department of Education may administratively determine that the criterion of need was not established by an orphan, eligible for assistance, who waived such assistance while in attendance at school of collegiate grade and who intended, after graduation, to apply for reimbursement of aid in full.

INTRODUCTORY FACTS:

Educational assistance to orphans is limited in duration to 8 semesters of attendance at institutions of higher education, to be completed within a period of 6 consecutive academic years from the date of first entrance. 20 M.R.S.A. § 3212. The maximum cash assistance is \$300 per year to be used for tuition, matriculation fees, board, room rent, books and supplies. (*Ibid.*) Additionally, the provisions of 20 M.R.S.A. § 3213 authorize orphans to receive tuition-free attendance at State-supported post-secondary vocational schools or institutions of collegiate grade.

Semesters are academic half-years of the conventional academic year. For a full-time attendance, a normal academic program will approximate 15 to 18 semester hours of credit, a semester hour of credit being defined generally as the academic credit for successful completion of a course conducted one hour per week for the full semester with outside preparation of at least equal length.

Claims from orphans have been presented to the Department of Education on various matters, and those claims are made the subject of your request for legal advice. For the purpose of clarity, each of the eight questions posed in your memorandum will be discussed separately as to the presentment of facts, questions and reasoning.

PART ONE

FACTS:

Orphan claims have been presented to the Department of Education on the subject of attendance at summer sessions of institutions of collegiate grade. Orphans who were full-time students during the regular academic year immediately preceding the summer session wish to enroll, or are required by the institution where they are enrolled as full-time students to enroll, in a course not available in the regular academic year, or, at the student's initiative, to take a maximum summer session academic load in order to shorten the time necessary for obtaining a degree. To a lesser extent, orphans who have completed degree requirements without exhausting eligibility, wish to use remaining eligibility in a graduate level summer session. At the same time, claims have been made by orphans who are not regularly enrolled full-time students, respecting courses taken in so-called continuing education programs, such as evening or Saturday classes at the University of Maine campuses or which are conducted at selected locations throughout the State under University auspices.

QUESTIONS:

1. May eligible orphans receive financial assistance for other than full-time attendance during the regular academic year, i.e., attendance at a summer session between academic years in which they were and will be enrolled as full-time students?

2. May eligible orphans receive financial assistance for other than full-time attendance during the regular academic year, i.e., attendance in a continuing education program, although such orphans are not enrolled for full-time study during a regular academic year?

ANSWERS:

1. Yes.
2. Yes.

REASONS:

The provisions of 20 M.R.S.A. § 3212 state, among other things, that an orphan is entitled to financial assistance in securing higher education and that the Department of Education shall pay, for any person which it finds eligible for such assistance, "a maximum of \$300 per year, for a period of time not exceeding 8 semesters of attendance nor exceeding 6 consecutive academic years from the date of first entrance, towards the cost of such higher education. . . ." In the event that an eligible orphan has an unused balance of the \$300 maximum yearly assistance amount at the close of the regular school year, such moneys are available for either attendance at summer session or attendance in a continuing education program. Of course, such attendance at summer session or in a continuing education program must be within the 8 semester and 6 consecutive academic years statutory provisions, to qualify for aid.

PART TWOFACTS:

In a summer session, the usual duration is 6 weeks with a probable maximum academic load of 6 semester hours as compared with a 17-18 week period in an academic semester in which a typical academic load would be courses carrying 15-18 semester hours of credit. In continuing education programs, a typical class may meet for one night per week for two or three clock hours and operate for a period of time equal to a semester of 17-18 weeks, and carry 2 or 3 semester hours of credit.

QUESTION:

To what extent shall the orphan's maximum eligibility as to time be charged?

ANSWER:

This is an administrative matter.

REASONS:

The provisions of 20 M.R.S.A. § 3211-3214 do not specifically cover apportionment of time respecting eligibility of orphans to financial assistance. The statutory time limits appearing in § 3212 only specify maximum periods of attendance, i.e., 8 semesters of attendance not exceeding 6 consecutive academic years from the date of first entrance. That being so, the Legislature has seemingly left the matter of computation of attendance time to those administering the assistance.

PART THREEFACTS:

An orphan regularly enrolled in a full-time study program may have, at the end of the academic year, an unused balance of the \$300 grant.

QUESTION:

May the unused balance of the \$300 grant be used to assist the orphan in meeting expenses of summer session study before the next regular academic year begins?

ANSWER:

Yes.

REASONS:

See Part One Reasoning.

PART FOURFACTS:

Summer session and continuing education programs are offered by the University of Maine. The various campuses of the University offering summer session and continuing education programs have stated that the University requires the campuses to operate such programs only on a self-financing basis through imposition on enrolled students of course fees which are expressed as so many dollars per semester hour of credit for which a student is enrolled. Subject to the limit which the student or his advisor feels is the practical maximum academic load that the student should carry, and subject to the payment of course fees on the semester hour basis, the option as to the number of courses taken rests with the student. Your inter-departmental memorandum states that the University of Maine campuses do not equate such course fees with

tuition; and payment is requested of students directly or through orphan assistance paid by the Department of Education in accord with a directive that fees collected from students shall finance the courses. The State question exists because the Department is asked to pay the University fees out of orphan funds.

QUESTION:

Is the University of Maine, as a State-supported institution, obligated to accept orphans on a tuition-free basis in fee-charging summer session or in continuing education courses?

ANSWER:

Yes. It is suggested that the Trustees should be asked to examine the directive because State orphan funds from the Department are involved.

REASONS:

This aspect of the opinion is advisory only because this office is not counsel for the University of Maine. It is fact that the situation involves funds administered by the State. At the same time, we are not unmindful of the fact that 20 M.R.S.A. § 3213 allows all children qualifying as orphans to be admitted to "state supported post-secondary vocational schools or institutions of collegiate grade free of tuition". To the extent that your memorandum seeks legal advice as to the meaning of the word "tuition", we do offer our opinion. Your memorandum informs us that the campuses of the University system do not equate fees for summer session study, and study in continuing education courses, as constituting tuition fees. According to decisional law, tuition is the charge made for instruction, rather than a rent for use of buildings in which instruction is imparted. Linton v. Lucy Cobb Institute, 117 Ga. 678, 45 S.E. 53. In Crow ex rel. Jones v. Clay County, 196 Mos. 234, 95 S.W. 369, a bequest of a sum of money "to pay the 'tuition' or education" of orphans or poor children under a certain age meant "to pay for the instruction or school training of orphans; that is, to pay the fee charged by teacher or school for instruction".

Nothing appearing in 20 M.R.S.A. § 3213 distinguishes between tuition for full-time study during a regular academic year and tuition for study of lesser periods of time. Such limiting language is properly the province of the Legislature.

We are ascertaining here not what the Legislature may have meant by what it said but rather are deciding what that which the Legislature said means. State v. Millett, 160 Me. 357, 360. It is advisable to request that the University Trustees obtain a ruling from their legal counsel on this subject, since it is not apparent from your memorandum that such advice has been sought. We believe such a request is proper in view of the fact State funds administered by a State agency are involved.

PART FIVE

FACTS:

The provisions of § 3212 state a financial need and means test in which the Department of Education is required to give consideration to necessary expenses and to the resources available to the applicant for meeting those expenses. It is fact that federal law respecting education of children of veterans killed or disabled from service-connected causes provides federal financial aid per month to each eligible child during his attendance in an educational institution of higher learning, including post-secondary vocational schools of less than collegiate grade.

QUESTION:

May, or should, such federal assistance be considered as a resource to the orphan when determining how much, if any, assistance should be payable under the State orphan assistance program?

ANSWER:

Yes, but while it may be considered as a resource to the orphan, the weight to be given such federal assistance when determining the amount of State assistance is an administrative matter.

REASONS:

This matter is more administrative than legal. There seems to be nothing illegal about the Department's awareness of the fact that a particular applicant for orphan assistance received federal assistance. However, the weight to be given that fact is administrative. It seems advisable to contact federal authorities administering such federal assistance to determine whether federal regulations exist on the subject barring State administrators from considering such assistance as a resource of the war orphan. Nothing in the State law allows the Department of Education to specifically downgrade the amount of aid based upon the amount of federal assistance which the orphan receives; and conversely, neither is there statutory language precluding consideration of federal assistance as a part of the resources available to the applicant.

PART SIX

FACTS:

Section 3212 states that financial assistance paid an applicant shall be used "for the purpose of providing tuition, matriculation fees, board, room rent, books and supplies."

QUESTIONS:

1. Do commuting expenses to college or school, in lieu of board and room on campus, or to day school campuses where dormitory and dining facilities are not provided, qualify?

2. Do board and room at the home of a parent living within commuter distance of the college or school qualify?

3. Does apartment rent of a married orphan (paid to one not the parent of the orphan) in a city or town where the institution is located qualify, in lieu of dormitory room rent and board at dining halls?

4. Does travel expense incurred by use of a personal car or a common carrier to the institution qualify?

ANSWERS:

1. No.

2. No.

3. Yes.

4. No.

REASONS:

1. and 4. The words "tuition, matriculation fees, board, room rent, books and supplies" do not encompass commuting expenses. Nor is there any language in § 3212 allowing expenditure of moneys for a purpose considered to be in lieu of one of the stated statutory purposes.

2. Although the statute uses the words "board" and "room rent", neither of those terms permit the use of funds for board and room at the home of the orphan's parent who lives within commuting distance

of the school. The word "board" means to receive food as a lodger or without lodging for a reasonable compensation. A "boarder" is one who has food or diet and lodging in another's family for reward or for a stipulated price. In re Doubleday, 173 App. Div. 739, 159 N.Y.S. 947. To the same effect, Heron v. Webber, 103 Me. 178, 68 Atl. 44, holds that a boarder is ordinarily one who has food and lodging in another's house or family for a stipulated price. We interpret the words "board" and "room rent" in the ordinary manner; and that the Legislature has not yet authorized the payment of food and lodging to the parent of the student.

3. What we have said in paragraph 2 above calls for an affirmative answer respecting those claims for apartment rent (paid to one other than the parent) of married orphans. The language "room rent" seems clearly to encompass the rental expense of an apartment by an orphan. We do not interpret the words "room rent" and "board" as meaning that the expenses of board and room must be in dormitory facilities. If the Legislature intends a narrow interpretation of those words, it should say so. State v. Millett, *supra*.

PART SEVEN

FACTS:

Section 3212 provides a maximum of \$300 per year assistance to qualified orphans. At the same time, the same statutory provision establishes limitations as to the length of time in which such yearly financial support shall be paid, i.e., not exceeding 8 semesters of attendance nor exceeding 6 consecutive academic years from the date of first entrance.

QUESTION:

Whether an orphan may legally be granted the maximum \$300 assistance during a period of one semester's duration; or must cash assistance be limited to \$150 per semester?

ANSWER:

The cash allowance of \$300 per year may be approved for the orphan as assistance is needed.

REASONS:

Nothing in § 3212 requires that the financial assistance be halved so that \$150 is paid the orphan per semester. Expenses of the orphan may well be greater in one semester than in another. Since no limiting language appears in the statute on this point, the only limitation being the amount of aid, assistance may be given based on need.

PART EIGHTFACTS:

An orphan, who was eligible for assistance and who was aware of such assistance at the time studies were commenced, waived the making of the claim for annual assistance with the intention of making a claim upon graduation for lump sum assistance for all of the years in which the student was eligible. The Department of Education has administratively ruled that the fact such collegiate grade studies were completed through the point of graduation, with all college bills being paid by the student prior to graduation, presumes that personal resources were sufficient to meet all costs of education and that, as a consequence, no assistance was due under the law.

QUESTION:

Whether the Department of Education may administratively determine that the criterion of need was not established by an orphan who was eligible for assistance, under the given facts, but who waived the making of such request for assistance until after graduation when all college expenses have been paid?

ANSWER:

The provisions of § 3212 establish a program of aid to orphans on the basis of existing expenses and resources available to the applicant for meeting those expenses. The program does not appear to be one in which an orphan may wait until completion of studies of subjects at collegiate grade and then make application for reimbursement. The last sentence of § 3212 allows the Department of Education to make such rules and regulations as it considers necessary for carrying out the chapter pertaining to war orphans. In this case, the Department has ruled

administratively that the facts reveal the presence of resources available to the applicant which precluded a grant of federal assistance. Administration of the program is left to the Department of Education and the position expressed by the Department, under the given facts, does not appear to be in violation of the provisions of the chapter pertaining to orphans.

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