

MAINE STATE LEGISLATURE

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NOT A FORMAL OPINION

May 29, 1973

Kermit S. Nickerson, Deputy
Commissioner
John W. Benoit, Jr., Deputy

Educational and Cultural Serv.
Attorney General

War Orphan Assistance; Availability of Retroactive Assistance.

In your April 12, 1973, inter-departmental memorandum, you state that the Department of Educational and Cultural Services has received a substantial number of applications requesting retroactive financial assistance under the provisions of 20 M.R.S.A. §§ 3211-3214. The applicants would have been eligible for war orphan assistance under the statute had a timely application been filed. Applicants for retroactive assistance have stated to the Department that they were unaware of available assistance until the matter was brought to their attention either by a college mate or a younger member of the family applied for and obtained assistance under the reference statute.

The Department asks whether this is an administrative matter. If it is, the Department intends to make retroactive payments to applicants even though they have completed their college programs. The Department is presuming that if an applicant did not file for assistance during his college attendance, he was unaware that assistance was available.

By way of analogy, see our opinion to you dated June 15, 1972; specifically, Part 8 on pages 9 and 10 of the opinion. That opinion answers the question whether 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 out of his intention not to claim assistance until completion of his college studies. At that time, we stated that the program described in 20 M.R.S.A. § 3211, et seq. did not appear to be one in which an orphan could wait until completion of studies and then make application for reimbursement. We are presumed to know the law. Since that is so, the presumption utilized by the Department (that if an applicant did not seek assistance, he had no knowledge of the program) is questionable.

The provisions of 20 M.R.S.A. § 3212 authorize the Department to give assistance to those applicants presently in a program of higher education. There is no language in the statutes pointedly authorizing reimbursement. So while the matter may be administrative in nature, and thus be the proper subject of rules and regulations of the Department, it is necessary to consider whether the provisions of the statutes authorize reimbursement for past expenses in securing a post-secondary education.

"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.

You will note that the language in § 3212 states that: "Such assistance as is paid shall be used for the purpose of providing tuition, matriculation fees, board, room rent, books and supplies." Assistance in the form of reimbursement will not go to pay the items listed in the section; those items have already been paid.

If you wish to discuss this matter with us, please do not hesitate to contact us.

JOHN W. BENOIT, JR.
Deputy Attorney General

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