

Opinion No. 55-6287

September 22, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Mrs. Georgia L. Lusk, Superintendent of Public Instruction, State Department of Education, Santa Fe, New Mexico

You have asked the opinion of this office upon several questions regarding Chapter 170 of the New Mexico Session Laws of 1949.

Your questions are:

1. Can a child of a deceased veteran be granted a scholarship under the above Act for more than one year?
2. Can two or more children of a deceased veteran be beneficiaries under the Act?
3. What is the proper basis for determining eligibility for benefits under the Act?

You mention that so many applications have been received that in all probability the monies appropriated for these purposes will not be sufficient to take care of all the applicants.

The pertinent part of this Act is Section 3, which reads:

"Children who shall be the beneficiaries of this Act **shall be selected by the State Board of Education on the basis of need and merit**, from the nominations made by the New Mexico Veterans Service Commission." (Emphasis supplied)

I find no other restrictions, express or implied, touching upon the selection of applicants for the benefits available under the Act.

Thus, it is our opinion that a child may be granted a scholarship or other aid covering periods of more than one year. Further, we see no objection to granting these benefits to two or more children of the same deceased veteran. The only basis for determining who shall receive the benefits is "need and merit" as determined by the State Board of Education.

It seems to us that the State Board of Education has complete discretion as to who shall receive the benefits under the Act. Since there is not sufficient money to take care of all applications, you could possibly adopt a policy wherein benefits in the nature of scholarships or otherwise would be awarded to an applicant for only one year and possibly restrict the grants to only one child of a deceased veteran. This may or may not be wise and the final determination is up to the Board. It is merely a suggestion which is

offered for your consideration. However, whatever policy is adopted it should be flexible enough so that in exceptional cases, say a showing of extraordinary need or merit, an award could be made for more than one year and to two or more children of a deceased veteran, notwithstanding other applications showing need and merit would have to be disapproved.

I trust the above is of aid to you.

By: Santiago E. Campos

Assistant Attorney General