

Opinion No. 59-76

July 20, 1959

BY: HILTON A. DICKSON, JR., Attorney General

TO: Mr. A. E. Hunt Director Department of Finance and Administration State Capitol Building Santa Fe, New Mexico

All students enrolled for credit may be considered in the computation of scholarships under section 73-30-2, N.M.S.A., 1953 Compilation.

Only those charges for instruction are "tuition" within the meaning of Section 73-30-2, N.M.S.A., 1953 Compilation.

OPINION

{*120} This is written in reply to your recent request for an opinion on the following questions:

1. May part-time and special students be considered in the computation of scholarships under Section 73-30-2, N.M.S.A., 1953 Compilation?
2. The New Mexico Military Institute tuition for in-state students is indicated in their catalog to be \$ 750 per academic year. However, this amount is allocated in the institution's budget as follows:

Tuition \$ 130.00
Library fee 10.00
Student
Athletic Fee 15.00
Room and Board 575.00
Other Auxiliary
Fees 20.00

{*121} What is the maximum amount per student which the New Mexico Military Institute may legally award as scholarships?

In answer to your questions it is my opinion that:

1. All students enrolled for credit at the College may be considered for computation of scholarships.
2. Only those charges which are for instruction may be granted as scholarships; or, in this case \$ 130.00.

The statute which controls the answer to your first question is Section 73-30-2, N.M.S.A., 1953 Compilation, which reads, in part, as follows:

". . . the Board of Regents . . . shall have discretionary power to establish and grant gratis scholarships by waiving fees for matriculation or tuition or both to bona fide resident students in their respective institutions and the number of such scholarships so established and granted **shall not exceed two per centum (2%) of the preceding fall semester enrollment . . .**" (emphasis supplied)

The section seems clear and does not require any interpretation. It does not make any distinction as to full time or part-time students; it merely says that the scholarships shall not exceed 2% of the last fall semester enrollment. The word enroll means to register or to put on record, e.g. to sign for a class for credit. This is the only logical interpretation of the section since there are no guides to use in determining what a full time or part-time student would be. To make a distinction between part-time and full time students for the purpose of this section would lead to confusion and conflict. Would a part-time student be one carrying four hours, eight hours, twelve hours? The resulting confusion is apparent. It is therefore my opinion that all students who are enrolled for credit, without regard to number of hours they are enrolled for, should be considered in computing scholarships under this section. This would, of course, preclude students not taking courses for credit such as those in the community college.

The same statute as above referred to governs the answer to your second question. Section 73-30-2, N.M.S.A., 1953 Compilation, provides that the Board of Regents may:

". . . grant gratis scholarships **by waiving fees for matriculation or tuition or both . . .**" (emphasis supplied)

The words of the statute are clear and unambiguous and need no interpretation. The problem is how to define the word "tuition". The word tuition contemplates a charge for instruction as opposed to a charge for student activities, library, room and board and the like. The Court in **Linton v. Lucy Cobb Institution**, 117 Ga. 678, 45 S.E. 53, said that the word meant the charge for instruction rather than the rent for use of buildings. See also **Crow ex rel. Jones v. Clay County**, 196 Mo. 234, 95 S.W. 369; **Rheam v. Board of Regents of the University of Oklahoma**, 161 Okl. 268, 18 P. 2d 535, and generally "tuition", Vol. 42-A **Words and Phrases**, page 459.

It is, therefore, my opinion that only the actual tuition charge, that is, the charge for instruction, can be granted for tuition scholarships under Section 73-30-2. This would not include fees for student activities, library, room and board or the like. The maximum charge, then, in the case you pose, assuming that the actual instruction charge is \$ 130.00, would be \$ 130.00.

It might be well to point out that **{*122}** under Section 73-30-2, the matriculation fee authorized thereunder can be waived and included as part of a scholarship.