



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Air Force - Tuition Assistance to Members of Armed
Forces in North Carolina

File: B-225035

Date: September 15, 1987

DIGEST

Off-duty college tuition assistance provided by military departments is subject to percentage limitation on "charges" of educational institution. 10 U.S.C. § 2007. Under North Carolina statute, non-domiciliary military personnel are "charged" out-of-state tuition rate, but portion to be paid by individual is reduced in accordance with statutory formula. Although application of percentage limit to full tuition rate will result in government's paying more than that percentage of actual costs, payment on this basis will not violate 10 U.S.C. § 2007 nor constitute improper use of appropriations.

DECISION

The Deputy Assistant Comptroller of the Air Force for Accounting and Finance requested our decision on what effect, if any, a recent North Carolina statute has on the amount of higher education tuition assistance the Air Force may pay to military personnel stationed in North Carolina but domiciled elsewhere. More specifically, the question is whether the operation of the North Carolina statute causes the Air Force to exceed the ceiling on tuition assistance provided in 10 U.S.C. § 2007. As explained below, although the North Carolina statute has the effect of increasing the proportion of actual tuition costs paid by the Air Force, it does not, in our opinion, produce a violation of 10 U.S.C. § 2007.

Background

The Air Force is authorized to provide tuition assistance to its military personnel for education and training during

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off-duty periods. However, the assistance is subject to statutory limitations found in 10 U.S.C. § 2007, which provides in relevant part:

"The Secretary of a military department may not pay more than 75 percent of the charges of an educational institution for the tuition or expenses of a member of the armed forces enrolled in such institution for education or training during his off-duty periods, except that-

"(1) In the case of an enlisted member in the pay grade of E-5 or higher with less than 14 years' service, not more than 90 percent of the charges may be paid;

"(2) in the case of a member enrolled in a high school completion program, all of the charges may be paid; and

"(3) in the case of a commissioned officer, no part of the charges may be paid unless the officer agrees to remain on active duty for a period of at least two years after the completion of the training or education."

Thus, under section 2007, the Air Force generally pays 75 percent of a member's tuition and the member pays 25 percent, or in the case of an enlisted member qualifying under subparagraph (a)(1), the Air Force pays 90 percent and the member 10 percent.

The recent enactment of a North Carolina statute has raised a question concerning the proper amount of the contribution the Air Force is authorized to make toward tuition for that State's schools on behalf of non-domiciliary personnel. General Statutes of North Carolina, § 116-143.3(b), provides:

"Any member of the armed services qualifying for admission to an institution of higher education . . . but not qualifying as a resident for tuition purposes . . . shall be charged the out-of-State tuition rate; provided, that the out-of-State tuition shall be forgiven to the extent that the out-of-State tuition rate exceeds any amounts payable to the institution or the service member by the service member's employer by reason of enrollment pursuant to such admission while the member is abiding in this State incident to active military duty, plus the amount that represents the percentage of the out-of-State tuition rate paid to the institution or the service member by the service member's employer multiplied by the in-State tuition rate and then subtracted from the in-State tuition rate."

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Under this provision, military personnel domiciled outside of North Carolina are charged the out-of-state tuition rate, but the portion to be paid by the individual is reduced in accordance with the statutory formula.

The Issue

Understanding the issue in this case is aided by use of the example provided in the Air Force's submission. The illustration is as follows:

"Fayetteville State University charges domiciliaries \$205 per semester and nondomiciliaries \$1,628 per semester. The university expects to collect \$1,465.20 from a military department for a nondomiciliary who meets the '90 percent' criteria. It does not collect the remaining 10 percent (\$162.80) from the military member. Instead, it applies the 10 percent rate against the in-state tuition charge of \$205 and bills the member \$20.50. Under this formula, the net cost paid, the Federal and member's contribution combined, is \$1,485.70. The Federal contribution as a share of that net cost is not 90 percent, but 98.6 percent."

In essence, the issue is whether, under 10 U.S.C. § 2007, the Air Force may pay an amount equaling up to 90 percent (or 75 percent if applicable) of North Carolina's usual out-of-state tuition which, but for the forgiveness provision in the North Carolina statute, would be the total owed to the State's institution, or whether the Air Force may pay only 90 percent (or 75 percent) of the "net costs" as that term is used in the illustration.

Restated, the question is whether the term "charges," as used in 10 U.S.C. § 2007 with reference to public institutions of higher education in North Carolina, means the out-of-state tuition rate or the amount of dollars the institution will actually receive. If it means the latter, then, as the submission points out, "the North Carolina approach significantly increases the cost to the Air Force, which could result in an unfair and unintended distribution of the limited training funds available."

100 percent assistance for high school completion,^{3/} and the first appearance of the 90 percent limitation for middle rank enlisted personnel.^{4/} (We thought it unlikely to find any useful discussion in those interim years in which the statute did not change.)

Viewing this material as a whole, the essential purpose of the tuition assistance program was to improve the efficiency of operations within the Defense Department by enhancing the educational level of its personnel. Educational assistance was seen as an important benefit of military service, and thus a key incentive to retention. The amount of assistance was set at a high level because military personnel generally earn less than their civilian counterparts.

The 75 and 90 percent limitations appear in the statute because the services requested them. At least with respect to post-high school education, it has been the view of the services that the individual should pay a portion of his or her tuition,^{5/} apparently out of recognition that one tends to place a higher value on that for which one is required to pay. Reducing or minimizing the cost of the program, to the extent relevant at all, appears to have been a secondary consideration.

Against this background, it seems more consistent with the purpose and intent of 10 U.S.C. § 2007 to permit the benefit of the North Carolina statute to fall upon the individual, that is, to construe the statute as authorizing payment of 75 or 90 percent, as the case may be, of the tuition rate charged by the state (again assuming the rate is non-discriminatory) without regard to the forgiveness provision.

It would certainly be possible to construe the statute in a manner that would reduce the expense to the services. The options are noted in a memorandum dated August 22, 1985, from the Director of Legal Programs, Headquarters Tactical Air Command, USAF, Langley Air Force Base, Virginia:

^{3/} Department of Defense Appropriation Act, 1980, Pub. L. No. 96-154 (December 21, 1979), § 722, 93 Stat. 1156.

^{4/} Department of Defense Appropriation Act, 1981, Pub. L. No. 96-527 (December 15, 1980), § 722, 94 Stat. 3084.

^{5/} E.g., Department of the Army Appropriations for 1955: Hearings Before a Subcomm. of the House Comm. on Appropriations, 83d Cong., 2d Sess. 649 (1954).

not, in our opinion, violate 10 U.S.C. § 2007 nor in any way constitute an improper use of appropriated funds.

for *Harry J. Van Cleve*
Comptroller General
of the United States