

DATE: 07-18-90

CITATION: VAOPGCPREC 37-90
Vet. Aff. Op. Gen. Couns. Prec. 37-90

TEXT:

Subject: Applicability of Government Employees Training Act as a Limitation Under 38 U.S.C. § 1781 to Payment of Educational Assistance Allowance

(This opinion, previously issued as General Counsel Opinion 3-73, dated February 22, 1973, is reissued as a Precedent Opinion pursuant to 38 C.F.R. §§ 2.6(e)(9) and 14.507. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

QUESTION PRESENTED:

"Are veterans attending the Federal Mine Health and Safety Academy operated by the Bureau of Mines barred from receiving educational assistance allowances by 38 U.S.C. § 1781?"

COMMENTS:

The Bureau of Mines of the Department of Interior operates the Federal Mine Health and Safety Academy at Beckley, West Virginia. The Academy offers a 72-week long Mine Inspector Training Program, and the trainees are full-time Bureau of Mines employees. They are furnished all necessary supplies and equipment, and there are no tuition or fee charges to the trainees. This is a pilot program started in September 1971, and the Bureau of Mines has contracted with the University of West Virginia to provide the training. The trainees are employed at the GS-5 level, and upon completion of the program are promoted to GS-7 and assigned to a Bureau of Mines district office where they receive on-the-job training for an additional year before promotion to GS-9. The Bureau of Mines anticipates placing the Academy on a permanent basis and plans to construct appropriate facilities. Recruiting for this training program will be from Bureau personnel as well as from persons not so employed. It anticipates that veterans will become a major source for recruits into the program.

Section 1781 of title 38, United States Code, provides:

"§ 1781. Limitations on educational assistance

"No educational assistance allowance or special training allowance granted under chapter 34 or 35 of this title shall be paid to any eligible person (1) who is on active duty and is pursuing a course of education which is being paid for by

the Armed Forces (or by the Department of Health, Education, and Welfare in the case of the Public Health Service); or (2) who is attending a course of education or training paid for under the Government Employees Training Act and whose full salary is being paid to him while so training." (emphasis supplied)

The Department of Interior has advised that the trainees of the Academy receive the full salary of the classification grade held by them as employees of the Department during the course of their training. Thus, the ultimate question is whether the course of education or training at the Federal Mine Health and Safety Academy is "paid for under the Government Employees Training Act."

The Academy was established pursuant to the authority granted the Secretary of the Interior in sections 503 and 505 of Public Law 91-173, the Federal Coal Mine Health and Safety Act of 1969, with the primary function of training personnel, particularly inspectors, in the administration of the health and safety provisions of the Act. It requires the Secretary to develop and maintain programs for the training and education of personnel, and to provide financial and technical assistance to fulfill the purposes of the Act. The funding for the Academy and the training program is from Interior Department, Bureau of Mines, appropriations for the promotion of health and safety in mines.

The Government Employees Training Act, set forth at title 5 U.S.C., sections 4101 through 4118, is, in substance, broad spectrum legislation which empowers the heads of government agencies to establish, operate, and maintain coordinated programs and curricula of instruction related to the performance of governmental duties in order to increase efficiencies in operations, to raise standards of performance, and to increase the skills, proficiencies, and abilities of their employees. The Government Employees Training Act is not specifically funded by appropriations for its implementation. To the contrary, the Act authorizes individual governmental agencies to utilize their own "appropriations or other funds available to the agency" for the functioning of such educational programs. Thus, it would appear that the educational programs initiated under the Government Employees Training Act are not, in the most literal sense, "paid for" from funds allocated by or under the Government Employees Training Act.

However, application of the principle that a statute is to be reasonably and logically construed requires the rationale that section 1781 is applicable where a government agency initiates a program of education or training for its employees under authority of the Government Employees Training Act and funds it from its own appropriations.

It also appears that the Department of Interior recently submitted a case to the Civil Service Commission which raised a substantially similar issue, although based upon a somewhat different factual situation. The Department asked the Commission whether the Government Employees Training Act applied to training administered and paid for by the Federal Mine Health and Safety Academy. The General Counsel for the Commission concluded in an opinion of

November 28, 1972, that The Government Employees Training Act established a central point of responsibility for the control of Government employee training programs and that training at the Academy pursuant to the Federal Coal Mine Health and Safety Act was subject to the provisions of the Government Employees Training Act.

It is implicit that the training at the Federal Mine Health and Safety Academy, although directly funded and paid for by the Bureau of Mines of the Department of the Interior, should nevertheless be considered, for purposes of applying section 1781, 38 U.S.C., as being "paid for under the Government Employees Training Act."

HELD:

Veterans attending the Federal Mine Health and Safety Academy are barred by the provisions of section 1781 of title 38, United States Code, from receiving veterans educational assistance allowances.

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