

1980 WL 120888 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 22, 1980

RE: Tuition Assistance Program

*1 Major General T. Eston Marchant
The Adjutant General
National Guard Armory
1225 Bluff Road
Columbia, South Carolina 29201

Dear General Marchant:

You have requested an opinion from this office as to which fees imposed by the Military College of South Carolina, The Citadel, would fall within the term 'tuition' as defined under The South Carolina National Guard Tuition Assistance Act, Section 59-14-10, et seq., of the South Carolina Code of Laws (1976). It appears that The Citadel charges students the following annual fees:

- (1) Registration Fee

- (2) Tuition Fee

- (3) College Fee:
 - (a) Maintenance and operation costs

 - (b) Library and institutional expenses

 - (c) Plant improvement

 - (d) College and student activity fee

- (4) Auxiliary Fee:
 - (a) Laundry

 - (b) Room and board

- (5) Uniforms

The difficulty in addressing this question is due to the fact there is no standard classification by schools of costs to be included under 'tuition'. Therefore, the term has received numerous and disparate interpretations by courts and other legal authorities. Compare, [Linton v. Lucy Cobb Institute](#), 117 Ga. 678, 45 S.E. 53 (1903); [State v. Regents of University System](#), 179 Ga. 210, 175 S.E. 567 (1934) (tuition is charge made for instruction, rather than a rent for use of buildings) with, [Sakezzie v. Utah State Indian Affairs Commission](#), 215 F.Supp. 12 (1963) ('tuition' includes necessary or incidental expenses, such as books, board and room, and traveling expenses). In a previous opinion rendered by this office, 'tuition' was defined for purposes of a

statute providing free tuition to children of disabled or deceased firemen, law enforcement and certain other public employees ([Section 59-111-110 of the Code](#)) to include a 'college' or 'maintenance and activities' fee as well as fees charged for 'tuition', 'matriculation', and 'registration'. 1971 *Ops. Att. Gen.* 5 (Op. No. 3068). In that opinion, we noted that free tuition statutes are grounded upon principles of humane public policy and, therefore, should be given a liberal interpretation to effectuate their manifest humanitarian and beneficent purposes.

However, unlike the statute dealt with in that opinion, the Legislature has defined 'tuition' for the purposes of the South Carolina National Guard Tuition Assistance Act. Section 59-114-20(5) defines 'tuition' as:

... the amount charged for registering or credit hours of instruction and shall not include other fees, charges or costs of textbooks.

The first question that must be determined is whether the term 'or' as used in the above statute precludes the payment of both the registration fee and the fees charged for instruction. It is my opinion that within the context of the act and in order to effectuate the intention of the Legislature, the term 'or' should be construed to mean 'and'. As noted by the Supreme Court in [Robson v. Cantwell Supervisors](#), 143 S.C. 104, 117, 141 S.E. 181, 184 (1928):

*2 The popular use of 'or' and 'and' is so loose and so frequently inaccurate that it has infected statutory enactments. While they are not treated as interchangeable, and should be followed when their accurate reading does not render the sense dubious, their strict meaning is more readily departed from than that of other words, and one is read in place of the other in deference to the meaning of the context. Whenever it is necessary to effectuate the obvious intention of the Legislature, the Courts have the power to change and will change 'and' to 'or', and *vice versa*. 25 R.C.L. 977.

It is clear from Section 59-114-20 that the Legislature was attempting to define 'tuition' to include costs associated with the regular course of study in schools and exclude costs which do not directly apply to the school curriculum or which might be associated with extracurricular activities.

Therefore, under this statute it is clear that items (1) (Registration Fee) and (2) (Tuition Fee) would fall within the meaning of 'tuition'. On the other hand, items (4) (Auxiliary Fee) and (5) (Uniforms) are not directly related to the cost of instruction and, therefore, are not covered under the Tuition Assistance Act. As to item (3), part of this cost appears to be included and part not included. Specifically, the college and student activity fee would not be included, because it is associated with extracurricular activities. However, the remaining costs do appear associated with the cost of instruction so as to permit their payment under the Act.

If I can be of further assistance to you in this matter, please do not hesitate to contact me.

Very truly yours,

Richard B. Kale, Jr.
Senior Assistant Attorney General

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