

**OPINION
69-179**

June 10, 1969 (OPINION)

Mr. Kenneth E. Raschke

Commissioner of Higher Education

RE: Higher Education - Resident Tuition - Residence Required

This is in reply to your letter of June 5, 1969, in which you set forth the following question:

"Is there any way short of legislative action by which North Dakota students can register at a North Dakota institution of higher education and trade campus residence and class attendance with a student from another state (not contiguous with North Dakota) who registered in his state - without involving the payment of out-of-state tuition for the incoming student?"

Section 15-10-18 of the North Dakota Century Code provides in part that at all state institutions of higher education, tuition must be charged and collected from each non-resident student in such amount as shall be determined by the State Board of Higher Education. The statute further provides that the amount of tuition on the undergraduate level shall not be less than the average nonresident tuition charged for the preceding fall registration by similar state-supported institution in the states bordering upon North Dakota. The statute also permits these requirements to be varied by specific reciprocal interstate agreement.

Section 15-10-19 of the North Dakota Century Code, as amended, defines a nonresident student for tuition purposes. This section was amended by the 1969 Legislative Assembly but the Amendments do not appear pertinent to the question at hand. The students from other states referred to in the above question would apparently be considered nonresident students under section 15-10-19.

The 1969 Legislative Assembly also enacted House Bill 105, effective July 1, 1969, which authorizes the State Board of Higher Education to enter into agreements with institutions of higher education within this State and in contiguous States, governing the education and admission of certain students on a reciprocal basis. The bill, by its provisions, is an exception to section 15-10-18, requiring nonresident tuition. There are two principal provisions of the bill. Section 2 provides:

AGREEMENTS - RECIPROCAL BASIS. Notwithstanding the provisions of section 15-10-18, the state board of higher education is hereby authorized to enter into agreements with public or private institutions of higher education, or the governing boards thereof, in this state and in contiguous states on a reciprocal basis in order to accomplish the following:

1. To enable a student at any institution party to such an agreement to take a specialized course or courses at a different institution from that in which he is enrolled,

with or without the payment of tuition charges at the other institution.

2. To enable a student enrolled in any of the institutions party to the agreement to attend another institution party to such agreement without being required to pay nonresident tuition fees and in accordance with the terms of such agreement."

While the students in question would appear to fall within subsection 2 of the above quoted section, we note the section authorizes the Board of Higher Education to enter into agreements only with institutions of higher education or the governing boards thereof in North Dakota or in contiguous states.

Section 3 of the bill provides:

REMISSION OF NONRESIDENT TUITION - AGREEMENT. Notwithstanding the provisions of section 5-10-18, the state board of higher education may enter into agreements for the remission of nonresident tuition for designated categories of students at state institutions of higher education. Such agreements shall have as their purpose the mutual improvement of educational advantages for residents of this state and such other states or institutions of other states with whom agreements are made."

While this section does not specifically refer to contiguous States, we must also take into consideration the declaration of legislative intent as set forth in section 1 of the bill:

DECLARATION OF LEGISLATIVE INTENT. In order to make the most provident utilization of state institutions of higher education and private colleges in North Dakota, and public and private colleges and universities in contiguous states, and to avoid duplication of facilities, it is desirable to provide means which will enable a student resident within the areas served by such institutions of higher education to obtain his desired courses in the most expedient manner and at the least possible cost."

We note the statement of legislative intent indicates the Legislature, in enacting this bill, was concerned only with the institutions of higher learning in North Dakota and in contiguous states. In addition we note the title of the Bill states its purpose is to create a statute: "Authorizing the board of higher education to enter into agreements with institutions of higher education within this state and in contiguous states, governing the education and admission of certain students on a reciprocal basis."

In construing a statute the Supreme Court of North Dakota has held that an interpretation of a statute harmonizing with its title will be adopted, rather than one extending a statute's provisions beyond the range stated in the title. See, e.g., Olson v. Erickson, 56 N.D. 468, 217 N.W. 841.

We must therefore conclude that the above cited provisions of House Bill 105 are applicable only to agreements with institutions of

higher learning in North Dakota and in states contiguous thereto.

We also note the provisions of section 15-10-28 of the North Dakota Century Code provides:

AGREEMENTS WITH OTHER STATES' INSTITUTIONS OF HIGHER LEARNING. The state board of higher education is hereby authorized to enter into agreements with institutions of higher learning in other states, and, subject to the limits of legislative appropriations, to make such expenditures as are necessary for the purpose of utilizing the educational facilities of such institutions for teaching North Dakota students those courses that are not offered by institutions of higher learning in this state. In addition the state board of higher education is authorized to enter into agreements with other state institutions of higher learning for the acceptance of students from other states in North Dakota institutions of higher learning."

The last sentence of the above quoted section indicates the Board of Higher Education may enter into agreements with other state institutions of higher learning (this would exclude privately owned institutions or institutions operated by a political subdivision rather than the State itself) for the acceptance of students from other States in North Dakota institutions of higher learning. This provision does not, however, permit a waiver of nonresident tuition as required by section 15-10-28.

We are not aware of any other provisions relative to the matter of tuition for nonresident students. We must therefore conclude the present legislative authority would not permit the Boards to waive nonresident tuition for students coming from States not contiguous to North Dakota even though such students would be trading campus residence and class attendance with North Dakota students who were registered at a North Dakota institution of higher learning.

HELGI JOHANNESON

Attorney General

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