

**OPINION
71-439**

July 15, 1971 (OPINION)

Mr. Lloyd H. Nygaard

Assistant Commissioner of Higher Education

RE: Taxation - Sales Tax - College Food Service

This is in reply to your letter of June 30, 1971, relative to House Bill 1053 enacted by the 1971 Legislative Assembly. You state the following facts and questions:

"House Bill 1053 was passed by the Legislature, signed by Governor Guy and becomes effective on July 1, 1971. It creates and enacts a new subsection to Section 57-39.2-04 of the sales tax law. The new subsection exempts food purchased by a student under a board contract with a college, university, fraternity, or sorority.

"Not all of our institutions charge students for food on a quarter or semester basis. Some make meal tickets in various forms available to students. Under this method the students pay only for the meals eaten.

"We respectfully ask your opinion as to whether such meal tickets constitute boarding contracts under the provisions of House Bill 1053."

The act passed by the Legislature creates an exemption for the food purchased by a student under a boarding contract with a college, university, fraternity or sorority. The bill was a result of a study by the Legislative Council. While the bill as originally introduced was amended before final enactment, we find the following statement on page 58 of the 1971 Legislative Council Report:

"A third recommendation related to the sales tax would remove the exemption on food purchased from college and university cafeterias and dining rooms, including fraternity and sorority houses. * * * The Tax Department advises that * * * some colleges and universities are now paying the sales tax on sales in cafeterias which are open to the general public. The principle behind the removal of this exemption is to provide uniform treatment between those students who eat in cafeterias and dining rooms and those students who eat off campus."

We note the bill as finally enacted is substantially different from that originally recommended in that the bill as finally enacted exempts from the sales tax food purchased by a student under a boarding contract with a college, university, fraternity or sorority. Whether the bill as finally enacted meets the principle espoused by the Legislative Council in the above-quoted statement is open to conjecture since it is obvious that the principle of uniform treatment between those students who eat in cafeterias and dining rooms and those students who eat off campus would not be completely

honored by the enactment of the bill.

In order to answer the question presented, we must construe the words "under a boarding contract." We assume, although your letter does not so state, that a meal ticket is purchased for a specified sum and entitles the person (student) purchasing same to the amount of food or number of meals specified on the meal ticket. Such transaction would appear to constitute a contract in that the student pays for a ticket and is entitled to a specified dollar amount of food or a specified number of meals in return. The term "boarding" presents a more difficult problem. We believe there is no doubt but that a student who pays a specified sum for a quarter or semester and in return therefore is entitled to his meals for that time in the college or university cafeteria specified is a boarding contract. Whether this would apply to a meal ticket which entitles a student to only a specified amount of food or number of meals is not as clear since the statutes do not define the term "boarding contract."

The dictionary definitions do not appear of assistance in this instance. The cases (as listed in "Words and Phrases") are not directly in point. However they appear to distinguish between a public cafe and a boarding house on the basis that in a boarding house the guest is under an express contract at a fixed rate for a certain period of time whereas in other instances a cafe is open for the public without previous agreement. We believe the same rationale may be applied in this instance in that students under a contract are under a "boarding contract" whereas students who purchase meal by meal are not under such a contract and pay only as they eat. In such instance we see no reason for distinguishing between students who pay by the quarter or semester and those who buy meal tickets, since the only difference is the fact that the duration of time and amount of money paid may be different, i.e., the person purchasing a meal ticket may purchase same for a shorter duration and for less money than the student who pays for meals by the quarter or semester. However even in such instance we realize that a student could purchase a meal ticket for a quarter or a semester.

Since both the contract for a quarter or a semester and a meal ticket involve a contract for a duration of time, it is our opinion that meal tickets constitute boarding contracts under the provisions of House Bill 1053 (Chapter 572, 1971 Session Laws).

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Attorney General