



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 27, 1994

Honorable Hugo Berlanga
Chair
Committee on Public Health
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Letter Opinion No. 94-011

Re: Reconsideration of Attorney General
Opinion WW-1246 (1962) (RQ-604)

Dear Representative Berlanga:

You have asked this office to reconsider Attorney General Opinion WW-1246 (1962), which opined that article 2654b-1, V.T.C.S., since repealed and codified as section 54.203 of the Education Code, applied only to veterans who had received "honorable discharges" from military service. In our view, the strained and hypertechnical reading of this opinion has been vitiated by the liberal interpretation of the meaning of discharge categories for benefit purposes which Congress and the armed forces have adopted. Accordingly, Attorney General Opinion WW-1246 is overruled. In the opinion of this office, the exemptions from tuition and fees provided by section 54.203 of the Education Code apply to those persons classified by the armed services as "discharged under honorable circumstances" as well as those "honorably discharged."

Section 54.203 exempts "from the payment of all dues, fees, and charges" for higher education several categories of persons, which categories may be summarized as all veterans honorably discharged from the armed forces of the United States who served in the Spanish-American War, the First or Second World Wars, the Korean War, or at any time thereafter. Tex. Educ. Code, §54.203(a). The phrase "honorably discharged" is used to describe all such categories of members of the armed forces covered.

Attorney General Opinion WW-1246 reasoned that "honorable discharge" was a term of art, and that it was therefore appropriate to consider how the armed forces understood the term. Attorney General Opinion WW-1246 at 3. It concluded, based on then-current regulations, "that an 'Honorable Discharge' is a categoric term or phrase applied to a specific type or kind of discharge [rather than] a generic term applying to discharges that are other than 'Dishonorable Discharges.'" *Id.* Accordingly, it found that the exemption granted by what was then article 2654b-1, V.T.C.S., was only available to veterans granted an honorable discharge.

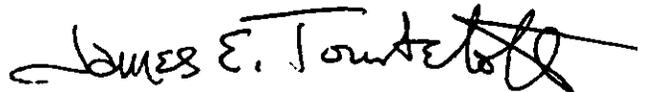
Without considering whether Attorney General Opinion WW-1246 was correct in its interpretation when issued, we believe that it is no longer an adequate statement of the law.

Under federal regulations, many though not all benefits available to honorably discharged veterans are also available to those who have received general discharges under honorable conditions. For example, 38 U.S.C. § 3452(a)(1) defines any veteran who served on active duty from January 31, 1955, to January 1, 1977, "and was discharged or released therefrom under conditions other than dishonorable" as entitled to certain enumerated educational benefits. Similarly, 38 U.S.C. § 3202(1)(A) makes such benefits available to veterans "discharged or released . . . under conditions other than dishonorable" who served between January 1, 1977, and July 1, 1985. The Montgomery G.I. Bill Act of 1984, 38 U.S.C. § 3002, which covers service after 1985, is more restrictive. However, we believe that as a general matter these enactments suggest a federal policy of regarding discharges under honorable conditions as roughly equivalent to honorable discharges for the purpose of most educational benefits. Following the apparent logic of Attorney General Opinion WW-1246, therefore, we believe that "honorable discharge," as the term is used in section 54.203 of the Education Code, must now be construed to include general discharges under honorable conditions. Accordingly, Attorney General Opinion WW-1246 is overruled.

S U M M A R Y

Attorney General Opinion WW-1246 (1962) is overruled. For the purposes of the exemption from tuition and fees for higher education for veterans authorized by section 54.203 of the Education Code, discharges under honorable conditions should be treated as the equivalent of honorable discharges.

Very truly yours,



James E. Tourtelott
Assistant Attorney General