



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

August 16, 1996

**Dr. Kenneth H. Ashworth
Commissioner
Texas Higher Education Coordinating Board
P.O. Box 12788
Austin, Texas 78711**

Letter Opinion No. 96-90

Re: Whether, under Education Code section 54.203, a member of the reserve components of the United States armed forces who has been honorably separated from active duty but not discharged from the reserve is exempt from various dues, fees, and charges at an institution of higher education (ID# 38757)

Dear Dr. Ashworth:

Education Code section 54.203 generally requires an institution of higher education to exempt from the payment of various fees a resident of Texas who was honorably discharged from the United States armed forces after serving on active military duty during the Persian Gulf War. You ask whether a member of a reserve component of the armed forces who served on active military duty during the Persian Gulf War and who has been "honorably separated" from active duty but not discharged from service to the reserve is exempt under section 54.203. In Attorney General Opinion O-7021 this office determined that certain navy personnel who were transferred to inactive duty, subject to recall, were entitled to the exemption provided by the statutory predecessor to Education Code section 54.203. Based upon our decision in Attorney General Opinion O-7021, we conclude that these reservists are exempt under section 54.203.

Education Code section 54.203(a) exempts certain veterans from paying various fees to an institution of higher education:

The governing board of each institution of higher education shall exempt the following persons from the payment of all dues, fees, and charges, . . . , provided the persons seeking the exemptions were citizens of Texas at the time they entered the services indicated and have resided in Texas for at least the period of 12 months before the date of registration:

. . . .

(4) all persons who were honorably discharged from the armed forces of the United States after serving on active military duty . . . for more than 180 days and who served a portion of their active duty during:

....

(E) the Persian Gulf War.

For the purposes of this opinion, we assume you ask about a person who was a citizen of Texas at the time he or she entered the service and who has resided in Texas for at least one year before registering to attend an institution of higher education.

As you state, during the Persian Gulf War, numerous reservists were called to active duty and then granted an "honorable separation from active duty." We assume these reservists have not been released from their obligation to serve the reserve component of the armed forces of which they are members. Thus, while the reservists were released from active duty to return to their homes, they remain "on call" to the reserve.

This office considered a similar question in Attorney General Opinion O-7021. There, we were faced with the plight of enlisted Navy personnel who were transferred to inactive status to resume their medical, dental, or theological educations.¹ As we recognized, the transfer program was part of the Navy's partial demobilization "as a result of the surrender of our enemies and consequent decrease in personnel requirements."² We were specifically asked whether the transfer constituted a personal request to be discharged, which would have disqualified a person from receiving the exemptions.³ We determined that it did not.⁴ Moreover, even though the transferred personnel remained subject to recall by the Navy upon certain conditions, this office concluded that the personnel were eligible for the exemptions provided in the statutory predecessor to Education Code section 54.203.⁵ Implicit in our conclusion is the determination that the transfer to inactive status constitutes a discharge for purposes of the statute, the substance of which is now found in Education Code section 54.203.

¹ Attorney General Opinion O-7021 (1946) at 2.

²*Id.* at 3.

³*See id.* at 1 (quoting V.T.C.S. art. 2654b-1 (repealed 1971)).

⁴*Id.* at 3.

⁵*Id.*

Consistent with our conclusion in Attorney General Opinion O-7021, we conclude that the reservists about whom you ask, who have been "honorably separated" from active duty performed during the Persian Gulf War, are eligible for the exemptions provided in Education Code section 54.203.

S U M M A R Y

A reservist who was on active duty during the Persian Gulf War and who has been honorably separated from active duty is eligible for exemption from the payment of various dues, fees, and charges at an institution of higher education under Education Code section 54.203. The reservist must, of course, satisfy the other requirements listed in section 54.203 to actually receive the exemption.

Yours very truly,



Sarah J. Shirley
Chair, Opinion Committee