BR#91-85

Connecticut State University
Central • Eastern • Southern • Western

P.O. Box 2008, New Britain, Connecticut 06050
(203) 827-7700

RESOLUTION

concerning

RESIDENCY REQUIREMENT FOR ELIGIBILITY FOR VETERANS' WAIVERS OF TUITION AND PARTIAL WAIVER OF EXTENSION AND SUMMER SESSION COURSE FEES

June 14, 1991

WHEREAS, The Connecticut Attorney General issued on May 10, 1991, an official opinion that Connecticut General Statutes Section 10a-77(d)(2) is unconstitutional insofar as it denies the war service veterans' tuition waiver to such resident veterans at the Community-Technical Colleges who did not enter the armed forces from Connecticut or become residents during their time of service, and

WHEREAS, Connecticut General Statutes Section 10a-99(d)(2), which applies to Connecticut State University, contains precisely the same language as Section 10a-77(d)(2), therefore be it

RESOLVED, That, effective this date, Board Resolution 84-125 is amended to provide the tuition waiver granted therein to all qualified veterans who are Connecticut residents at the time of their enrollment in the Connecticut State University without regard to their residence at the time of their service in the armed forces, and be it

RESOLVED, That, effective this date, Board Resolution 78-104 is amended to provide the 50% Extension and Summer Session Course Fee waiver granted therein to all qualified veterans who are Connecticut residents at the time of their enrollment in Extension or Summer Session courses without regard to their residence at the time of their service in the armed forces.

A Certified True Copy

Dallas K. Beal
President

THE CONNECTICUT STATE UNIVERSITY

P.O. Box 2008 • New Britain, Connecticut 06050 • (203) 827-7700

Office of the President

RESOLUTION

concerning

WAIVER OF TUITION FEES FOR VETERANS

July 20, 1984

WHEREAS, Public Act No. 84-438 amended Subsection (b)(2) of Section 10a-99 of the General Statutes to require the waiver of Tuition fees for veterans who served in either a combat or combat support role in the invasion of Grenada or the peace keeping mission in Lebanon, and

WHEREAS, Board Resolution #78-103 provided for the waiver of Tuition for all veterans who then qualified for such waiver, be it

RESOLVED, That, effective retroactively to July 1, 1984, Board Resolution #78-103 is rescinded, and be it

RESOLVED, That, effective retroactively to July 1, 1984, Tuition for qualified veterans shall be waived by the Connecticut State University in accordance with the provisions of Subsection (b)(2) of Section 10a-99 of the General Statutes as amended by Public Act No. 84-438.

A Certified True Copy:

James A. Frost

James A. Frost
President

SCR#78-104

73-31 rescinded

STATE OF CONNECTICUT

BOARD OF TRUSTEES
FOR THE STATE COLLEGES
P. O. Box 2008 New Britain, Connecticut 06050
TEL. NEW BRITAIN: 203-229-1607 TEL. HARTFORD: 203-566-7373

RESOLUTION

concerning

EDUCATIONAL EXTENSION AND SUMMER SESSION FEES FOR VETERANS

November 3, 1978

WHEREAS, The policy of the Board of Trustees for State Colleges, as stated in State College Resolution #73-31, provides for the waiver of Educational Extension and Summer Session credit hour fees only for veterans of the Vietnam Era, and

WHEREAS, Public Act 78-175 has extended the privilege of waiver of tuition to veterans of other periods of war service, and

WHEREAS, The Board of Trustees supports the concept of free education for veterans but cannot justify further increases in course fees to non-veteran students in order to provide free instruction for veterans, be it

RESOLVED, That, effective retroactively to the beginning of the 1978 Fall semester, State College Resolution #73-31 is rescinded, and be it

RESOLVED, That dependent children of armed forces personnel who qualify for waiver of tuition under Subsection (b) (1) of Section 10-116 of the General Statutes shall continue to be granted full waiver of credit hour fees when enrolled in the Educational Extension and Summer Session programs, and be it

RESOLVED, That, effective retroactively to the beginning of the 1978 Fall semester, those veterans who qualify under Subsection (b)(2) of Section 10-116 of the General Statutes shall be granted a waiver of one-half of credit hour fees when enrolled in the Educational Extension or Summer Session programs.

A Certified True Copy:

James A. Frost

James A. Frost
Executive Director

MEMORANDUM

TO: Dr. Dallas K. Beal, President
Connecticut State University
P. O. Box 2008
New Britain, CT 06050

FROM: Bernard F. McGovern, Jr.
Assistant Attorney General
Department Head
Education and DMR
110 Sherman Street
Hartford, CT 06105

RE: Tuition Waiver for Resident Veterans

DATE: May 20, 1991

In reply to your letter of May 14, 1991 regarding the above subject, I suggest the Board be presented for its consideration a ruling in substantially the following form:

WHEREAS, the Attorney General issued on May 10, 1991 an official opinion that Conn. Gen. Stat. § 10-77(d)(2) is unconstitutional insofar as it denies the war service veterans tuition waiver to such resident veterans at the Community-Technical Colleges who did not enter the armed forces from Connecticut or become residents during their time of service, and

WHEREAS the Connecticut State University has been informed that because its statutory counterpart , Conn. Gen. Stat. § 10a-99, contains precisely the same language as § 10a-77(d)(2), the Attorney General's opinion applies with the same effect to § 10a-99.

RESOLVED, that, effective immediately, Board Resolution No. 84-125 is amended to provide the tuition waiver granted therein to all qualified veterans who are Connecticut residents at the time of their acceptance for admission to the Connecticut State University without regard to their residence at the time of entry into the armed forces or during their service in the armed forces.

Also I suggest this expansion of the class of resident war-service veterans be noted in § 4.5.5 of the Policy Book.

If you have further questions, please give me a call.

Bernard F. McGovern, Jr.
Assistant Attorney General

BFM:sad

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(203) 827-7700

Office of the President

May 14, 1991

Bernard F. McGovern
Assistant Attorney General
Office of the Attorney General
Educational Unit
MacKenzie Hall
110 Sherman Street
Hartford, Connecticut 06105

Dear Mr. McGovern: Bernie

I am enclosing a copy of the resolution dated July 20, 1984 concerning waiver of tuition fees for veterans.

This is what we have on the books. We will edit the text according to your directions.

Sincerely,

Dallas K. Beal
President

enclosure

Sec. 10a-99. (Formerly Sec. 10-116). Tuition, fees and refunds. Tuition fund. Waivers. Reimbursement of fund. (a) Subject to the provisions of section 10a-26, the board of trustees of the Connecticut State University shall fix fees for tuition of not less than four hundred forty dollars for residents of this state and not less than one thousand thirty dollars for nonresidents and shall fix fees for such other purposes as the board deems necessary at the university, subject to the approval of the board of governors of higher education, and may make refunds of the same.

(b) The board of trustees of the Connecticut State University shall establish and administer a fund to be known as the Connecticut State University tuition fund. All tuition revenue received by the Connecticut State University in accordance with the provisions of subsection (a) of this section shall be deposited in said fund. Expenditures from said fund shall not exceed the amount recommended for expenditure by the governor pursuant to section 4-72, provided in the event the total of the projected fund income, including interest earnings from investments, and the accumulated fund balance exceeds the expenditure authority, the authority may be increased by action of the board of trustees with the approval of the board of governors of higher education, by the amount that the total of the projected fund income, including interest earnings from investments, and the accumulated fund balance exceeds the expenditure authority. All costs of waiving or remitting tuition pursuant to subsection (e) of this section shall be charged to said fund.

(c) Commencing December 1, 1984, and thereafter within sixty days of the close of each quarter, the board of trustees shall submit to the joint standing committee of the general assembly having cognizance of matters relating to appropriations and the budgets of state agencies and the office of policy and management, through the board of governors of higher education, a report on the actual expenditures of the Connecticut State University tuition fund itemized by appropriation account and containing such other relevant information as the board of governors of higher education may require.

(d) Said board shall waive the payment of tuition fees at the Connecticut State University (1) for any dependent child of a person whom the armed forces of the United States has declared to be missing in action or to have been a prisoner of war while serving in such armed forces after January 1, 1960, which child has been accepted for admission to such institution, provided such person missing in action or former prisoner of war was a resident of Connecticut at the time he entered the service of the armed forces of the United States or was a resident of Connecticut while so serving, (2) for any veteran having served in time of war, as defined in subsection (a) of section 27-103, or who served in either a combat or combat support role in the invasion of Grenada or the peace-keeping mission in Lebanon, who has been accepted for admission to such institution, provided such veteran was a resident of Connecticut at the time he entered the service of the armed forces of the United States or was a resident of Connecticut while so serving and is a resident of Connecticut at the time he is accepted for admission to such institution, (3) for any resident of Connecticut sixty-two years of age or older who has been accepted for admission to such institution, provided such person is enrolled in a degree-granting program or, provided, at the end of the regular registration period, there is space available in the course in which such person intends to enroll, (4) for any student attending the Connecticut police academy who is enrolled in a law enforcement program at said academy offered in coordination with the university which accredits courses taken in such program, and (5) for any active member of the Connecticut army or air national guard who (A) is a resident of Connecticut, (B) has been certified by the adjutant general or his designee as a member in good standing of the guard, and (C) is enrolled or accepted for admission to such institution on a full-time or part-time basis in an undergraduate degree-granting program. If any person who receives a tuition waiver in accordance with the provisions of this subsection also receives educational reimbursement from an employer, such waiver shall be reduced by the amount of such educational reimbursement.

(e) Said board shall set aside from its anticipated tuition fund revenue, an amount not less than that required by the board of governors' tuition policy established under subdivision (3) of subsection (a) of section 10a-6. Such funds shall be used to provide tuition waivers, tuition remissions, grants for educational expenses and student employment for

any undergraduate or graduate student who is enrolled as a full or part-time matriculated student in a degree-granting program, or enrolled in a precollege remedial program, and who demonstrates substantial financial need.

(f) The Connecticut State University tuition fund shall be reimbursed for the amount by which the tuition waivers granted under subsection (d) of this section exceed two and one-half per cent of said fund through an annual state appropriation. The board of governors shall request such an appropriation in accordance with section 10a-8 and said appropriation shall be based upon an estimate of tuition revenue loss using tuition rates in effect for the fiscal year in which such appropriation will apply.

(1949 Rev., S. 1419; 1955, S. 937d; 1959, P.A. 411, S. 12; February, 1965, P.A. 330, S. 38; 372, S. 1; 1969, P.A. 530, S. 4; June, 1971, P.A. 5, S. 123, 127; P.A. 73-542, S. 3; P.A. 74-266, S. 3, 5; 74-282, S. 3; P.A. 75-484, S. 3, 5; P.A. 76-181, S. 3, 5; 76-313, S. 1, 3; P.A. 77-241; 77-573, S. 24, 30; P.A. 78-175, S. 3, 5; P.A. 81-252, S. 3, 5; 81-468, S. 10, 11; P.A. 82-218, S. 37, 39, 46; 82-463, S. 3, 7; P.A. 83-457, S. 3, 6; P.A. 84-241, S. 2, 5; 84-365, S. 4, 12; 84-438, S. 3, 5; P.A. 85-553, S. 3, 5; P.A. 86-325, S. 3, 5; P.A. 87-450, S. 9, 17; P.A. 88-136, S. 22, 37; P.A. 89-380, S. 4, 7; P.A. 90-147, S. 8, 9, 20.)

History: 1959 act changed teachers colleges to state colleges and confined remission of fees to students preparing to teach; 1965 acts substituted board of trustees of the state colleges for state board of education, deleted phrase "under such regulations as it prescribes" in fee provision, deleted phrase restricting fee remission to students who are preparing to teach and added Subsec. (b) allowing waiver of fees for persons sixty-two or older; 1969 act allowed fees other than tuition to be charged and made fees subject to approval of commission for higher education; 1971 act made fees subject to provisions of Sec. 10-329b, set tuition fees at rate of at least three hundred dollars for residents and eight hundred fifty dollars for nonresidents and deleted provision allowing remission of fees for students of exceptional promise; P.A. 73-542 added Subsecs. (b) and (c) re waiver of fees for children of persons missing-in-action and former prisoners of war and for Vietnam era veterans; P.A. 74-266 deleted Subsec. (c) and incorporated its provisions into Subsec. (b) as Subdiv. (2); P.A. 74-282 allowed waiver of fees for persons sixty-two or older, incorporated as Subdiv. (3) in Subsec. (b), restoring previous provision enacted in 1965 but inadvertently dropped in 1971 act; P.A. 75-484 added Subsec. (c) allowing waiver of fees for those demonstrating substantial financial need; P.A. 76-181 increased minimum fee for residents to three hundred ninety dollars and for nonresidents to one thousand thirty dollars, provided that funds generated by the increase be appropriated to state colleges for educational purposes and increased percentage of students whose fees may be waived in Subsec. (c) from one to ten per cent; P.A. 76-313 allowed waiver of fees for students attending Connecticut state police academy in Subsec. (b); P.A. 77-241 substituted Connecticut police academy for Connecticut state police academy; P.A. 77-573 substituted board of higher education for commission for higher education; P.A. 78-175 substituted "veteran having served in time of war" for "Vietnam era veteran" in Subsec. (b); P.A. 81-252 amended Subsec. (b) to authorize waiver of tuition for eligible members of the Connecticut army or air national guard and to provide for reduction in waiver if eligible person receives educational reimbursement from employer; P.A. 81-468 amended Subsec. (a) increasing tuition fees from three hundred ninety to four hundred forty dollars for residents; P.A. 82-218 reorganized higher education system, amending Subsec. (a) to redesignate state colleges as the Connecticut State University and to replace board of higher education with board of governors, effective March 1, 1983; P.A. 82-463 amended Subsec. (c) to restrict waivers to full or part-time resident students and nonresident graduate students enrolled in degree-granting or precollege remedial programs and to include part-time students in calculation of total amount waived; Sec. 10-116 transferred to Sec. 10a-99 in 1983; P.A. 83-457 amended Subsec. (c) to repeal provision that tuition waived or remitted shall not exceed ten per cent of tuition revenue payable by number of full-time and part-time resident and nonresident students matriculated in a degree-granting program and enrolled in precollege remedial programs at the Connecticut State University for the current academic year, and substituted provision that tuition waived or remitted shall not exceed (1) ten per cent of tuition revenue due during the preceding year, including revenue lost due to tuition waivers and remissions, adjusted for tuition changes or (2) the appropriation to the Connecticut State University for the current fiscal year for tuition waiver or remittance, whichever is less, and added provision that only the funds in the scholarship aid tuition refund account may be used for the purposes of this section; P.A. 84-241 added "of higher education" to board of governors' title; P.A. 84-365 inserted new Subsecs. (b) and (c) establishing tuition fund for Connecticut State University, relettering subsequent sections accordingly, and deleting provisions in Subsec. (a) which required inclusion in Connecticut State University appropriation of tuition above stated amounts and in Subsec. (e), formerly (c), which limited tuition waivers and remittances to the amount appropriated for the purpose; P.A. 84-438 amended Subsec. (b) authorizing tuition waivers for veterans of Grenada and Lebanon; P.A. 85-553 inserted new Subsec. (e) which required board to set aside from its anticipated tuition fund revenue an amount not less than that required by the board of governors' tuition policy to provide funds for tuition waivers and remissions, grants for educational expenses and student employment, replacing previous provisions re waiver or remittance of tuition; P.A. 86-325 in Subsec. (b) increased two per cent of the expenditure level to one hundred and two per cent and added Subsec. (f) to provide for reimbursement of the tuition fund for waivers; P.A. 87-450 in Subsec. (b) provided that the expenditure authority may be increased by the amount the fund income exceeds the authority rather than by the amount the income exceeds the authority up to two per cent and eliminated the transfer of fund income for student financial aid; P.A. 88-136 deleted obsolete provision in Subsec. (b) re tuition revenue received for the 1984-1985 academic year; P.A. 89-380 in Subsec. (b) substituted "fund balance or projected fund balance, including reserves and interest earnings from investments", for "fund income, including interest earnings from investments" as the amount which must exceed the expenditure authority in order for the authority to be increased by the board of trustees and provided that if the authority is increased it be increased by the amount that the fund balance rather than the fund income exceeds the expenditure authority; P.A. 90-147 in Subsec. (b) expanded the authority of the board of trustees to increase expenditures from the tuition fund beyond the governor's recommended expenditure authority and in Subsec. (d) required that a person sixty-two years of age or older be a resident of the state to be eligible for a tuition waiver.

Ms. Higgins

Connecticut State University

Central • Eastern • Southern • Western

Office of the President

P.O. Box 2008, New Britain, Connecticut 06050
(203) 827-7700

MEMORANDUM

TO: Presidents Adanti, Carter, Feldman, Shumaker;
Vice Presidents Bowes, Merolli, Mitchell, Sullivan;
Deans Ariosto, Lemoine, Lubetkin, Pederson;
Directors Hawkins, Maginniss, Savage, Taylor;
Communications Committee Members Adanti, Judd, Muska, Pernal.

FROM: Dallas K. Beal
CSU President

DATE: June 14, 1991

SUBJ: Veterans' Waivers: (1) Inclusion of Operations Desert Shield/ Desert Storm; (2) Attorney General Opinion on Veterans' Residency.

(1) Attached is a copy of Public Act 91-2, AN ACT CONCERNING STATE EMPLOYEES AND OTHER CONNECTICUT RESIDENTS CALLED TO ACTIVE DUTY IN THE ARMED FORCES OF THE UNITED STATES IN SUPPORT OF OPERATION DESERT SHIELD AND OPERATION DESERT STORM. This is the tuition waiver statute for Veterans of the Persian Gulf. Please note that this statute was signed on February 11 by Governor Weicker, and was effective immediately.

The pertinent section of P.A. 91-2 is Section 6. This is the section that defines "armed services" and "Veterans" to include those who served "during Operation Desert Shield and Operation Desert Storm, August 7, 1990, until the cessation of hostilities as determined by the President of the United States or until a date established by an act of the General Assembly." Accordingly, these Veterans are entitled to the same tuition waivers granted to all other Veterans through Board resolution.

Your attention to the implementation of this law is appreciated.

(2) Also attached, are copies of the Attorney General's opinion on the constitutionality of the current statute defining residency for Veterans' benefits, and the subsequent board resolution addressing the residency issue as opined by the Attorney General. Note that this policy is effective immediately.

With regard to the Attorney General opinion on Veterans' residency requirements, please note that it is considered unconstitutional to place limits on residency dates for the purposes of Veterans' benefits. Accordingly, Veterans' tuition waivers are to be based only on service in the armed forces as defined by the statutes, and on

An Equal Opportunity Employer

Connecticut residency at the time of acceptance for admission. No longer will we be able to demand proof of Connecticut residency at the time of induction or service in the armed forces.

Again, your attention to the implementation of this Attorney General Opinion and subsequent Board Resolution is appreciated.

Finally, while the Governor has not yet signed two technical amendments bills (House Bills 7227 and 7346) which affect Veterans' issues, and while the special session of the General Assembly may result in yet further revisions affecting Veterans, you should be apprised that such changes may be forthcoming. When and if such changes are in place, you will be so notified.

Feel free to contact Dr. Peter M. Rosa, CSU Director of Governmental Relations, at 827-7399 if you have any questions about these legislative and administrative changes in the public policies affecting Veterans.

cc: Executive Council

Substitute House Bill No. 5565

PUBLIC ACT NO. 91-2

AN ACT CONCERNING STATE EMPLOYEES AND OTHER CONNECTICUT RESIDENTS CALLED TO ACTIVE DUTY IN THE ARMED FORCES OF THE UNITED STATES IN SUPPORT OF OPERATION DESERT SHIELD AND OPERATION DESERT STORM.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. As used in sections 1 to 3, inclusive, of this act, "state employee" or "employee" means any elected official, officer or full-time employee of the executive, legislative or judicial department; and "part pay" means the difference between the state employee's base rate of pay, plus longevity, in the employee's primary position on the date the employee is called to active service in the armed forces of the United States and the total compensation the employee receives for such active service, as certified to the comptroller by the employing state agency in a manner acceptable to the comptroller.

Sec. 2. Notwithstanding any provision of the general statutes or any public or special act to the contrary, the state shall continue to provide coverage, under a group hospitalization and medical and surgical insurance plan sponsored by the state under section 5-259 of the general statutes, for the dependents of any state employee who is a member of the armed forces of the state or of any reserve component of the armed forces of the United States and who has been called to active service in the armed forces of the United States during the period commencing on August 7, 1990, and lasting for the duration of Operation Desert Shield and Operation Desert Storm until the cessation of hostilities as determined by the President of the United States or until a date established by an act of the general assembly, provided such dependents were covered by the insurance plan on the date the state employee was called to active service and the state employee continues to pay any amount that the employee was required to pay for coverage of the dependents before being called to active service. The coverage of such dependents shall be continued for the duration of the state employee's active service in the armed forces. Any payment required

to be made by the employee for coverage of dependents under this section may be deducted from compensation provided under section 3 of this act. The state shall reimburse any state employee who has paid premiums for the continuation of any such group hospitalization and medical and surgical insurance plan between August 7, 1990, and the effective date of this act. The reimbursement shall be in the amount of the state's portion of the premiums so paid.

Sec. 3. Notwithstanding any provision of the general statutes or any public or special act to the contrary, any state employee who is a member of the armed forces of the state or of any reserve component of the armed forces of the United States and who has been called to active service in the armed forces of the United States during the period commencing on August 7, 1990, and lasting for the duration of Operation Desert Shield and Operation Desert Storm until the cessation of hostilities as determined by the President of the United States or until a date established by an act of the general assembly, shall be entitled to a leave of absence with pay for thirty calendar days from the date on which the employee was called to active service. After the expiration of such thirty-day period, the state employee shall receive part pay for the duration of his active service in the armed forces if the compensation received by the state employee for his active service in the armed forces of the United States is less than the employee's base rate of pay, plus longevity, in the employee's primary position. The state employee shall not be required to exhaust accrued vacation or sick time in order to be eligible for the paid leave of absence and part pay under this section.

Sec. 4. Notwithstanding the provisions of chapter 224 of the general statutes, no person liable for the tax imposed on dividends, interest income and capital gains under said chapter 224 who is serving on active duty in the armed forces of the United States (1) during the period commencing on August 7, 1990, and lasting for the duration of Operation Desert Shield and Operation Desert Storm until the cessation of hostilities as determined by the President of the United States or until a date established by an act of the general assembly, and (2) in the combat zone designated by Executive Order 12744 of January 21, 1991, and no spouse of any such person who has

filed or will file a joint return under said chapter 224 with such person, shall be required to file a tax return or pay all or any part of the tax due under said chapter 224 with respect to any tax year commencing on or after January 1, 1990, until one hundred eighty days after such person returns from the combat zone. No interest or other penalty shall be imposed by the commissioner of revenue services or be payable by any person for reason of the late filing of or late payment related to any return filed or tax paid in accordance with this section.

Sec. 5. (a) Notwithstanding the provisions of chapter 216 of the general statutes, no person liable for the tax imposed under said chapter shall be required to file a tax return or pay all or any part of the tax due under said chapter until one year after the date of death if the transferor is a person who died while serving on active duty in the armed forces of the United States (1) during the period commencing on August 7, 1990, and lasting for the duration of Operation Desert Shield and Operation Desert Storm until the cessation of hostilities as determined by the President of the United States or until a date established by an act of the general assembly, and (2) in the combat zone designated by Executive Order 12744 of January 21, 1991. No interest or other penalty shall be imposed by the commissioner of revenue services or be payable by any person on any return filed or tax paid in accordance with this section.

(b) Notwithstanding the provisions of chapter 216 of the general statutes, no person who is an administrator, executor, administrator for tax purposes, administrator c.t.a. or administrator d.b.n. or administrator d.b.n.,c.t.a. for any transferor under said chapter and who is serving on active duty in the armed forces of the United States (1) during the period commencing on August 7, 1990, and lasting for the duration of Operation Desert Shield and Operation Desert Storm until the cessation of hostilities as determined by the President of the United States or until a date established by an act of the general assembly, and (2) in the combat zone designated by Executive Order 12744 of January 21, 1991, shall be required to file a tax return or pay all or any part of the tax due under said chapter 216 until one hundred eighty days after returning from the combat zone. No interest or other penalty

shall be imposed by the commissioner of revenue services or be payable by any person on any return filed or tax paid in accordance with this section.

Sec. 6. Subsection (a) of section 27-103 of the general statutes is repealed and the following is substituted in lieu thereof:

(a) As used in the general statutes, except chapter 504, and except as otherwise provided: (1) "Armed forces" means the United States Army, Navy, Marine Corps, Coast Guard and Air Force; (2) "veteran" means any person honorably discharged from, or released under honorable conditions from active service in, the armed forces; (3) "service in time of war" means service of ninety or more days unless separated from service earlier because of a service-connected disability rated by the Veterans' Administration, during the Spanish-American War, April 21, 1898, to August 13, 1898; the Philippine insurrection, August 13, 1898, to July 4, 1902, but as to engagements in the Moro Province, to July 15, 1903; the Boxer Rebellion, June 20, 1900, to May 12, 1901; the Cuban pacification, September 12, 1906, to April 1, 1909; the Nicaraguan campaign, August 28, 1912, to November 2, 1913; the Haitian campaign, July 9, 1915, to December 6, 1915; the punitive expedition into Mexico, March 10, 1916, to April 6, 1917; World War I, April 6, 1917, to November 11, 1918, but as to service in Russia, to April 1, 1920; World War II, December 7, 1941, to December 31, 1946; and the Korean hostilities, June 27, 1950, to January 31, 1955; and shall include service during the Vietnam era, January 1, 1964, to July 1, 1975; AND SHALL INCLUDE SERVICE DURING OPERATION DESERT SHIELD AND OPERATION DESERT STORM, AUGUST 7, 1990, UNTIL THE CESSATION OF HOSTILITIES AS DETERMINED BY THE PRESIDENT OF THE UNITED STATES OR UNTIL A DATE ESTABLISHED BY AN ACT OF THE GENERAL ASSEMBLY; and shall include service during such periods with the armed forces of any government associated with the United States.

Sec. 7. Section 27-140 of the general statutes is repealed and the following is substituted in lieu thereof:

All money so paid to and received by the American Legion shall be expended by it in furnishing food, wearing apparel, medical or surgical aid or care or relief to, or in bearing the funeral expenses of, soldiers, sailors or marines who served in any branch of the military

service of the United States between April 6, 1917, and November 11, 1918, or between December 7, 1941, and December 31, 1946, all dates inclusive, or served in the Spanish-American War between April 21, 1898, and July 4, 1902, inclusive, and actual participation in hostilities in the Moro Province to July 15, 1903, or any persons who served in the military or naval forces between June 27, 1950, and December 31, 1955, both dates inclusive, or who served in the military or naval forces during the Vietnam era, as defined in subsection (a) of section 27-103, AS AMENDED BY SECTION 5 OF THIS ACT, OR WHO SERVED IN THE MILITARY OR NAVAL FORCES DURING OPERATION DESERT SHIELD AND OPERATION DESERT STORM, AUGUST 7, 1990, UNTIL THE CESSATION OF HOSTILITIES AS DETERMINED BY THE PRESIDENT OF THE UNITED STATES OR UNTIL A DATE ESTABLISHED BY AN ACT OF THE GENERAL ASSEMBLY, or who were engaged in any of the wars waged by the United States during said periods in the forces of any government associated with the United States, who have been honorably discharged therefrom or honorably released from active service therein, and who were citizens or resident aliens of the state at the time of entering said armed forces of the United States or of any such government, or to their spouses who are living with them, or to their widows or widowers who were living with them at the time of death, or dependent children under eighteen years of age, who may be in need of the same. All such payments shall be made by the American Legion under authority of its bylaws, which bylaws shall set forth the procedure for proof of eligibility for such aid and shall be approved by the board of trustees, provided payments made for the care and treatment of any person entitled to the benefits provided for herein, at any hospital receiving aid from the general assembly unless special care and treatment are required, shall be in accordance with the provisions of section 17-312, and provided the sum expended for the care or treatment of such person at any other place than a state-aided hospital shall in no case exceed the actual cost of supporting such person at the veterans' home and hospital, unless special care and treatment are required, when such sum as may be determined by the treasurer of such organization may be paid therefor. The treasurer of such organization shall account to said board of trustees during the months of January, April,

July and October for all moneys disbursed by it during the three months next preceding the first day of either of said months, and such account shall show the amount of and the name and address of each person to whom such aid has been furnished. Upon the completion of the trust provided for in section 27-138, the principal fund so held by said board of trustees shall revert to the state treasury.

Sec. 8. This act shall take effect from its passage.

Certified as correct by

_____

Legislative Commissioner.

_____

Clerk of the Senate.

_____

Clerk of the House.

Approved _____ *, 1991.*

_____

Governor, State of Connecticut.

cc: Executive Council
5-22-91

MEMORANDUM

TO: Dr. Dallas K. Beal, President
Connecticut State University
P. O. Box 2008
New Britain, CT 06050

RECEIVED
MAY 22 1991
CSU
STATE UNIVERSITY

FROM: Bernard F. McGovern, Jr.
Assistant Attorney General
Department Head
Education and DMR
110 Sherman Street
Hartford, CT 06105

RE: Tuition Waiver for Resident Veterans

DATE: May 20, 1991

In reply to your letter of May 14, 1991 regarding the above subject, I suggest the Board be present for its consideration a ruling in substantially the following form:

WHEREAS, the Attorney General issued on May 10, 1991 an official opinion that Conn. Gen. Stat. § 10-77(d)(2) is unconstitutional insofar as it denies the war service veterans tuition waiver to such resident veterans at the Community-Technical Colleges who did not enter the armed forces from Connecticut or become residents during their time of service, and

WHEREAS the Connecticut State University has been informed that because its statutory counterpart , Conn. Gen. Stat. § 10a-99, contains precisely the same language as § 10a-77(d)(2), the Attorney General's opinion applies with the same effect to § 10a-99.

RESOLVED, that, effective immediately, Board Resolution No. 84-125 is amended to provide the tuition waiver granted therein to all qualified veterans who are Connecticut residents at the time of their acceptance for admission to the Connecticut State University without regard to their residence at the time of entry into the armed forces or during their service in the armed forces.

Also I suggest this expansion of the class of resident war-service veterans be noted in § 4.5.5 of the Policy Book.

If you have further questions, please give me a call.

Bernard F. McGovern, Jr.
Assistant Attorney General

BFM:sad

MEMORANDUM

TO: Dr. Dallas K. Beal
President
Connecticut State University
P. O. Box 2008
New Britain, CT 06050

FROM: Bernard F. McGovern, Jr.
Assistant Attorney General
Department Head
Education and DMR
110 Sherman Street
Hartford, CT 06105

RE: Tuition Waiver for Resident Veterans

DATE: May 15, 1991

Enclosed is a copy of a recent formal opinion of the Attorney General to the Executive Director of the Community Technical Colleges to the effect that the provision of Conn. Gen. Stat. § 10a-77(d)(2), which limits the waiver of tuition for resident war service veterans to those who entered the service from Connecticut or who became Connecticut residents while in the service is unconstitutional. In other words, henceforth this waiver will be predicated only upon service in the armed forces during a time of war and upon Connecticut residency at the time of acceptance for admission.

Since Conn. Gen. Stat. § 10a-99(d)(2) contains provisions identical to § 10a-77(d)(2), the opinion applies to Connecticut State University and should be implemented with respect to all future requests for waivers.

I will be pleased to answer any specific questions you may have about this opinion.

Bernard F. McGovern, Jr.
Assistant Attorney General

BFM:sad
Enc.

RICHARD BLUMENTHAL
ATTORNEY GENERAL

55 Elm Street
P.O. Box 120
Hartford, CT 06141
(203) 566-2026

Office of The Attorney General
State of Connecticut

May 10, 1991

Dr. Andrew McKirdy
Executive Director
Board of Trustees of
Community-Technical Colleges
61 Woodland Street
Hartford, CT 06105

Dear Dr. McKirdy:

We are writing in response to your letter dated January 9, 1991, in which you request our advice about the constitutionality of the residency requirement contained in Conn. Gen. Stat. § 10a-77(d)(2), a statute concerning tuition waivers for eligible veterans. In an opinion issued on April 11, 1990, we concluded that the residency requirements and waiting periods contained in three statutes concerning veteran benefits (Conn. Gen. Stat. 27-103, 27-104, and 27-122b) are unconstitutional. You are asking whether, in light of that opinion, the residency requirement contained in Section 10a-77(d) is also unconstitutional. For the reasons discussed below, it is our opinion that it is.

The statute in question requires the Board of Trustees of Community-Technical Colleges to waive tuition for veterans who served during time of war and have been accepted for admission, provided the veteran was a Connecticut resident when he entered the service or was a Connecticut resident while serving and is a resident at the time he is accepted for admission. Thus, any veteran who establishes residence in Connecticut after serving in the armed forces during time of war is not and never will be eligible for the tuition waiver mandated by Section 10a-77(d)(2).

Residency requirements which simply distinguish between residents and nonresidents are permissible. Residency requirements which treat established residents differently depending upon when they moved into the state raise constitutional questions based on the right to equal protection of the laws. Attorney General of New York v. Soto-Lopez, 476 U.S. 898 (1986). Our opinion of last year provided a thorough review of the equal protection analysis to which

residency requirements have been subjected by the United States Supreme Court. For purposes of the immediate response we will summarize our earlier analysis and attach a copy of our 1990 opinion for your reflection.

An equal protection challenge to a statute or regulation basically asserts that similarly situated citizens are being treated differently and demands that the state justify its reasons for enacting a law that classifies people. The usual standard for reviewing a law challenged on equal protection grounds is the "rational basis" test. However, where a law classifies by race, alienage or national origin or in a manner that infringes upon a constitutionally protected fundamental right, it is subjected to so-called "strict scrutiny".

As a general rule, whether a statute is subjected to strict scrutiny or the rational basis test is a matter of critical importance. Strict scrutiny places upon the state the heavy burden of demonstrating that a compelling state interest is being served by the statute under challenge. By way of contrast, the rational basis test requires the state to show that the statute is rationally related to a legitimate state interest and deference has traditionally been given to the rationale a state puts forth.

Thus, a threshold question in any equal protection challenge is whether a fundamental right or a suspect classification is implicated. Statutes containing a residency requirement classify on the basis of the date that someone moves into the state. Although the Supreme Court has consistently recognized a constitutional right to interstate travel, recent decisions by the court have differed as to whether the right to travel is a fundamental right independent of the equal protection clause or simply one aspect of the equal protection clause. As a result, the standard of review, i.e., strict scrutiny or the rational basis test, has differed from case to case.

Our analysis of the Supreme Court's recent decisions led us to conclude that, in general, where the benefits at stake in a statute containing a residency requirement related to the "basic necessities of life", the Court subjected the statute to strict scrutiny since the fundamental right to travel was implicated. See Shapiro v. Thompson, 394 U.S. 618 (1968) (invalidating statutes denying welfare benefits to residents who had not resided in the state for at least a year); Memorial Hospital v. Maricopa County, 415 U.S. 250 (1974) (invalidating statute requiring a year's residency as a condition for receiving nonemergency medical care at public expense). Where the statute under challenge involves benefits that do not rise to the level of "basic necessities", the Court has employed the "rational basis" test. See Hooper v. Bernallillo County Assessor, 472 U.S. 612

(1985) (invalidating statute providing modest property tax exemption to veterans who were New Mexico residents before May 8, 1976); Zobel v. Williams, 457 U.S. 55 (1982) (overturning Alaska statute allocating among its residents a portion of petroleum revenues on the basis of length of residence in state).

However, there is no "bright line" test in determining whether a statute containing a residency requirement implicates the fundamental right to travel and warrants heightened scrutiny by the court. In Soto-Lopez, the Court invalidated a New York civil service rule giving bonus points on state civil service examinations to veterans who were New York residents when they entered the military. A plurality of the Court applied strict scrutiny after describing the benefit as "unquestionably substantial"; two concurring opinions concluded that strict scrutiny was not triggered but that the law failed to survive the "rational basis" test. In any event, the law failed to survive an equal protection challenge.

Our analysis of recent Supreme Court decisions on residency requirements led us to the conclusion that, in this area, no state has been able to advance either a compelling interest or even any legitimate state objective to which the statutes in question were rationally related. As a result, we concluded that the three statutes concerning veteran benefits could not survive an equal protection challenge under either the strict scrutiny or the rational basis test.

Our opinion of April 11, 1990 found the residency requirement of Section 27-140 to be unconstitutional. That requirement is similar to the one found in Section 10a-77(d)(2) in that it limited eligibility for certain benefits to war-time veterans who were Connecticut citizens at the time they entered the armed forces. We concluded that it could not survive the "rational basis test" any more than it could survive strict scrutiny.

The residency requirement of Section 10a-77(d)(2) is nearly identical to that found in section 27-140. Although the benefit in question may not relate to the basic necessities of life that seem to trigger strict scrutiny, it is at least as significant as the modest property tax exemption, the civil service bonus points and the petroleum fund dividends at issue in laws struck down under the rational basis test. Finally, we still cannot discern any legitimate state objective to which the statute would be rationally related that has not already been rejected by the court.

We conclude, therefore, that the residency requirement in Conn. Gen. Stat. § 10a-77(d) is unconstitutional.

Very truly yours,

RICHARD BLUMENTHAL
ATTORNEY GENERAL

Bernard F. McGovern, Jr.
Assistant Attorney General

RB/BFM/mu
Attachment

STATE OF CONNECTICUT
BOARD OF TRUSTEES OF COMMUNITY - TECHNICAL COLLEGES
61 Woodland Street - Hartford, Connecticut 06105-2392 - Telephone: (203) 566-8760

January 9, 1991

The Honorable Richard Blumenthal
Attorney General
55 Elm Street
Hartford, Connecticut 06106

Dear Attorney General Blumenthal:

The community and technical colleges are in the process of registering students for the Spring 1991 semester and a question has arisen regarding the State of Connecticut veterans tuition waiver.

CGS 10a-77 (d)(2) provides that the board of trustees of community-technical colleges shall waive tuition "for any veteran having served in time of war, as defined in subsection (a) of section 27-103, or who served in either a combat or combat support role in the invasion of Grenada or the peace-keeping mission in Lebanon, who has been accepted for admission to such institution, provided such veteran was a resident of Connecticut at the time he entered the service of the armed forces of the United States or was a resident of Connecticut while so serving, and is a resident of Connecticut at the time he is accepted for admission to such institution."

It is my understanding that the commissioner of veterans affairs has been advised by your office that such residency requirements for state veterans benefits are unconstitutional in light of Attorney General of New York v. Eduardo Soto-Lopez, 476 U.S. 898, 90 L. Ed. 2d 899, 106 S. Ct. 2317 (1986). Does this also apply to veterans tuition waivers at state institutions of higher education, or should the community and technical colleges continue to enforce the statutory requirement that the veteran have been a resident either upon entrance or while so serving?

Your response to this question will be greatly appreciated.

Sincerely,

Andrew C. McKirdy
Executive Director

ACMcK:LS65

State of Connecticut

CLARINE NARDI RIDDLE
ATTORNEY GENERAL

Office of The Attorney General
55 ELM STREET
P.O. BOX 120
HARTFORD, CT 06101
TELECOPIER (203) 566-1704

April 11, 1990

Mr. Joseph C. Barber
Commissioner
Department of Veterans' Affairs
287 West Street
Rocky Hill, Connecticut 06067

Dear Commissioner Barber:

We are writing in response to your letter dated February 22, 1990, in which you request our advice about the constitutionality of the residency requirements and waiting periods contained in Conn. Gen. Stat. §§ 27-103 and 27-122b, two state statutes concerning veterans' benefits. We are also responding to your oral request, based upon your responsibilities under Conn. Gen. Stat. §27- 1021(c)(4),[1/] for our opinion on the constitutionality of the residency requirement found in Conn. Gen. Stat. § 27-104, which is contained in Part II of Chapter 506.

Whenever the constitutionality of legislative action is questioned, the matter must be approached with great caution and examined with infinite care. 24 Conn. Op. Atty. Gen. 312 (1946). Except in rare cases, it is not the province of the Attorney General to pass upon the constitutionality of an Act which became a law in the prescribed manner. 22 Conn. Op. Atty. Gen. 228, 229

1/ Conn. Gen. Stat. § 27-1021(c)(4) provides that the Commissioner of Veterans' Affairs shall "assist veterans, their spouses and eligible dependents and family members in the preparation, presentation, proof and establishment of such claims, privileges, rights and other benefits accruing to them under federal, state and local laws;".

(1941). While it is a basic rule of construction that every reasonable intendment be made in favor of the constitutionality of a statute, if the invalidity of the enactment is clear beyond a reasonable doubt, it is our duty, no matter how delicate the task may be, to advise our client agencies that the statute should not be enforced. See Cahill v. Leopold, 141 Conn. 1, 10 (1954); 16 C.J.S. Constitutional Law § 86. This obligation exists, irrespective of the consequences, no matter how desirable or beneficial the legislation may be. 16 C.J.S. Constitutional Law § 86.

For the reasons discussed below, it is our opinion that the residency requirements and waiting periods found in Sections 27-103(b) and 27-122b, which are contained in Part Ia of Chapter 506, are unconstitutional. We also conclude that the residency requirement found in Conn. Gen. Stat. § 27-140 is unconstitutional.

I. Veterans' Home and Hospital Statutes

The benefits contained in Part Ia of Chapter 506 all relate to care, treatment and services provided by the state Veterans' Home and Hospital to eligible veterans. Benefits include such things as hospital and medical care, housing, food, clothing, social and rehabilitation services, headstones and grave markers, burial expenses, and employment services. See Conn. Gen. Stat. §§ 27-108, 27-109, 27-118, and 27-122b.

The definition of "veteran" for Part Ia of Chapter 506 is contained in Section 27-103(b) and applies to all the benefits described above, except for the burial benefits found in Section 27-122b. That definition provides:

> "veteran" means any veteran who served in time of war, as defined by subsection (a), and who is a resident of this state, provided, if he was not a resident or resident alien of this state at the time of enlistment or induction into the armed forces, he shall have resided continuously in this State for at least two years; ....

The definition of "veteran" for Section 27-122b, which has a longer waiting period for eligibility than Section 27-103(b), states:

> "veteran" means any person honorably discharged from, or released under honorable conditions from, active service in the armed forces after service in time of war and who at the time of entering the armed forces was domiciled in this state or who was domiciled in this state at the time of his death and had been so domiciled for a period of not less than five years since such discharge or release; ....

In looking at the constitutionality of a statute which contains a residency requirement, it is important to distinguish "between bona fide residence requirements, which seek to differentiate between residents and non-residents, and residence requirements, such as durational, fixed dated, and fixed point residence requirements, which treat established residents differently based on the time they migrated into the State." Attorney General of New York v. Soto-Lopez, 476 U.S. 898, 903 n.3 (1986).

> "[A] bona fide residence requirement, appropriately defined and uniformly applied, furthers the substantial state interest in assuring that services provided for its residents are enjoyed only by residents. Such a requirement ... [generally] does not burden or penalize the constitutional right of interstate travel, for any person is free to move to a State and to establish residence there. A bona fide residence requirement simply requires that the person does establish residence before demanding the services that are restricted to residence."

Id., quoting Martinez v. Bynum, 461 U.S. 321, 328-29 (1974) (upholding a Texas statute that permits a school district to deny tuition-free admission to any student who lives apart from his parent or guardian for the primary purpose of attending the district's public schools.) See also Starns v. Malkerson, 326 F.Supp. 234 (D. Minn. 1970), aff'd, 401 U.S. 985 (1971).

In cases where the United States Supreme Court has declared residency requirements to be unconstitutional, the Court has held that the challenged statutes violated newer residents' right to equal protection of the law. U.S. Const. amend. XIV, § 1. See generally Attorney General of New York v. Soto-Lopez, 476 U.S. 898 (1986); Hooper v. Bernalillo County Assessor, 472 U.S. 611 (1985); Zobel v. Williams, 457 U.S. 55 (1982); Memorial Hospital v. Maricopa County, 415 U.S. 250 (1974); Dunn v. Blumstein, 405 U.S. 330 (1972); and Shapiro v. Thompson, 394 U.S. 618 (1969). The Court's approach to analyzing such constitutional claims, however, has varied from case to case. Compare Hooper, 472 U.S. 611 (1985) with Soto-Lopez, 476 U.S. 898 (1986). "Few areas of constitutional jurisprudence have proven more intractable to the judiciary - in terms of establishing both a coherent and consistent analytical framework - than analysis under the Equal Protection Clause." Baccus v. Karger, 692 F. Supp. 290, 293 (S.D.N.Y. 1988).

The usual standard of review for a statute or regulation challenged on equal protection grounds is the rational-basis test. City of Cleburne v. Cleburne Living Center, Inc., 473 U.S. 432 (1985). Under this test, legislation is presumed to be valid and will be sustained as long as the classification drawn by the statute is rationally related to a legitimate state interest and neither discriminates against a suspect classification nor impinges on a fundamental right. Id. at 440. Nevertheless, "[i]t is well established that where a law classifies by race, alienage, or national origin, and where a law classifies in such a way as to infringe constitutionally protected fundamental rights, heightened scrutiny under the Equal Protection Clause is required." Soto-Lopez, 476 U.S. 898, 906 n.6 (1986).

The Supreme Court has consistently recognized a constitutional right to interstate travel. See e.g., Dunn v. Blumstein, 405 U.S. 330 (1972); Shapiro v. Thompson, 394 U.S. 618 (1969). Although the Court has never determined the precise textual source of this privilege, it has nevertheless asserted that "[f]reedom to travel throughout the United States has

long been recognized as a basic right under the Constitution .... And it is clear that freedom to travel includes the 'freedom to enter and abide in any State in the Union.'" Soto-Lopez, 476 U.S. at 904-05, quoting Dunn v. Blumstein, 405 U.S. 330, 388 (1972). The Court has explained that "[i]n addition to protecting persons against the erection of actual barriers to interstate movement, the right to travel, when applied to residency requirements, protects new residents of a state from being disadvantaged because of their recent migration or from otherwise being treated differently from longer term residents." Zobel v. Williams, 457 U.S. 55, 60 n.6 (1982).

Recent decisions of the Court have differed, however, as to whether the right to travel is a fundamental right independent of the equal protection clause; see Shapiro v. Thompson, 394 U.S. 618, 630-31, quoting United States v. Guest, 383 U.S. 745, 757-58 (1966); or merely one aspect of the equal protection guarantee. See Zobel v. Williams, 457 U.S. 55, 60 n.6 (1982) ("In reality, right to travel analysis refers to little more than a particular application of equal protection analysis. Right to travel cases have examined, in equal protection terms, state distinctions between newcomers and long term residents.") In each of the cases where the right to travel has been treated as an independent fundamental right, the Court has subjected the challenged statute to heightened scrutiny from the outset and has struck down the statute if it did not serve a compelling state interest. See Soto-Lopez; 476 U.S. 898, Memorial Hospital, 415 U.S. 250; Shapiro, 394 U.S. 618. In other cases, where the Court has treated the right to travel merely as an aspect of the right to equal protection, the Court has used a rational-relationship analysis before considering whether heightened scrutiny was merited. See Hooper, 472 U.S. 611; Zobel, 457 U.S. 55. The Court has noted, however, that "[t]he analysis in all of these cases ... is informed by the same guiding principle - the right to migrate protects residents of a State from being disadvanataged, or from being treated differently, simply because of the timing of their migration, from other similarly situated residents." Soto-Lopez, 476 U.S. at 906.

To begin our evaluation of the constitutionality of the definition of "veterans" in Conn. Gen. Stat. § 27-103(b) and 27-122b, it will be helpful to review a few of the critical United States Supreme Court cases that have invalidated state residency requirements. One of the first Supreme Court cases to apply the right to migrate analysis to statutory residency requirements was Shapiro v. Thompson, 394 U.S. 618 (1968). In Shapiro, the Court invalidated three statutes from different jurisdictions which denied welfare benefits to residents who had not resided in their respective jurisdictions for at least a year. The Court held that each of the three statutes created a classification which constituted an "invidious discrimination" denying equal protection of the laws.[2/] Id. at 627-28. The Court stated that moving from one State to another or to the District of Columbia is a constitutional right which the individual states may not unreasonably burden or restrict by statute, rule or regulation. Id. at 629.

The Shapiro Court explained that the mandatory waiting period in each of the statutes divided needy resident families into two classes that were indistinguishable from each other except that one was composed of residents who had resided in the jurisdiction a year or more, and the other was made up of residents who had resided there less than a year. Shapiro, 394 U.S. at 627. "On the basis of this sole difference, the first class is granted and the second class is denied welfare aid upon which may depend the ability of the families to obtain the very means to subsist -- food, shelter, and other necessities of life." Id.

The States advanced several interests that allegedly justified the one-year residency requirements. These interests included preserving the fiscal integrity of state public assistance programs by deterring

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2/ One of the statutes the Court held unconstitutional was Conn. Gen. Stat. § 17-2d, which denied Aid to Families with Dependent Children (AFDC) to women who had been in the state less than a year. See Shapiro v. Thompson, 394 U.S. 618, 622 (1968).

immigration of indigents, distinguishing between new and old residents based on past tax contributions, aiding in planning the budget, providing an objective test of residency, minimizing the opportunity for fraud, and encouraging early entry of new residents into the labor force. Id. at 628-34. The Court held that the first two interests were unconstitutional state objectives and that the next four, while legitimate objectives, were either not furthered by the imposition of a one-year waiting period or could easily be achieved by less drastic means. Id. at 634-38.

At the outset, the Shapiro Court rejected the States' argument that a mere showing of a rational relationship between the waiting period and the "admittedly permissible state objectives" would justify the classification. Id. at 634. The Court asserted that "since the classification here touches on the fundamental right of interstate movement, its constitutionality must be judged by the stricter standard of whether it promotes a compelling state interest." Id. at 638. The Court proceeded to hold that none of the state interests advanced to support the statutes were compelling. Moreover, the Court stated that even under the traditional equal protection test, which requires only a rational relationship between the challenged statute and a legitimate state objective, the one-year residency requirement seemed "irrational and unconstitutional." Id. at 638.

In a subsequent "right to travel" decision, Memorial Hospital v. Maricopa County, 415 U.S. 250 (1974), the Court struck down an Arizona statute requiring a year's residence as a condition to receiving nonemergency medical care at the County's expense. The Court reasoned that medical benefits are as much a basic necessity of life as welfare benefits, and that their denial therefore constitutes a penalty on the right to migrate. Id. at 259. The Court held in Memorial Hospital, as it had in Shapiro, that a durational residency requirement must be justified by a compelling state interest, and that the State had been unable to articulate a satisfactory justification.

Zobel v. Williams, 457 U.S. 55 (1982) was the first of two recent Supreme Court cases that have treated the

right to migrate as a simple adjunct of the right of equal protection. See also Hooper v. Bernalillo County Assessor, 472 U.S. 612 (1985), discussed infra. Zobel presented a challenge to Alaska's method of allocating among its residents a portion of the state's annual petroleum revenues. Under the State's distribution plan, each citizen eighteen years of age or older annually received one dividend unit for each year of residency subsequent to 1959, Alaska's first year of statehood. The Court, noting that execution of the scheme would permit Alaska "to divide citizens into expanding numbers of permanent classes, " 457 U.S. at 64, struck down the plan. The Court asserted:

> The only apparent justification for the retrospective aspect of the program, "favoring established residents over new residents," is constitutionally unacceptable ... [citation omitted]. In our view Alaska has shown no valid state interests which are rationally served by the distinction it makes between citizens who established residence before 1959 and those who have become residents since then.
>
> We hold that the Alaska dividend distribution plan violates the guarantees of the Equal Protection Clause of the Fourteenth Amendment.

Id. at 65. Because the Court determined that the law could not survive even the minimal rational-relationship test, it decided there was no need to consider whether enhanced scrutiny was merited. Id. at 60-61.

In Hooper v. Bernalillo County Assessor, 472 U.S. 612 (1985), the Court reviewed the constitutionality of a New Mexico statute that granted a small tax exemption to any Vietnam veteran who was a resident of New Mexico before May 8, 1976. Although the Court did not explicitly consider whether the statute burdened the right to travel and did not examine the law with strict scrutiny, the Court nevertheless concluded:

> The State may not favor established residents over new residents based on the view that the State may take care of "its own", if such is defined by prior residence. Newcomers, by establishing bona fide residence in the State, become the State's "own" and may not be discriminated against solely on the basis of their arrival in the State after May 8, 1976.
>
> Id. at 623.

In Attorney General of New York v. Soto-Lopez, 476 U.S. 898 (1986) (plurality opinion), the latest Supreme Court decision that is pertinent to our analysis, the Court declared unconstitutional a New York civil service rule giving bonus points on the state civil service examination to those veterans who were residents of New York at the time they joined the military. In reaching its decision, the plurality returned to the analytic approach of Shapiro and Memorial Hospital. The Court began its review by noting that its first task was to determine whether the law in question operated to penalize those persons who had exercised their right to migrate. Soto-Lopez, 476 U.S. at 906.

Although the Court cautioned that not all waiting periods or residency requirements are impermissible, the Court asserted, as it had in Shapiro, that once a burden on the the right to migrate is found, the law which burdens that right is subject to strict scrutiny, and a State must present a compelling justification to support the statute. Soto-Lopez, 476 at 904, n.4. Justice Brennan, writing for the plurality, stated: "While the benefit sought here may not rise to the same level of importance as the necessities of life [welfare and medical benefits] and the right to vote, it is unquestionably substantial." (Emphasis added). Soto-Lopez, 476 U.S. at 908. The Court went on to hold that the statute "clearly" operated "to penalize appellees for exercising their rights to migrate". Id. at 909. It noted that, unlike the statutes challenged in Shapiro and Memorial Hospital, which were "temporary deprivations of very important benefits and rights", the New York statute permanently deprived appellees of

the benefits they sought in that it never allowed them to qualify for the bonus points, no matter how long they resided in the State. Soto-Lopez, 476 U.S. at 909-10.

The State argued that its method of awarding bonus points was warranted by the following objectives: (1) The encouragement of New York residents to join the armed services; (2) the compensation of residents for service in time of war; (3) the inducement of veterans to return to New York; (4) the employment of a uniquely valuable class of public servants. Id. The Court, however, concluded that these goals were inadequate to justify the burden the statute placed on freedom of travel.

Chief Justice Burger, in his concurring opinion, chose to follow the analytical framework of Hooper and Zobel. Accordingly, he did not reach the question of whether strict scrutiny was triggered because he felt that the State's purported interests did not even survive a rational-relationship test. 476 U.S. at 912. Justice White, in his concurring opinion, also concluded that heightened scrutiny was not triggered. He agreed with the judgment because he believed that the statute at issue denied equal protection of the laws by employing a classification that was irrational. Id. at 916. Thus, although there was no majority on what standard of review to apply, a majority of the Court did rule the New York statute unconstitutional; four did so because it did not pass strict scrutiny, and two because the statute did not pass rational-relationship review.

Following the analysis outlined in Shapiro and its progeny, therefore, we note that Sections 27-103(b) and 27-122b establish three classes of veterans in the State: those who were residents of the State at the time of their induction; those who have resided continuously in the State for at least two years or five years respectively; and those who meet neither of the previous residency criteria. Veterans in the first two categories are eligible for the aid described in Part Ia of Chapter 506, while veterans in the third category cannot obtain any of the statutes' benefits.

The type of residency requirements contained in Conn. Gen. Stat. §§ 27-103(b) and 27-122b bear greater resemblance to the residency requirements at issue in Shapiro, Memorial Hospital and Soto-Lopez than those at stake in Zobel and Hooper. Sections 27-103(b) and 27-122b each use duration of residency and place of residency at the time of induction as criteria in their respective definitions of "veteran". Shapiro and Memorial Hospital both considered the validity of durational residency requirements, and Soto-Lopez reviewed the constitutionality of a system that classified veterans according to where they lived when they entered the service. In contrast, Zobel examined the grouping of residents into an ever-growing number of permanent, unequal categories, while Hooper analyzed the classification of persons according to their place of residence on a fixed date in the past.

The benefits at stake in Conn. Gen. Stat. §§ 27-103(b) and 27-122b -- medical care, food, shelter, clothing, employment services and burial services -- all relate to the "basic necessities of life" identified by the Court in Shapiro and Memorial Hospital. By denying those benefits to veterans who have recently settled in Connecticut, the statutes single out such newcomers and place them at a disadvantage.

These laws plainly burden the right to travel and we believe that any court considering their constitutionality would examine them with strict scrutiny, the most intense kind of judicial review. The State would then be required to present a compelling justification to support the statute. As discussed above, all attempts by other jurisdictions to find an acceptable compelling justification for similar statutes have failed, and we know of no compelling justification, not previously asserted, that would be sufficient to support the residency requirements in Sections 27-103(b) and 27-122b. Since every reasonable intendment is to be made in favor of the constitutionality of a statute, we have also examined Sections 27-103(b) and 27-122b under the rational-basis test to determine if there exists a legitimate state interest which would sustain their validity. As Zobel and Hooper demonstrate, favoring established residents over new residents based on the view that a state may

take care of "its own" is constitutionally unacceptable.

We conclude, therefore, that the durational residency requirements contained in Conn. Gen. Stat. § 27-103(b) and 27-122b are unconstitutional.

II. Soldiers, Sailors and Marines Fund

Conn. Gen. Stat. § 27-140 provides for funds to be expended by the American Legion "in furnishing food, wearing apparel, medical or surgical aid or care or relief to, or in bearing the funeral expenses of, soldiers, sailors or marines who served in any branch of the military service" of the United States or its allies during a time of war. Under this statute the American Legion may also give such aid to the spouses or dependent children of eligible veterans.

The benefits provided in Section 27-140 are limited to veterans who were "citizens or resident aliens of the state at the time of entering said armed forces ...." The residency limitation in this statute is even more restrictive, therefore, than those in Sections 27-103(b) and 27-122b. There is no waiting period that would allow veterans, who are otherwise eligible for benefits but were not residents of Connecticut on a particular past date, to become eligible sometime in the future after completing a period of residency.

For the reasons already discussed in regard to the residency requirements contained in Part 1a of Chapter 506, it is our opinion that the classification system in Section 27-140 is unconstitutional. The residency requirement in Section 27-140 is substantively identical to the one which the United States Supreme Court struck down in Soto-Lopez. Furthermore, the benefits provided in Part II of Chapter 506 -- food, wearing apparel, medical or surgical aid, and funeral expenses -- like those benefits established in Part 1a, are all "basic necessities of life". See Shapiro, 394 U.S. 618, and Memorial Hospital, 415 U.S. 250, discussed supra. We expect that a court, in reviewing this residency requirement, would subject it to strict scrutiny and would find that there is no state interest adequate to justify it.

Furthermore, even the application of the rational-basis test would not save the residency requirement contained in Section 27-140. Shapiro and Memorial Hospital made it clear that preserving the fiscal integrity of state public assistance programs by deterring immigration of indigents was an unconstitutional state objective. Similarly, Shapiro, Memorial Hospital, Zobel, and Hooper made it clear that distinguishing between new and old residents based on past tax contributions or on the view that a state may take care of "its own" is also an unconstitutional objective. We cannot discern any legitimate state objective to which the statute would be rationally related.

We conclude, therefore, that the residency requirement in Conn. Gen. Stat. §§ 27-140 is unconstitutional.

Very truly yours,

CLARINE NARDI RIDDLE
ATTORNEY GENERAL

Michael J. Jarjura
Assistant Attorney General

CNR:mjj

STATE OF CONNECTICUT

DEPARTMENT OF VETERANS' AFFAIRS
OFFICE OF ADVOCACY AND ASSISTANCE
287 West Street
Rocky Hill, Connecticut 06067

Joseph C. Barber
Deputy Commissioner

Telephone (203) 721-5894

February 22, 1990

Ms. Clarine Nardi Riddle
Acting Attorney General
Office of the Attorney General
55 Elm Street
Hartford, CT 06106

Dear Attorney General Riddle:

Having read with deep interest and concern the legal analysis of the memorandum, "Constitutionality of Durational Residency Requirements of Conn. General Statute S-27-103", and the Law Revision Commission's review of residency requirements associated with various Veterans' benefits in light of the decision of the United States Supreme Court in Attorney General of New York, vs. Eduardo Soto-Lopez, I am requesting that the Office of the Connecticut Attorney General again review the above and provide the Connecticut Department of Veterans' Affairs a formal opinion with reference to Residency Requirements contained in Conn. General Statutes SS-27-103 and 27-122(b).

In view of the heightened interest on this issue, may I suggest that your formal opinion on this matter be determined at your earliest convenience.

I shall be most happy to cooperate in any way to help expedite a resolution to this problem.

Very truly yours,

Joseph C. Barber

Joseph C. Barber
Commissioner
Department of Veterans' Affairs

JCB:pm
cc: Governor William A. O'Neil
Michael J. Jarjura, Asst. Atty. General
DOVA Board of Trustees
David B. McQuillan, Commandant VH & H
DOVA Service Officers
Robert Getman, Exec. Officer, VH & H