



**THE ATTORNEY GENERAL
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August 9, 1966

Mr. C. H. Cavness
State Auditor
Sam Houston State Office Bldg.
Austin, Texas

Opinion No. C-737

Re: Construction of Article 2654c, Section 1(h), Vernon's Civil Statutes:
1. Whether or not the benefits extend to an alien who is an employee of a Texas State institution of higher learning but who is neither in this country under a visa permitting permanent residence nor has he filed a Declaration of Intention to become a citizen of the United States; 2. Whether or not the benefits may be exercised in institutions other than the employing institution.

Dear Mr. Cavness:

In a recent letter to this office you requested an opinion in regard to the above referenced matters. We quote from your letter as follows:

". . .

"1. Does House Bill No. 675 of the 59th Legislature, which extends resident tuition rates to resident teachers or professors or other employees of Texas State institutions of higher learning and their spouses and children, without regard to the length of time they may have resided in Texas, also extend resident tuition rates to an alien who is a resident institutional employee but who is not in this country under a visa permitting permanent residence or who has not filed a Declaration of Intention to become a citizen with the proper Federal immigration authorities (as set forth in Sub-

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paragraph (f), Section I, Article 2654c, Vernon's Revised Civil Statutes)?

"2. Do the provisions of House Bill No. 675 of the 59th Legislature relating to resident teachers or professors or other employees of Texas State institutions of higher learning extend to enrollments in institutions other than the one employing them?"

Section 1(f) of Article 2654c of Vernon's Civil Statutes provides as follows:

"(f) All aliens shall be classified as 'nonresident students'; provided, however, that an alien who is living in this country under a visa permitting permanent residence or who has filed a Declaration of Intention to become a citizen with the proper federal immigration authorities shall have the same privilege of qualifying for resident status for fee purposes under this Act as has a citizen of the United States. Provided, however, that a resident alien residing in a junior college district located immediately adjacent to state boundary lines shall be charged the resident tuition by such junior college."

Section 1(h) of Article 2654c, Vernon's Civil Statutes, provides:

"(h) Officers, enlisted men and women, selectees or draftees of the Army, Army Reserve, National Guard, Air Force, Air Force Reserve, Navy, Navy Reserve, or Marine Corps of the United States, who are stationed in Texas by assignment to duty within the borders of this State, or teachers, professors, or other employees of Texas State institutions of higher learning, shall be permitted to register themselves, their husband or wife as the case may be, and their children, in State institutions of higher learning by paying the regular tuition fees and other fees or charges provided for regular residents of the State of Texas, without regard to the length of time such officers, enlisted men or women, selectees or draftees, or teachers, professors, or other employees of Texas State institutions of higher

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learning have been stationed on active duty or resided within the State. As amended Acts 1965, 59th Leg., p. 1003, ch. 490, § 1.

The former paragraph (6) of Section 1, Article 2654c, Vernon's Civil Statutes, now Paragraph (h), was added in 1941 as an exception to the general requirements for establishing "resident status" for fee purposes. Prior to this amendment military personnel were subject to the same requirements for establishing domicile in Texas for fee purposes as other persons. In 1965 the benefits of Paragraph (h) of Section 1 were extended to teachers, professors, and other employees of Texas State institutions of higher learning and their families.

The effect of Section 1(f) of Article 2654c, Vernon's Civil Statutes, is that all aliens shall be classified as "non-resident students" and therefore must pay non-resident tuition fees at State institutions of higher learning unless they qualify for classification as "resident students" by conforming to certain criteria. Did the Legislature intend that an alien professor or institutional employee of a State institution of higher learning in Texas, should first either be living in this country under a visa permitting permanent residence or have filed with the proper immigration authorities a Declaration of Intention to become a citizen before he could take advantage of the provisions of Section 1(h) of Article 2654c? We think not. Had such been the intent of the Legislature it could have added a provision to Section 1(h) making alien teachers, professors, and other employees of State institutions of higher learning specifically subject to the provisions of Section 1(f) of Article 2654c.

Paragraphs (f) and (h) of Article 2654c, Vernon's Civil Statutes, must be construed in *pari materia*. As to alien teachers, professors, or other alien employees of State institutions of higher learning, Section 1(h) is an exception to the general provisions regarding aliens in Section 1(f). Our answer to your first question is in the affirmative.

Your second question is whether the benefits extended to teachers, professors, and other employees of Texas State institutions of higher learning, and their families, by Article 2654c, Section 1(h), Vernon's Civil Statutes, may be exercised in institutions other than the employing institution. The wording of Section 1(h) in no way limits its application to the employing institution alone; rather it clearly extends benefits which may be exercised in all State institutions of higher learning. The phrase "State institutions of higher learning" is plural and non-specific, and it is clear that the benefits which the statute confers may be exercised in institutions other than the employing institution.

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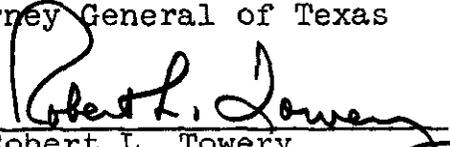
SUMMARY

Alien employees of Texas State institutions of higher learning, their husband or wife as the case may be, and their children are entitled to "resident student" status for fee purposes in State institutions of higher learning as authorized by Article 2654c, Section 1(h), Vernon's Civil Statutes, notwithstanding the provisions of Section 1(f) of Article 2654c.

The benefits extended to teachers, professors, and other employees of Texas State institutions of higher learning and their families by Article 2654c, Section 1(h), Vernon's Civil Statutes, are not limited to the employing institution but may be exercised in all State institutions of higher learning.

Yours very truly,

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By: 
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APPROVED:
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