

STATE OF TENNESSEE
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Opinion No. 05-019

Austin Peay State University Nursing Loan-Scholarship Pilot Program for Nontraditional Students

QUESTION

Under Article XI, Section 5, of the Tennessee Constitution, “the legislature may authorize a state lottery if the net proceeds of the lottery’s revenues are allocated to provide financial assistance to citizens of this state to enable such citizens to attend post-secondary educational institutions located within this state.” Is the Austin Peay State University Nursing Loan-Scholarship Pilot Program for Nontraditional Students, established in the attached draft legislation, a constitutional use of net lottery proceeds?

OPINION

Yes, the Program represents an authorized use of net lottery proceeds under Article XI, Section 5, of the Tennessee Constitution.

ANALYSIS

This opinion concerns the use of net lottery funds to establish the “Austin Peay State University Nursing Loan-Scholarship Pilot Program for Nontraditional Students” (the “Program”), under draft legislation included with the request. Article XI, Section 5, of the Tennessee Constitution provides in relevant part:

The legislature shall have no power to authorize lotteries for any purpose, and shall pass laws to prohibit the sale of lottery tickets in this state, except that the legislature may authorize a state lottery *if the net proceeds of the lottery's revenues are allocated to provide financial assistance to citizens of this state to enable such citizens to attend post-secondary educational institutions located within this state*. The excess after such allocations from such net proceeds from the lottery would be appropriated to:

(1) Capital outlay projects for K-12 educational facilities; and

(2) Early learning programs and after school programs.

Such appropriation of funds to support improvements and enhancements for educational programs and purposes and such net proceeds shall be used to supplement, not supplant, non-lottery educational resources for educational programs and purposes.

(Emphasis added). The Program would aid twenty students who meet certain criteria, including admission to the Austin Peay State University School of Nursing in the Bachelor of Science in Nursing Program and who are not ineligible to receive scholarships under other current lottery scholarship programs. Financial assistance would include full tuition, fees, and a living allowance stipend. The living allowance stipend would include a housing allowance and an allowance, if applicable, for day care for a participant's children who are under the age of thirteen (13) and for whom the participant must provide day care in order to attend the university. Financial assistance would take the form of a loan. Each year of financial assistance would be forgiven for each two years of nursing service in Tennessee.

The question is whether the Program would fall within Article XI, Section 5, of the Tennessee Constitution providing that the General Assembly may establish a state lottery "if the net proceeds of the lottery's revenues are allocated to provide financial assistance to citizens of this state to enable such citizens to attend post-secondary educational institutions located within this state." The Program is limited to a single post-secondary educational institution located in Tennessee, while the Constitution refers to financial assistance to enable citizens to attend "post-secondary educational *institutions* located within this state." (Emphasis added). We do not think, however, that the use of the plural term in this instance would prevent the General Assembly from establishing the Program for two reasons. First, the Program is a pilot program and could be extended in the future to other educational programs and institutions. Second, the General Assembly has already established other scholarship programs that provide scholarships to a range of post-secondary educational institutions in Tennessee.

Another issue is whether the term "financial assistance . . . to enable such citizens to attend post-secondary educational institutions" can be interpreted to include living expenses, including a housing allowance and an allowance for day care. The current scholarship programs authorize use of scholarship funds for room and board in some cases. *See, e.g.*, Tenn. Code Ann. § 49-4-928(e). We think an allowance for day care for a participant's children who are under the age of thirteen (13) and for whom the participant must provide day care in order to attend the university falls within the scope of "financial assistance . . . to enable such citizens to attend post-secondary educational institutions" as used in Article XI, Section 5, of the Tennessee Constitution. The Program, therefore, represents an authorized use of net lottery proceeds under Article XI, Section 5, of the Tennessee Constitution.

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