

STATE OF MICHIGAN

MIKE COX, ATTORNEY GENERAL

ADMINISTRATIVE LAW AND
PROCEDURE:

Eligibility for Michigan Merit Award
Scholarships

EDUCATION:

MICHIGAN MERIT AWARD BOARD:

SCHOLARSHIPS:

The Michigan Merit Award Scholarship Act, MCL 390.1451 *et seq*, does not authorize the Michigan Merit Award Board to add a requirement that a student complete 40 hours of voluntary community service in order to qualify for a Michigan Merit Award Scholarship.

Opinion No. 7176

June 21, 2005

Honorable Brian Palmer
State Representative
The Capitol
Lansing, MI 48913

You have asked whether the Michigan Merit Award Board has the authority to add a requirement that a student complete 40 hours of voluntary community service in order to qualify for a Michigan merit award scholarship by either a board resolution or administrative rules adopted under the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.201 *et seq*.

The Michigan Merit Award Scholarship Act (Act), 1999 PA 94, MCL 390.1451 *et seq*, established a program to provide merit award scholarships to Michigan students who graduate from high school or pass a graduate equivalency examination. This

scholarship program is administered by the Michigan Merit Award Board. See sections 4, 7, 7a, and 7b of the Act, MCL 390.1454; MCL 390.1457; MCL 390.1457a; MCL 390.1457b.

Sections 7, 7a, and 7b of the Act provide the eligibility criteria for the scholarships. A student is eligible for a merit award if the student, while in high school, has taken and received qualifying results on the high school assessment tests or, if the student has not received qualifying results in all subject area assessments, the student has received qualifying results on certain other examinations or job skills assessment tests. Section 7(2)(a)-(c), MCL 390.1457(2)(a)-(c).

In addition to these testing requirements, the student must satisfy the eligibility requirements set forth in section 7b of the Act:

In addition to the requirements set forth in section 7(2) or (3) or section 7a(1), to be eligible for the award of a Michigan merit award scholarship under this act, the board must find that a student satisfies all of the following:

(a) The student has graduated from high school or passed the general educational development (GED) test or other graduate equivalency examination approved by the state board.

(b) The student graduated from high school or passed the general educational development (GED) test or other graduate equivalency examination approved by the state board within 1 of the following time periods. . . .

(c) The student is enrolled in an approved postsecondary educational institution. For students who qualify under section 7(2)(c), the student is enrolled in a vocational or technical education program at an approved postsecondary educational institution.

(d) The student has not been convicted of a felony involving an assault, physical injury, or death.

(e) *The student satisfies any additional eligibility requirements established by the board.* [MCL 390.1457b(1); emphasis added.]

On August 17, 2004, the Michigan Merit Award Board adopted, by Resolution 2004-1, an additional eligibility requirement. Starting with the class of 2006, each student eligible for a Michigan Merit award must complete at least 40 hours of volunteer community service before June 30 of their graduation year to earn the award. Although the text of the Board's resolution does not indicate the statutory basis for the Board's action, it is presumed that the Board exercised its authority under MCL 390.1457b(1)(e) to establish "*any* additional eligibility requirements." (Emphasis added.)

The broad language used in this section raises the threshold question of whether the authority of the Board under section 7b(1)(e) of the Act to establish "any" additional eligibility requirements constitutes an unconstitutional delegation of legislative authority. The Legislature may not delegate to another its lawmaking powers. *Dep't of Natural Resources v Seaman*, 396 Mich 299, 308, 240 NW2d 206 (1976). In *Seaman*, the Court confronted the issue of whether a statutory provision constituted an unconstitutional delegation of legislative authority because it lacked sufficient standards to limit administrative discretion. The *Seaman* Court provided the following guiding principles to apply in making such determinations:

While no hard and fast rule exists for determining whether a given statute has provided sufficient standards, a number of guiding principles have evolved in Michigan jurisprudence to assist in making a determination in this case.

First, the act in question must be read as a whole; the provision in question should not be isolated but must be construed with reference to the entire act. *Argo Oil Corp v Atwood, supra, 53.*

Second, the standard should be "as reasonably precise as the subject matter requires or permits". *Osius v St Clair Shores, 344 Mich 693, 698; 75 NW2d 25; 58 ALR2d 1079 (1956).*

The preciseness of the standard will vary with the complexity and/or the degree to which [the] subject regulated will require constantly changing regulation. The "various" and "varying" detail associated with managing the natural resources has led to recognition by the courts that it is impractical for the Legislature to provide specific regulations and that this function must be performed by the designated administrative officials. *People v Soule, 238 Mich 130, 140; 213 NW 195 (1927).* See *United States v Grimaud, 220 US 506; 31 S Ct 480; 55 L Ed 563 (1910).*

Third, if possible the statute must be construed in such a way as to "render it valid, not invalid" as conferring "administrative, not legislative" power and as vesting "discretionary, not arbitrary, authority". *Argo Oil Corp v Atwood, supra, 53.* [*Seaman, 396 Mich at 309; footnotes omitted.*]

Applying these principles to the statutory provision involved here, section 7b(1)(e), read by itself, appears to confer unlimited discretion on the Michigan Merit Award Board to impose additional eligibility requirements. But section 7b(1)(e) of the Act may not be read in isolation. Rather, it must be construed within the context of the entire Act.

The Legislature created the Michigan Merit Award Board and spelled out its goals in section 4(1) of the Act, MCL 390.1454:

The Michigan merit award board is established within the department of treasury. *The goal of the board is to increase access to postsecondary education and reward Michigan high school graduates who have demonstrated academic achievement.* [Emphasis added.]

Thus, the broad authority of the Board to impose additional eligibility requirements is carefully limited by the Legislature's explicit language defining the dual goals of the Board to increase access to postsecondary education and to reward high school graduates who have achieved academically. When the Act is read as a whole, the Legislature has provided standards to limit the authority of the Board in imposing additional eligibility requirements.

Consideration then turns to whether the standards are as reasonably precise as the subject matter requires or permits. Here, since the Board may only exercise its authority to impose additional eligibility requirements within the context of achieving its legislatively defined goals of increasing access to postsecondary education and rewarding demonstrated academic achievement, the standards are reasonably precise in light of the regulated subject matter. These two statutory goals direct and give focus to the Board in implementing the Michigan merit award scholarship program.

Third, if possible, the Act must be construed in a way that renders it valid as conferring administrative rather than legislative power. The Act may be given a constitutional construction by limiting the Board's authority to impose additional eligibility requirements to include only those requirements that implement the legislatively defined goals of the Board to increase access to postsecondary education and to reward demonstrated academic achievement. Construing the delegation of authority in section 7b(1)(e) in this manner, the Board's power to impose additional eligibility requirements does not constitute an unconstitutional delegation of legislative authority.

The question that arises next is whether the additional eligibility requirement to perform voluntary community service is authorized by the Act. *Luttrell v Dep't of Corrections*, 421 Mich 93, 100; 365 NW2d 74 (1984), sets forth the test for resolving this issue:

The offenders challenge the validity of the Department of Corrections' rules and policy directives under the standard quoted in *Chesapeake & Ohio R Co v Public Service Comm*, 59 Mich App 88, 98-99; 228 NW2d 843 (1975), *lv den* 394 Mich 818 (1975):

"Where an agency is empowered to make rules, courts employ a three-fold test to determine the validity of the rules it promulgates: (1) whether the rule is within the matter covered by the enabling statute; (2) if so, whether it complies with the underlying legislative intent; and (3) if it meets the first two requirements, when [*sic*] it is neither arbitrary nor capricious."

The Board's power to impose additional eligibility requirements is limited by the legislatively imposed dual goals of the Board to increase access to postsecondary education and to reward high school graduates who have demonstrated academic achievement by providing scholarships to those graduates. The requirement that students complete 40 hours of voluntary community service in order to qualify for a merit scholarship award neither increases access to postsecondary education nor rewards Michigan high school graduates for their academic achievements. Thus, the voluntary community service eligibility requirement is not within the matters authorized by the Board's enabling statute. Further, the requirement does not comply with the underlying legislative intent. Having failed to qualify under the first two prongs of the three-part test in *Luttrell*, it is not necessary to consider the third prong.

It is my opinion, therefore, that the Michigan Merit Award Scholarship Act, MCL 390.1451 *et seq.*, does not authorize the Michigan Merit Award Board to add a requirement that a student complete 40 hours of voluntary community service in order to qualify for a Michigan Merit Award Scholarship.

MIKE COX
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