S T A T E O F T E N N E S S E E
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Opinion No. 08-61

Statutory Authority of the Tennessee Student Assistance Corporation ("TSAC") to Promulgate Rules for the Tennessee HOPE Scholarship Program

QUESTION

Does TSAC have statutory authority to promulgate rules to effectuate the purposes of Tenn. Code Ann. § 49-4-913?

OPINION

Yes. TSAC has statutory authority to promulgate rules to effectuate the purposes of Tenn. Code Ann. § 49-4-913.

ANALYSIS

In 2002, Tennesseans approved a constitutional amendment that allowed the creation of a state lottery, requiring that "the net proceeds of the lottery's revenues [be] allocated to provide financial assistance to citizens of this state to enable such citizens to attend post-secondary educational institutions located within this state." Tenn. Const. art. XI, § 5. Further, the amendment provides that the lottery "shall be implemented and administered uniformly throughout the state in such manner as the legislature, by general law, deems appropriate." *Id.* Acting pursuant to this constitutional mandate, the General Assembly directed TSAC to administer the state lottery scholarship program, and also authorized it, *inter alia*, to determine the eligibility of students to receive such scholarships:

> The scholarship and grant programs established by this part shall be administered by TSAC, which shall be responsible for determination of eligibility of students and for the distribution of funds appropriated by the general assembly for scholarships and grants awarded under the program. In the event net proceeds from lottery revenues are insufficient to fund fully the scholarships and grants created by this part, then the Tennessee student assistance corporation is authorized to review and reduce the amounts to be awarded for such scholarships and grants pro rata.

Tenn. Code Ann. § 49-4-903(a).

Consistent with this authority, the General Assembly also authorized TSAC to promulgate rules and regulations related to the state lottery scholarship program:

> TSAC is authorized to promulgate rules and regulations to establish deadlines for applications, appeal procedures for the denial or revocation of scholarships and grants, methods of paying scholarship awards to part-time students, and to otherwise effectuate the purposes of this part. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

Tenn. Code Ann. § 49-4-924(a).

The state lottery scholarships are called "Tennessee HOPE scholarship or Tennessee HOPE access grant." Tenn. Code Ann. § 49-4-902(27). Students wishing to receive a Tennessee HOPE scholarship must meet several requirements. *See generally* Tenn. Code Ann. §§ 49-4-904 through 49-4-913. In relevant part, § 49-4-913 prescribes events that will trigger a student's ineligibility to continue to receive a Tennessee HOPE scholarship:

> (a) Except as set forth in subsection (b) and §§ 49-4-918 and 49-4-919, a student may receive a Tennessee HOPE scholarship until the first of the following events:
>
> (1) The student has earned a baccalaureate degree;
>
> (2) The student has attempted at any postsecondary institution a total of one hundred twenty (120) semester hours; or
>
> (3) Five (5) years have passed from the date of the student's initial enrollment at any postsecondary institution.
>
> (b) A student enrolled in an undergraduate degree program required to be more than one hundred twenty (120) semester hours in length is eligible to receive a Tennessee HOPE scholarship until the first of the following events:
>
> (1) The student has earned a baccalaureate degree;
>
> (2) The student has attempted at any postsecondary institution a total of one hundred thirty-six (136) semester hours; or

> (3) Five (5) years have passed from the date of the student's initial enrollment at any postsecondary institution.

Tenn. Code Ann. § 49-4-913.

This Office concludes that TSAC has statutory authority to promulgate rules to effectuate the purposes of Tenn. Code Ann. § 49-4-913. The General Assembly unambiguously charged TSAC with the duty to administer the Tennessee HOPE scholarship program, and also made it "responsible for determination of eligibility of students and for the distribution of funds appropriated by the general assembly for scholarships and grants awarded under the program." Tenn. Code Ann. § 49-4-903(a). TSAC has an extensive grant of legislative authority, possessing the ability to review and to reduce scholarship amounts in the event that the "net proceeds from lottery revenues are insufficient to fund fully the scholarships and grants created by this part." *Id.* To effectively administer the Tennessee HOPE scholarship program, the General Assembly authorized TSAC to promulgate rules or regulations to establish the following: (1) deadlines for applications; (2) appeal procedures for the denial or revocation of scholarships and grants; (3) methods of paying scholarship awards to part-time students; and (4) "to otherwise effectuate the purposes of" part 9 of Chapter 4 of Title 49 of the Tennessee Code. Tenn. Code Ann. § 49-4-924(a). Tenn. Code Ann. § 49-4-913, which sets forth several events that will trigger a student's ineligibility to continue to receive a Tennessee HOPE scholarship, is included within Part 9. Thus, TSAC may promulgate regulations that interpret the provisions of Tenn. Code Ann. § 49-4-913, and, provided that the regulations are reasonable, they will be "given respect and accorded deference by courts." *Riggs v. Burson*, 941 S.W.2d 44, 50-51 (Tenn. 1997) (citing *Chevron U.S.A. v. Natural Resources Defense Council*, 467 U.S. 837, 844 (1984)); *cf.* Op. Tenn. Att'y Gen. No. 06-141 (Sept. 18, 2006) (concluding that TSAC's interpretation of recently amended statutes was reasonable and that it would be afforded *Chevron* deference).

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