STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

February 15, 2017

Opinion No. 17-10

Use of lottery proceeds for Advanced Placement examination fees for high school students

Question

Is payment of Advanced Placement examination fees for high school students from net proceeds of the Tennessee Lottery allowable under article XI, § 5, of the Tennessee Constitution?

Opinion

No.

ANALYSIS

Article XI, § 5, of the Tennessee Constitution allows the legislature to 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.

Article XI, § 5, further provides that any such state lottery "shall be implemented and administered uniformly throughout the state in such manner as the legislature, by general law, deems appropriate."

The Legislature has authorized a state education lottery, Tenn. Code Ann. §§ 4-51-101 through 136, and has enacted legislation dealing with the use of state lottery proceeds and establishing scholarship and grant programs to provide financial assistance to students with lottery proceeds. See Tenn. Code Ann. §§ 49-4-901 through 943. "Net proceeds of the state lottery shall be used exclusively for the purposes set out in the Constitution of Tennessee, Article XI, § 5 and this part." Tenn. Code Ann. § 49-4-901. The grants and scholarships established by the Legislature cover, to one extent or another, the "cost of attendance" at a postsecondary institution of education, which means "the combined cost of tuition, mandatory fees, room and board, books and other educational expenses as determined by the financial aid office of the eligible postsecondary institution." Tenn. Code Ann. § 49-4-902(8).

Advanced Placement (AP) examinations for high school students are voluntary standardized tests administered by the College Entrance Examination Board (the "College

Board"), a non-profit corporation with its principal place of business in New York. The College Board charges a fee, currently $93, for each AP examination.

Currently, the College Board offers AP courses and examinations in 38 subject areas ranging from AP Art History to AP Calculus BC to AP Spanish. If a student takes an AP examination and scores well enough, the student may be able to earn credit and/or advanced placement in college.[1] The AP examination itself is scored on a scale of 1 to 5, with a score of 5 being the highest and representing that a student is "extremely well qualified" in the subject matter and score of 1 indicating "no recommendation." [2]

Many colleges will grant credit and advanced placement if a student receives a score of 3, 4, or 5 on an AP examination. But not all colleges accept AP examination scores, and, if they do, the score level they accept varies from school to school and from subject matter to subject matter. For example, at the University of Tennessee-Knoxville a student who receives a 3 on the AP Biology examination would be eligible to receive 4 college credits, while a student taking the AP Computer Science examination would need a minimum score of 5 to receive 4 college credits.[3] On the other hand, a student receiving a 3 on an AP examination would generally not be entitled to any college credit at Middle Tennessee State University or Vanderbilt University. *Id.*

The text of a constitutional provision is the primary guide to the purpose of the provision. *Estate of Bell v. Shelby Cty. Health Care Corp.*, 318 S.W.3d 823, 835 (Tenn. 2010). Thus, when construing a constitutional provision, courts must give its terms their ordinary and inherent meaning. *Barrett v. Tennessee Occupational Safety and Review Commission*, 284 S.W.3d 784, 787 (Tenn. 2009).

Article XI, § 5 specifies that net proceeds of the lottery's revenues may only be used "to provide financial assistance to citizens of this state to enable such citizens *to attend* post-secondary educational institutions" in Tennessee. (Emphasis added.) Based on the ordinary meaning of this language, lottery proceeds may only be used to pay for costs incurred while a citizen is attending a post-secondary educational institution in Tennessee. Accordingly, the use of net lottery proceeds to pay AP Examination fees is not consistent with article XI, § 5, because students take AP examinations while they are in high school and before they attend college; they are not attending college when they take the examination.[4]

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[1] *See* https://apstudent.collegeboard.org/takingtheexam/about-exams (last visited February 6, 2017).

[2] *See* https://apscore.collegeboard.org/scores/about-ap-scores (last visited February 6, 2017).

[3] *See* https://apstudent.collegeboard.org/creditandplacement/search-credit-policies (last visited February 6, 2017).

[4] This distinction is recognized in the context of the "general assembly merit scholarship" for entering college freshmen established under Tenn. Code Ann. § 49-4-916. To be eligible for such a merit scholarship, home-schooled students and students in certain high schools must, "*[d]uring the course of a home school program or while attending an ineligible high school*" . . . "[t]ake two (2) Advanced Placement (AP) examinations, and make a score of at least (3) or [t]ake one (1) College-Level Examination Program (CLEP) test, and make a score of at least fifty-five (55)." Tenn. Code Ann. § 49-4-901(b)(3) (emphasis added).

Moreover, while AP examinations *might* result in students receiving college credit, they offer no guarantee of college attendance at a post-secondary institution of higher education in Tennessee and no guarantee that such an institution would grant course credit in any given case. A high school student who takes an AP examination may or may not subsequently apply to college in Tennessee, may or may not attend college in Tennessee, may or may not achieve a sufficiently high score to qualify for college credit, and may or may not submit an AP score for college credit. There is, in short, no certain and direct link between an AP examination taken by a Tennessee high school student and attendance by that Tennessee citizen at an institution of higher education in Tennessee.

By contrast, the dual enrollment grants established under Tenn. Code Ann. § 49-4-930, which involve college credit for high school students, are directly and definitively linked to attendance at a Tennessee institution of higher education. Dual enrollment grants are available for high school students who are also enrolled and taking courses at eligible postsecondary institutions. To qualify for a dual enrollment grant, the high school student must *attend*—and take a course at—a post-secondary institution located *in Tennessee*. *Id.* Thus, dual enrollment grants are within the scope of the plain language of article XI, § 5 because they satisfy its requirement that financial assistance funded by lottery proceeds be tied to college attendance in Tennessee.

It is true that a student who takes an AP examination that results in college credit *might* use that credit to advance through college more quickly and, therefore, at a reduced cost. But, again, there is no certainty that any student will do so. And even if a student does use AP credit in that way, that does not make payment of the fee for the AP examination "financial assistance" within the scope of article XI, § 5. The term "financial assistance" in article XI, § 5, is limited to assistance that will help a citizen pay the costs to attend a post-secondary educational institution. *See* Tenn. Att'y Gen. Op. 11-20 (March 4, 2011) (costs for planning tools, including career planning and test preparation tools, are not properly funded from net lottery proceeds under article XI, § 5). "Cost of attendance" is defined by statute to mean "the combined cost of tuition, *mandatory fees*, room and board, books and other educational expenses as determined by the financial aid office of the eligible postsecondary education." Tenn. Code Ann. §§ 49-4-902(8) (emphasis added). Since AP credit is not required for attendance at a postsecondary educational institution, the fee for an AP examination is neither a mandatory fee nor a cost of tuition

In sum, article XI, § 5, of the Tennessee Constitution does not authorize the use of net lottery proceeds to pay for AP examination fees.

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