

OPINION NO. 88-038**Syllabus:**

1. Pursuant to R.C. 5919.34(A), a resident of Ohio who is a high school graduate or the equivalent, does not already possess a baccalaureate degree, and has enlisted, reenlisted, or extended his current enlistment in the Ohio National Guard for at least six years, is eligible to participate in the educational grant program.
2. A member of the Ohio National Guard who fails to complete the term of the enlistment, reenlistment, or extended enlistment he was serving at the time an educational grant was paid on his behalf pursuant to R.C. 5919.34, is no longer eligible to participate in the educational grant program.
3. Pursuant to R.C. 5919.34(A), if an otherwise qualified resident of Ohio enlists, reenlists, or extends his current enlistment in the Ohio National Guard for a six year period, and during that period accepts a warrant or commission as an officer in the Ohio National Guard, he is still eligible to participate in the educational grant program provided that he is bound to complete the full term of the statutory service obligation of the enlistment, reenlistment or extended enlistment he was serving at the time an educational grant was paid on his behalf under the authority of R.C. 5919.34.

To: Richard A. Alexander, Adjutant General, Worthington, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, June 15, 1988

Your predecessor requested my opinion as to whether an enlisted member of the Ohio National Guard who accepts a commission or warrant as an officer may

participate in the educational grant program under R.C. 5919.34. Discussion with your staff confirms that your request involves the eligibility of persons who enter the Ohio National Guard as enlisted personnel and subsequently accept a commission or warrant as an officer. Your predecessor's letter raises the concern that "a restrictive view of the requirement in allowing only enlisted members to participate works a penalty against those whose initiative and completion of extra training has earned them a commission or warrant in The Ohio National Guard."

R.C. 5919.34 allows certain persons in the Ohio National Guard to participate in the educational grant program. Eligibility for the educational grant program is established by R.C. 5919.34(A), which states:

Any resident of Ohio who is a high school graduate or the equivalent, does not already possess a baccalaureate degree, and has enlisted, reenlisted, or extended his current enlistment in the Ohio national guard for at least six years shall, pursuant to an application therefor, be eligible for educational grants to attend an eligible institution of higher education as a full-time undergraduate student and if he is actively enrolled in a two-year or four-year degree-granting program at an eligible institution or in a diploma-granting program at a school of nursing which is an eligible institution, not later than twelve months after: the date of his enlistment; the date of his completion of initial active duty training; the date of extension of his current enlistment; or such later time as the adjutant general specifies pursuant to division (B) of this section if appropriations are inadequate. Participation in the educational grant program established under this section is limited to three thousand full-time students per term actively enrolled in a two-year or four-year degree-granting program at an eligible institution or in a diploma-granting program at a school of nursing which is an eligible institution. At no time shall one enlisted person be placed in priority over another because of sex, race, or religion.

R.C. 5919.34(A) thus imposes a number of conditions upon eligibility for participation in the educational grant program. The applicant must be a resident of Ohio who has graduated from high school, but who does not yet possess a baccalaureate degree. The applicant must also have enlisted, reenlisted, or extended his current enlistment in the Ohio National Guard for at least six years. There is no language in R.C. 5919.34(A) which expressly states that a qualified participant in the program loses his eligibility merely by accepting a warrant or commission as an officer. However, R.C. 5919.34(E) does contain the following language:

A member of the Ohio national guard who fails to complete the *term of enlistment* he was serving at the time an educational grant was paid on behalf of him under this section is liable to this state for repayment of all educational grants paid on behalf of him under this section, plus interest at the rate of ten per cent per annum calculated from the dates the grants were paid. (Emphasis added.)

This language certainly implies that a participant in the educational grant program who fails to complete his term of enlistment is no longer eligible to participate. Therefore, it is necessary to consider whether an enlisted member of the Ohio National Guard who accepts a warrant or commission as an officer thereby "fails to complete the term of enlistment he was serving at the time an educational grant was paid on [his] behalf...."

The phrase "term of enlistment" is not defined by statute. There is also no statutory definition of the word "enlistment". Absent a statutory definition of these terms they should be accorded their ordinary meaning unless, in the context in which they are used, a more technical meaning is appropriate. R.C. 1.42; *Carter v. Youngstown*, 146 Ohio St. 203, 65 N.E.2d 63 (1946). The word "enlistment" has been defined as the "[v]oluntary entry into one of the armed services other than as a commissioned officer." *Black's Law Dictionary* 475 (5th ed. 1979). This definition incorporates the commonly understood distinction between officers and enlisted

personnel. *See also Webster's New World Dictionary* 465 (2d college ed. 1972) (defining "enlisted man" as "any man in the armed forces who is not a commissioned officer or warrant officer"). Given the distinction between enlisted personnel and officers, it is arguable that an enlisted member of the Ohio National Guard who accepts a commission or warrant as an officer thereby fails to complete his term of *enlistment*. However, for the reasons that follow, I am of the opinion that a member of the Ohio National Guard, who is otherwise qualified to participate in the educational grant program, does not lose his eligibility to continue participation in the program by accepting a warrant or commission as an officer, provided that he remains obligated to serve the balance of the period of obligation incurred in the underlying enlistment, reenlistment or extended enlistment.

R.C. 5919.09 provides that "[o]riginal enlistments in the Ohio national guard and all subsequent enlistments shall be for the period prescribed by act of congress." R.C. 5919.10 requires that "[a]ll men enlisting in the Ohio national guard shall sign an enlistment contract...." Furthermore, Ohio National Guardsmen have dual status as members of both the organized militia of Ohio and as members of the United States Army Reserve. *See* 32 U.S.C. §§301-324 (1987). Upon enlistment a member of the Ohio national guard having the requisite qualifications becomes federally recognized and subject to federal regulation. *See* 32 U.S.C. 301 (1987). Correspondingly, when an enlisted member of the Ohio National Guard receives a commission under R.C. 5919.02 or an appointment under R.C. 5919.07, he receives the commission in both the Ohio National Guard and the United States Army Reserve. *See* 32 U.S.C. §§305-313 (1987). Based upon these statutes a person who enlists, reenlists, or extends his enlistment in the Ohio National Guard undertakes both a contractual and statutory obligation to serve in the Ohio National Guard for a fixed period of time. Under 32 U.S.C. §§301-324 and Army Regulation 135-91(2-1) persons enlisting in the Ohio National Guard are statutorily obligated to serve for six years if enlistment occurred prior to June 1, 1984, and for eight years if they enlisted after that date. The contractual obligation is fixed by the enlistment contract signed pursuant to R.C. 5919.10.

According to Army Regulation 135-91(2-2), the contractual obligation may run concurrently with the statutory obligation or it may extend past the statutory obligation. The distinction between the statutory and contractual obligation is recognized in Army Regulation 135-91(2-6), which states:

Military separation due to a discharge, dismissal, or being dropped from the rolls of the Army terminates a soldier's statutory service obligation. However, any type of separation for immediate reentry into the same or another military status does not terminate the *statutory service obligation* incurred by initial enlistment, induction, or appointment. This includes an officer training program in which the soldier has military status. (Emphasis in original.)

Based upon communications with your staff, it is my understanding that acceptance of a warrant or commission as an officer in the Ohio National Guard ends the contractual obligation in the enlistment contract. However, the *statutory* obligation that a member of the Ohio National Guard undertakes when he signs an enlistment contract remains in force. *See* Army Regulation 135-91(2-2), 135-91(2-6). *See also* Army Regulation 135-91(3-7) (noting that an Army National Guard officer commissioned from officer candidate school retains the original statutory obligation incurred by his enlistment). Thus, because the Ohio National Guard member who accepts a warrant or commission as an officer must fulfill his statutory obligation to complete the term of his enlistment, reenlistment, or extended enlistment, I find that his acceptance of the warrant or commission does not prevent him from completing the "term of enlistment" as that term is used in R.C. 5919.34(E). I reach this result even though I recognize that part of the time served in the "term of enlistment" will be served as an officer.

In response to your predecessor's specific question, therefore, I find that the conditions imposed by R.C. 5919.34(A) are met when an otherwise qualified resident of Ohio enlists, reenlists, or extends his current enlistment in the Ohio National Guard for at least six years. If, during that six year period, the individual should accept a warrant or commission as an officer, he remains eligible to participate in the educational grant program provided that he is still bound to complete the full

term of the statutory service obligation of the enlistment, reenlistment, or extended enlistment he was serving at the time an educational grant was paid on his behalf under the authority of R.C. 5919.34.

My conclusion is supported by a review of an additional provision contained in R.C. 5919.34(E). R.C. 5919.34(E) requires repayment of an educational grant by a member of the Ohio National Guard who "fails to complete the term of enlistment he was serving at the time an educational grant was paid on behalf of him under this section." R.C. 5919.34(E) further provides:

A member of the national guard is not liable under this division if his failure to complete the term of enlistment he was serving at the time an educational grant was paid on behalf of him under this section is due to his death, discharge from the national guard due to his disability, or his enlistment, for a term not less than his remaining term in the national guard, in the active or reserve forces of the United States armed forces.

Promotion from an enlisted rank in the Ohio National Guard to the status of an officer is not listed among the exceptions from liability for repayment in R.C. 5919.34(E). If the acceptance of a warrant or commission as an officer by an enlisted member of the Ohio National Guard were to be viewed as a failure to complete a "term of enlistment" for purposes of R.C. 5919.34(E), then the member would not only lose his eligibility to participate in the educational grant program, but would also be liable for repayment of moneys previously advanced. In construing ambiguous statutory language it is proper to consider the consequences of a particular construction. R.C. 1.49(E); *Green v. Stringer*, 58 Ohio App. 2d 53, 389 N.E.2d 510 (Clark County 1978) (the General Assembly is presumed not to intend any ridiculous or absurd results from the operation of a statute which it enacts, and, if reasonably possible to do so, statutes must be construed so as to prevent such results). It is not likely that the General Assembly would have intended that an enlisted member of the Ohio National Guard should lose his eligibility to continue to participate in the educational grant program, and be liable for repayment of moneys previously advanced on his behalf under that program, by accepting a warrant or commission as an officer. Conversely, there is every reason to expect that the General Assembly intended to reward rather than punish those enlisted members of the Ohio National Guard who, through effort and distinguished service, earn a promotion to the status of warrant or commissioned officer.

Therefore, it is my opinion, and you are so advised, that:

1. Pursuant to R.C. 5919.34(A), a resident of Ohio who is a high school graduate or the equivalent, does not already possess a baccalaureate degree, and has enlisted, reenlisted, or extended his current enlistment in the Ohio National Guard for at least six years, is eligible to participate in the educational grant program.
2. A member of the Ohio National Guard who fails to complete the term of the enlistment, reenlistment, or extended enlistment he was serving at the time an educational grant was paid on his behalf pursuant to R.C. 5919.34, is no longer eligible to participate in the educational grant program.
3. Pursuant to R.C. 5919.34(A), if an otherwise qualified resident of Ohio enlists, reenlists, or extends his current enlistment in the Ohio National Guard for a six year period, and during that period accepts a warrant or commission as an officer in the Ohio National Guard, he is still eligible to participate in the educational grant program provided that he is bound to complete the full term of the statutory service obligation of the enlistment, reenlistment or extended enlistment he was serving at the time an educational grant was paid on his behalf under the authority of R.C. 5919.34.