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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable Gregory G. Fitch
Executive Director
Alabama Commission on Higher Education
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Alabama Commission on Higher Education
– Policeman’s Survivor Tuition Act –
Disability – Tuition

“Totally disabled” and “total disability,” as used in section 36-21-102 of the Code of Alabama, mean that the injured party is medically disabled to the extent that he or she cannot perform the duties of the job occupation or profession in which he or she was engaging at the time the injury was sustained.

Dear Dr. Fitch:

This opinion of the Attorney General is issued in response to your request.

QUESTION

For purposes of section 36-21-102 of the Code of Alabama, what are the definitions of “totally disabled,” “total disability,” and “vocational disability?”

FACTS AND ANALYSIS

The Police Officer’s and Firefighter’s Survivors Educational Assistance Act (“Act”) states as follows:

Upon the effective date of Act 2009-631, when a full-time law enforcement officer or full-time firefighter employed by the state, by any county, or by any municipality, or a volunteer firefighter is or was

killed or becomes **totally disabled** in the line of duty, free tuition for undergraduate study at any state college, state community college, state junior college, state technical college, in the State of Alabama, and other costs officially prescribed for the classes in the course of study, shall be paid for the following:

(1) Any dependent child, natural or adopted, under 21 years of age at the time of death or **total disability** of the law enforcement officer or firefighter;

(2) A spouse who has not remarried, provided initial enrollment is within five years of the death or **total disability** of the law enforcement officer or firefighter or volunteer firefighter.

ALA. CODE § 36-21-102 (Supp. 2012) (emphasis added).

The term “totally disabled,” used interchangeably with the term “total disability” within the statute, is not defined in the Act, and you request the guidance of this Office in ascertaining the definition of these terms so as to enable the Tuition Eligibility Board to correctly administer the benefits of the Act.

Although not defined in the Act, the term “total disability” is defined in a closely-related statute. Section 36-30-2 of the Code provides for additional benefits to peace officers and firefighters upon death or “total disability” occurring in the line of duty. ALA. CODE § 36-30-2 (Supp. 2012). That section of the Code states that “[t]he term **total disability** shall be interpreted to mean that the injured party is medically disabled to the extent that he or she cannot perform the duties of the job occupation or profession in which he or she was engaging at the time the injury was sustained.” *Id.*

In matters of statutory interpretation, it is presumed that the Legislature, in enacting new legislation, knows the existing law. *Ex parte Fontaine Trailer Co.*, 854 So. 2d 71 (Ala. 2003), quoting *Blue Cross & Blue Shield of Ala., Inc. v. Nielsen*, 714 So. 2d 293, 297 (Ala. 1998). The Legislature is presumed to know the meaning of statutorily-defined terms and judicial construction of those terms. *Ex parte Pierce*, 50 So. 3d 447, 454 (Ala. Civ. App. 2010); *Madison Cnty. Bd. of Educ. v. Wilson*, 984 So. 2d 1153, 1159-60 (Ala. Civ. App. 2006), *aff'd sub nom. Ex parte Wilson*, 984 So. 2d 1161 (Ala. 2007). “A phrase that is used repeatedly in statutory provisions relating to the same object or subject matter shall ‘be interpreted to have the same meaning’ throughout.” *House v. Cullman Cnty.*, 593 So. 2d 69, 72 (Ala. 1992).

Because the definition of “total disability” appearing in section 36-30-2 relates to a similar subject matter as that of the Police Officer’s and Firefighter’s Survivors Educational Assistance Act, the compensation for the death or disability of peace officers and firefighters, it is the opinion of this Office that the definition of “total disability” appearing in section 36-30-2 of the Code is applicable to the terms “totally disabled” and “total disability” appearing in section 36-21-102 of the Code.

You also ask for a definition of “vocational disability.” This term is used in the area of worker’s compensation law and is not applicable to the Police Officer’s and Firefighter’s Survivors Educational Assistance Act. This Office is authorized to issue opinions to public officials and public bodies that relate to the present performance of a duty to be performed by that official or public body. ALA. CODE § 36-15-1 (Supp. 2012). Because the statutory authority of the Alabama Commission on Higher Education (“Commission”) and the Tuition Eligibility Board is limited to determinations of applicant eligibility based upon death or total disability, the definition of “vocational disability” is not necessary to any official act performed by the Commission or the Tuition Eligibility Board.

CONCLUSION

“Totally disabled” and “total disability,” as used in section 36-21-102 of the Code, mean that the injured party is medically disabled to the extent that he or she cannot perform the duties of the job occupation or profession in which he or she was engaging at the time the injury was sustained.

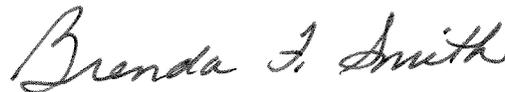
I hope this opinion answers your question. If this Office can be of further assistance, please contact Ben Baxley of my staff.

Sincerely,

LUTHER STRANGE

Attorney General

By:



BRENDA F. SMITH

Chief, Opinions Division