

**STATE OF TENNESSEE**

OFFICE OF THE  
**ATTORNEY GENERAL**  
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May 18, 2004

Opinion No. 04-094

Lottery Scholarship Eligibility Criteria

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**QUESTION**

Do the lottery scholarship eligibility criteria, under the current statutes or the proposed amendments in SB 2114/HB 2134, unconstitutionally discriminate against public high school students who must pass the assessment tests required by Tenn. Code Ann. §49-6-6001 to graduate from high school if private high school and home-schooled students are not required to pass such assessments to graduate from high school?

**OPINION**

No. Even if public high schools place additional requirements on students in order to graduate from high school, such as the assessment tests provided in Tenn. Code Ann. §49-6-6001, the lottery scholarship eligibility criteria are not unconstitutional.

**ANALYSIS**

To be eligible for a Tennessee HOPE scholarship, a student must have graduated from a Tennessee high school, completed high school in a Tennessee home school program or obtained a GED after January 1, 2003. Tenn. Code Ann. §49-4-905. Under the proposed amendments in SB 2114/HB 2134, this language is clarified to require graduation from an eligible high school or a high school located in Tennessee that is not an eligible high school, completion of high school in a Tennessee home school program or a GED obtained after January 1, 2003. In addition, there are minimum requirements regarding high school grade point average or minimum scores on ACT or SAT tests. Tenn. Code Ann. §§49-4-907, 49-4-908.

Ordinarily, unless a classification places a burden on a suspect class of persons, *e.g.*, one based on race, or interferes with the exercise of a fundamental right, *e.g.*, the right to vote, it will be upheld under an equal protection analysis if there is a rational basis for the classification. *City of Cleburne, Texas v. Cleburne Living Center*, 473 U.S. 432, 440, 105 S.Ct. 3249, 3254, 87 L.Ed.2d 313 (1985). In other words, the State need only demonstrate that there is some reasonable basis for the classification. *Riggs v. Burson*, 941 S.W.2d 44, 53 (Tenn. 1997).

In the present context, the concern would be the reasonableness of the requirement regarding graduation from high school when some high schools may have stricter requirements for graduation such as the assessment tests required in public high schools under the provisions of Tenn. Code Ann. §49-6-6001. As this classification does not involve a fundamental right or a suspect class, it is subject to a rational basis test. Requiring graduation from high school is a reasonable eligibility requirement for the award of a college scholarship. Therefore, the eligibility criteria currently in Tenn. Code Ann. §49-4-905 or under the proposed amendments in SB 2114/HB 2134 do not unconstitutionally discriminate against public high school students.

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