

**DECISION****THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548**

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**FILE:** B-212848**DATE:** October 24, 1983**MATTER OF:** The University of Virginia**DIGEST:**

1. As a general rule, GAO must receive claims against the government within 6 years after they accrue. State university's claim for tuition for two Army members enrolled during 1974-75 academic year, first received in 1983, therefore may not be paid. Moreover, university's attempt to recover amounts due from Army in 1980 does not toll running of 6-year period.
2. Exception to 6-year statute of limitations for claims of a state, set forth at 31 U.S.C.A. § 3702(b)(1)(B) (formerly 31 U.S.C. § 71a (1976)), does not apply to state university.

The University of Virginia, by letter dated August 19 and received in our Office on August 25, 1983, requests that we consider a claim for tuition for two students in the Army Nursing Program during the 1974-75 academic year. We find the claim is barred by the statute of limitations.

The University has forwarded correspondence between it and the Army regarding Educational Service Agreement No. DABT59-75-A-0011; however, no copy of the basic agreement is available. It appears that Pfc. Mary M. Oakley and Pfc. Valerie S. Robbins, among others, attended the University as liberal arts students. Handwritten notes on a delivery order, issued by the Procurement Division, Fort Lee, Virginia, on August 21, 1974, indicate that their tuition for the fall semester was paid; in any event, it is not being claimed by the University.

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Spring semester tuition, still outstanding, is shown on the delivery order as \$300 for Pfc. Oakley and \$350 for Pfc. Robbins. The University, however, is claiming \$322 and \$1,247, respectively (the latter amount reflecting the fact that Pfc. Robbins was a non-resident student), although there is no evidence that the basic agreement ever was modified to provide for the increased amounts.

In 1976, by letters dated March 1, June 10, and September 23, officials at Fort Bragg, North Carolina, to whom responsibility for administration of the basic agreement had been transferred, requested the University to forward invoices so that the accounts for 1974-75 could be cleared. The September 23 letter specifically stated that if the matter were not settled by the end of October, the monies would be deobligated. On March 14, 1977, the Army modified the basic agreement to delete the two students and reduce the contract amount by \$650.

The University apparently took no further action until September 18, 1980, when it submitted invoices totaling \$1,569 (\$322 plus \$1,247) to Fort Bragg. The Army's response, dated July 12, 1983, confirmed the fact that funds for payment were no longer available at that installation. The University subsequently filed its claim with our Office.

The question of actual amount due is academic because, in our opinion, the claim is barred by the statute of limitations, 31 U.S.C.A. § 3702 (West 1983) (formerly 31 U.S.C. § 71a (1976)). This section, which authorizes the Comptroller General to settle claims of or against the United States Government, generally bars any claim that has not been received by the Comptroller General within 6 years of accrual. See Jordanian Workmen's Claims for Severance Pay against the Department of State, B-209039, February 8, 1983, 83-1 CPD 200.

Further, because of the specific statutory requirement for receipt by the Comptroller General, the University's submission of invoices to the Army in 1980 did not toll the running of the 6-year period. Nordair Ltd., B-201635, February 25, 1981, 81-1 CPD 134; cf. B-146138, December 20, 1963, (rejecting an argument that the Army's assurance that a claim was being considered estopped our Office from refusing to consider it when received after the statutory time had run).

The only legal question therefore is whether the University of Virginia falls within the exception to the statute of limitations for claims of "a State, the District of Columbia, or a territory or possession of the United States" set forth at 31 U.S.C.A. § 3702(b)(1)(B). In our opinion, the exception, which also appeared in 31 U.S.C. § 71a, does not apply.

Although we have not construed the exception with regard to state institutions, we have held that political subdivisions of states, i.e., municipalities, are subject to the statute of limitations. Payment of Building Permit Fee for Government Construction Project, B-199838, October 20, 1981; B-159110, June 27, 1966. Our rationale was that to allow stale claims of the numerous cities, counties, and districts of the several states would tend to thwart the primary purpose of the statute of limitations. We believe the same rationale can be applied to claims of state institutions.

The legislative history of the original statute of limitations for claims filed with our Office supports a narrow construction of the exception. In 1940, when it was enacted, we were being asked to consider claims that had arisen even before the Civil War. Proposed legislation H.R. 8150 was amended to include the exception for States in response to concerns expressed by a Vermont Senator regarding a claim by that State which was more than 10 years old. 86 Cong. Rec. S 12746 (daily ed., September 27, 1940) (statement of Sen. Austin); Id., B-S12802 (daily ed., September 30, 1940). There is no indication, however, that the Congress intended the exception to apply to instrumentalities of the states.

Moreover, we believe that the exception was meant to apply to states acting in their governmental, or sovereign capacity. The establishment, maintenance, and operation of an educational institution, however, is a nongovernmental activity that may be performed by individuals and private entities, as well as by states and localities. Neither the University of Virginia nor any other educational institution has such attributes of sovereignty as the power to tax, to appropriate public money, to adjudicate controversies, or to fix and determine rights in property. See Student Bar Association Board of Governors of the School of Law, University of North Carolina at Chapel Hill v. Byrd, 23 N.C. 594, 239 S. E.2d 415 (1977). In this case, for

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example, if the Army Nursing Program students had been enrolled at a private institution of higher learning, and that institution had not attempted to claim amounts due for their tuition until more than 6 years after the claim accrued, the statute of limitations clearly would apply. We see no reason why the University of Virginia should be treated differently.

Finally the University of Virginia, created by state statute, is governed and controlled by a board of visitors. Although its members are appointed by the governor, the board otherwise may act as autonomously as any other private firm incorporated under Virginia statutes. Va. Code §§ 13.1-2.1; 23-69, 23-70 (1950). In educating the two students whose tuition is being claimed here, we do not find that the University of Virginia was acting as an agency or instrumentality of the state of Virginia.

The claim may not be paid.

*Milton J. Fowler*  
for Comptroller General  
of the United States