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ARIZONA ATTORNEY GENERAL

October 24, 1960

Mr. Spencer Thompson, Director
 Governor's Council for Veterans'
 Institutional and On-The-Job Training
 409 Capitol Building
 Phoenix, Arizona

1 Concur	DETSY FREDERICKSON
1 Concur	LES HANEY
1 Concur	

Dear Mr. Thompson:

The question that has evolved from your letters and our conversations relative to approval of a welding school under your program may be stated thusly:

A recently established welding school seeks approval as a "school offering non-accredited courses" under the regulations governing Institutional and On-The-Job Training for Veterans, and in order to meet the two-year existence requirement, bases that phase of its application on the purchase of a school of welding which had been in operation as such a school, it is alleged, for more than the required two-year period. In order to determine whether as a matter of fact the entity purchased was actually in operation as a school for that period, you ask what elements must be presented to prove the operation of the school.

Title 38, U.S.C.A., section 1625, provides that the enrollment of an eligible veteran shall not be approved in any course which has been in operation for less than two years. That section provides for exceptions to this rule. The only one of these exceptions which could come close to applying to the present situation is:

"(2) Any course which is offered by an educational institution which has been in operation for more than two years, if such course is similar in character to the instruction previously given by such institution;"

It thus appears that you are correct in requiring proof that the welding school shall have been in operation for more than two years prior to its application and that, therefore, the courses for which approval is now sought must be similar in character to the courses offered by the school which was purchased by the applicant.

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There is no legal definition of a school, and certainly not of a welding school, which can be applied as a matter of law. The existence of a school is a question of fact, not of law.

To aid in determining fact, you may, it seems to us, resort to your own regulations, as applicable to a new applicant, for essential elements. In using applicant requirements retroactively, it must be remembered that there is no legal basis for enforcing requirements in this respect, and also that if one is determining the existence of a welding school, he should use specific terminology applicable to welding schools and not by a statement in too general terms bind himself to terms which would leave the door too wide open or leave too narrow an opening for other vocational types of training.

In referring to the regulations, pages 11 and 12 relating to the existence of schools and the requirements for approval of a course of study on page 15, the essential elements may well be described as: An established program of instruction in which achievement standards are required of individual students; the instructor or instructors must be proficient and experienced in welding; welding equipment and supplies must be available both to the instructor for demonstration and to the student for practice; there must be physical facilities adequate for the housing of the equipment, the conduct of classes and the demonstration and practice of the use of the equipment; there must be a plan in existence and carried out to determine the degree of proficiency to be achieved by each student in one phase of instruction before he receives instruction in the next, more difficult operation.

Section 1654 of Title 38, U.S.C.A. sets forth the data to be included in an application for approval of non-accredited courses which is substantially the same as that set forth in your regulations and referred to above. It is not intended that all these factors are necessarily part of the proof of operation of the school for the two years preceding an application. However, in making the determination of the fact of whether there was in existence a school, you may be guided by the essentials indicated in the application form.

The best proof of the existence of a school would be some indication that the conduct of a school was the business,

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at least part time, of the operator of the school, that he had a schedule of tuition charges or offered instruction at a fixed charge for a course in welding, and that students instructed by him had, after completing training under his direction, obtained jobs as welders.

As indicated above, there is no rule of law that we can give you for deciding whether or not there is a "school". It remains a question of fact. If you have a situation in which there are conflicting facts presented to you, this office may be able to help by examining the record or outlining a way in which to obtain proof of facts alleged.

There appears to be no limit indicated either in your regulations themselves or in U.S.C.A. provisions for the program upon the number of schools or courses that may be approved in any given area. It appears also from both these sources that you have power to enforce the continued meeting of requirements and to disapprove any course failing to meet requirements, even though approval had originally been granted to the applicant upon a showing that requirements would be met.

Under these circumstances, if you are satisfied that the previous alleged school actually instructed people in the welding trade and that students so instructed became welders, your approval of its successor is, under your regulations, conditional upon its continuing to meet requirements.

We realize, of course, that this is placing the burden right back upon your shoulders, as we cannot presume to determine questions of fact, especially in regard to welding. Also, we are appreciative of the fact that your continuing to pursue this question arises from a conscientious desire to be scrupulously fair to the applicant while assuring potential students that attending classes offered by the applicant will result, if they are diligent, in their being good welders.

It, therefore, appears that if you can be assured of such a result, the record of prior students may be the determining factor in admitting the present applicant on the basis of the record of the operation purchased by him which is now claimed to have been a school.

Very truly yours,

WADE CHURCH
The Attorney General

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BETSY C. FREDERICKSON
Assistant Attorney General

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