

Opinion No. 51-5410

August 31, 1951

BY: JOE L. MARTINEZ, Attorney General

TO: H. W. James, President New Mexico Western College Silver City, New Mexico

{*114} In your letter of August 14, 1951 you request an opinion as to the definition of "resident student" as used in the General Appropriations Act of 1951.

It appears that the former State Comptroller, Mr. Strahlem, gave all colleges and other educational institutions his comments upon the definition of "resident" and "non-resident" students, as indicated on page 31 of Committee Substitute for House Bill 300, enacted at the last session of the Legislature.

"A resident student is defined as one who shall have resided in the State of New Mexico for at least one year before enrolling as a student in any college or university in the State of New Mexico; or whose parent or guardian shall have resided in the State of New Mexico for at least one year before enrolling in any college or university in New Mexico."

In all cases it should be borne in mind that under Section 4 of Article 7 of the State Constitution a person can neither acquire or lose residence while a student in any school.

In his comments, Mr. Strahlem stated that once a student has been classified as a non-resident under the existing law, he will remain a non-resident throughout his college career because he can only qualify as a resident before enrolling in a New Mexico college or university.

We cannot agree with this statement. **Enrolling is generally defined as registering in accepted dictionaries.** It is my opinion that when the Legislature used the word "enrolling" in the 1951 General Appropriations Act it intended that word to have the meaning of "registering". It is a well known fact that students who matriculate at a university or a college matriculate only once after meeting entrance requirements. Thereafter during their attendance at college, they register anew for each term.

It could easily happen that a student might matriculate at a university, yet not register for any course for several years thereafter.

Under the comments of Mr. Strahlem, "enrolling" would be given the narrow, restricted meaning of "matriculating". If the Legislature had intended it to mean that, I feel that it would have so stated this requirement without any ambiguity.

In view of the lack of positive evidence that the Legislature intended the word "enrolling" to have the same meaning as "matriculating", it is my opinion that a resident student is one who shall {*115} have resided in the State of New Mexico for at least one year before **registering** as a student in any college or university in the State of New Mexico, or whose parent or guardian shall have resided in the State of New Mexico for at least one year before **registering** in any college or university in the State of New Mexico. Were the situation otherwise, it is possible that a student might be a non-resident at one university or college but a resident at another if he transferred schools. It is obvious the Legislature did not intend any such absurdity.

An excellent discussion as to the general question of residence of students in particular circumstances is found in a former opinion of the Attorney General (Opinion No. 1279, Jan. 21, 1936). Your attention is cited thereto. I realize that undoubtedly situations will arise involving the question of residency or non-residency which do not seem to fall squarely within the four corners of this opinion or the former opinion cited. It is my suggestion that any question as to specific cases seemingly not embraced within this opinion or the former opinion be referred to this office for study.