

Opinion No. 53-5661

February 5, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Honorable Richard F. Rowley District Attorney Ninth Judicial District Clovis, New Mexico

{*50} This will acknowledge receipt of your letter dated February 1, 1953, in which you request an opinion as to whether or not a member of the armed forces of the United States, stationed in New Mexico, who buys a house or obtains employment in New Mexico, in addition to his regular employment at the military installation, is subject to the laws of New Mexico in regard to the purchase of license plates for motor vehicles, as provided under § 68-202 N.M.S.A., 1941 Compilation.

The Soldiers' and Sailors' Relief Act, Title 50, USC, Anno., § 574, provides as follows:

"(1) For the purposes of taxation in respect of any person, or of his personal property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while, and solely by reason of being, so absent. For the purposes of taxation in respect of the personal property, income, or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person {*51} is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District, and personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, Territory, possession, or political subdivision, or district: Provided, That nothing contained in this section shall prevent taxation by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia in respect of personal property used in or arising from a trade or business, if it otherwise has jurisdiction. This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to October 6, 1942.

"(2) When used in this section (a) the term 'personal property' shall include tangible and intangible property (including motor vehicles), and (b) the term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: **Provided**, That the license, fee, or excise required by the State, Territory,

possession or, District of Columbia of which the person is a resident or in which he is domiciled has been paid."

The Soldiers' and Sailors' Civil Relief Act, being the expression of the Congress of the United States, supersedes the law of the State of New Mexico as applied to persons under military orders. You will note that this Act provides that a person does not lose his domicile in his home state "solely by reason of being so absent." The Act provides further that a soldier's or sailor's personal property is not subject to taxation unless that personal property is "used in or arising from a trade or business." This law indicates that an affirmative expression must be made by the soldier or sailor in the event he intends to change his domicile. The soldier or sailor must be the acting party and express in unequivocal terms his intention to change his domicile. A domicile is defined in 28 CJS as follows:

Domicile is the legal conception of home, and the relation created by law between an individual and a particular locality or country. The term has been variously defined, the definitions agreeing substantially on the elements of a true, fixed home, habitation, or abode, where a person intends to remain permanently or indefinitely, and to which, whenever absent, he intends to return."

The term "domicile" embodies not only the presence in a particular place but the intent to remain there. This intent is a question of fact but must arise out of some definite expression to the effect that the place where the person resides is truly his "permanent" home.

This office feels that it is necessary for a definite expression of a change of domicile to be made by the soldier or sailor. This change of expression could be made by registration for purposes of voting, a renunciation of the laws of his home state, testimony in a legal action where he invokes the jurisdiction of this state's courts, or any other definite and positive expression or act showing an intention to make New Mexico his permanent home. We do not feel that merely purchasing a home or accepting additional part-time employment, { *52 } by either the soldier or any member of his family, is sufficient expression to exempt him from the provisions of the Soldiers' and Sailors' Civil Relief Act as set out above. It may be economically feasible for a person to purchase a home in the community where he is stationed without that person expressing his intention to remain in that place indefinitely. It is also economically feasible, in many cases, to accept part-time employment in the community where the soldier or sailor happens to be stationed. This does not of itself indicate a change of residence or domicile.

Thus it is the opinion of this office that the Soldiers' and Sailors' Civil Relief Act, as applied to motor vehicle registration fees, supersedes the New Mexico law on the subject and the New Mexico law has absolutely no application to persons subject to and who are beneficiaries of the Soldiers' and Sailors' Civil Relief Act. Therefore, unless a definite indication is made by the soldier or sailor that he has changed his domicile and fully intends that New Mexico be his domicile, and unless that intent is so expressed or

unless the person is using the automobile in his trade or business, New Mexico has no authority to require the registration of his motor vehicle in this state.

We sincerely hope that this answers your inquiry.