

## Opinion No. 53-5879

December 29, 1953

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** J. W. Branson, President New Mexico A. & M. College State College, New Mexico

{\*310} In your letter dated December 16, 1953 as amplified in your letter dated December 21, 1953, you request our opinion concerning tuition fees to be charges a student who is over the age of twenty-one years and is a citizen of Iran and upon completing his education intends to return to Iran in order to better serve his people. You are wondering whether this student, after being enrolled for one year, may be considered as a resident and be relieved of the nonresident tuition.

Paragraph 2 of Section 7 of the General Appropriation Act of 1953 provides as follows:

"A resident student is defined as one who has legally resided in the state of New Mexico for at least one year before enrolling as a student in a college or university in the state of New Mexico or whose parents or guardians shall have legally resided in the state of New Mexico for at least one year before the student's enrolling in any college or university in New Mexico; provided that students or their parents or guardians may during the student's enrollment, declare their intent to become citizens of the state of New Mexico, in which case the student may enroll as a resident student after the one year's residence requirement stated above is met by the student or the parents or guardian of the student; provided further that the attorney general shall pass on any doubtful interpretations of this section."

It is noted that in the proviso a student may, during his enrollment, declare an intention to become a citizen of the State of New Mexico and may thus enroll as a resident student after one year's residence requirement stated in the first sentence. The residence requirement is that of legal residence, although perhaps under the language of the proviso an alien could qualify as a resident student provided he honestly declared his intention to become a citizen of the United States and of the State of New Mexico. In the present case, however, the person involved is merely making this his temporary place of abode during the time necessary to complete his education and intends to return to his native land as his permanent place of abode. Under such a state of facts, it is our opinion that he cannot acquire the status of a resident student and should be required to pay the non-resident tuition fee provided in the Appropriation Act.

By: C. C. McCulloh

Assist. Attorney General