

## **Opinion No. 55-6077**

January 18, 1955

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

**TO:** Mr. Paul Tackett District Attorney Second Floor Court House, Albuquerque, New Mexico

**Re:** Soldier's Exemption.

### **OPINION**

In your letter dated January 11, 1955, you give the following statement of facts:

"John Doe enlisted in the Armed Services of the United States in a state other than New Mexico, and served on active duty over ninety days and was discharged in 1948 in New Mexico. At the time of his discharge he owned a residence in New Mexico. After his discharge and while residing in New Mexico, John Doe reenlisted in the Armed Services of the United States and since that time and now is on active duty."

You ask our opinion on the question whether John Doe should be allowed the soldier's exemption on the ground that he is an honorably discharged soldier and was a resident of New Mexico at the time he entered on his present tour of duty, or whether he will have to complete his present tour of duty and receive a new honorable discharge before becoming eligible for the exemption.

Section 72-1-13 of the 1953 Compilation, in allowing soldier's exemption, provides, in part, as follows:

"Provided, however, that such exemption from taxation shall not be permitted to be claimed by nor allowed to any person who was not either a resident of New Mexico at the time he entered on such duty or who had not acquired residence in the State of New Mexico prior to January 1, 1947."

You state that the person enlisted the first time from a state other than New Mexico and served more than ninety days and was discharged in 1948 in New Mexico. Unless he acquired residence in New Mexico prior to January 1, 1947, he would not be eligible for exemption based upon his honorable discharge in 1948, since merely serving in the Armed Forces while stationed in New Mexico is not alone sufficient to show an intention to acquire residence here. In this connection see **Allen v. Allen**, 52 N.M. 174, and also **Wilson v. Wilson**, decided June 24, 1954, being Cause No. 5733 in the Supreme Court, which has some bearing on the question of residence.

If, in fact, the person involved acquired residence prior to January 1, 1947, I believe he would be entitled to soldier's exemption based upon his honorable discharge regardless

of the fact that he subsequently reenlisted. If such residence was not acquired, the soldier will not be entitled to exemption until he is discharged from his present tour of duty, at which time the exemption could be based upon the fact that he was a resident of New Mexico at the time he entered on such duty.

By

C. C. McCulloh

Assistant Attorney General