

## Opinion No. 55-6302

October 17, 1955

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

**TO:** Mr. Marshall S. Hester, Superintendent, New Mexico School for the Deaf, 1060 Cerrillos Road, Santa Fe, New Mexico

You have presented to this office three questions for our opinion. All of them concern the matter of residence in connection with the Act regulating admission to your institution. Your questions are:

1. Are children of military personnel from other states who are assigned to bases in New Mexico, eligible for admission to your institution without payment of a non-resident fee?
2. Are children of military personnel who are from New Mexico but stationed out of this state eligible for admission without payment of a non-resident fee?
3. Are non-resident owners of property who are taxpayers of the state eligible for admission without payment of non-resident fee?

The statute regulating admission to your institution, is § 73-24-4, N.M.S.A., 1953. Part of that statute is as follows:

"The asylum shall be devoted exclusively to the care and instruction of the deaf and the hard-of-hearing, those who are either deaf or hard-of-hearing, of both sexes **residents** within the state of New Mexico between the ages of five (5) and twenty-one (21) years .

. . .

"Provided that deaf or hard-of-hearing children from other states or territories and Indian children, under the control of United States Indian agents, may be received and educated in said asylum, under such rules and regulations as the board of trustees may prescribe; but in no event shall such children be admitted except upon the payment of guaranty of at least six hundred and fifteen dollars (\$ 615) for the school year on the basis of nine (9) months for such year . . ." (Emphasis supplied.)

It is apparent from the above that children residents of New Mexico are admitted free while those of non-residents must pay the prescribed fee. However, since "residents" is a term which legally has different meanings, the problem arises as to its meaning here. We take the view, as heretofore expressed by this office, in Attorney General's Opinion No. 4903, that the term as used in this statute means a person who maintains his 'domicile' in this State.

Domicile is defined as that place where a person maintains his residence with the intention to live there indefinitely. Once established he may leave it and the place may remain his domicile if he intends to return.

As concerns military personnel, it is generally held that when they leave the state under orders, that that fact alone does not change their domicile.

"The domicile of a person is in no way affected by his enlistment or acceptance of employment in the civil, military, or naval service of his country. He does not thereby abandon or lose the domicile which he had when he entered the service or acquire one at the place where he serves . . ." 17 Am.Jur., 634.

However, a soldier or sailor may, while he is in the service, establish a new "domicile" other than the place where he came from, and thereby lose his original domicile.

"While ordinarily the domicile of a soldier is not changed or lost by his induction into military service, where he is under orders from his superiors and subject to transfer to different posts, as in the case in war, yet, a new domicile may be acquired by a soldier as well as by any civilian if both the fact and the intent concur." Allen vs. Allen, 52 N.M. 174, at page 178.

With this in mind, your questions are answered as follows:

Question No. 1. A qualified negative, that is, the mere presence of a soldier or sailor from another state at a post in New Mexico does not by that fact alone establish his residence here and for that reason his or her children would not be eligible for admission without payment of a non-resident fee. However, such a person could establish his residence here. By establishing a home and doing other acts manifesting an intent to remain here and to make New Mexico his home permanently such a person could establish domicile. For your purpose, a strong showing should be made that such is the case. If upon facts presented to you, you can make a good faith determination that such a person has established a home in New Mexico, and intends to live here permanently, then you may accept his or her children in your institution without payment of the non-resident fee.

Question No. 2. A qualified affirmative. From what has been said above it follows that mere absence from this state by reason of being in the military service, does not change that person's domicile in New Mexico, and thus his or her children would be eligible for admission without payment of the non-resident fee. However, here again you must determine whether or not such a person has in fact established a domicile outside of this state.

In connection with this question you have presented to us a particular application. In this case a person who formerly lived in New Mexico now stationed in the State of Washington has two children whom he wants to enroll in your institution. This man was born in New Mexico and his parents still reside in this state. However, he has been in

the service for fifteen (15) years. From this information we cannot state whether or not this man has established a domicile outside of New Mexico. It is suggested that you investigate further and determine whether or not he has done so. Some of the things which you could consider is whether or not he has registered for voting in a state other than in New Mexico, and also whether or not he has owned a home or homes outside of New Mexico. Further, he could be questioned as to whether or not he intends to return to New Mexico. These and other factors may be considered by you in arriving at your determination.

Question No. 3 is answered in the negative. The test is not whether a person is a property owner and pays taxes in New Mexico, but rather whether or not he is domiciled here. Ownership of property in New Mexico does not alone suffice.

We trust the above answers your inquiries.

By: Santiago E. Campos

Assistant Attorney General