

Opinion No. 57-292

November 13, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Robert F. Pyatt, Assistant Attorney General

TO: Honorable Drew Cloud, State Representative, Eddy County, 710 Pratt, Carlsbad, New Mexico

QUESTION

QUESTIONS

1. If a veteran established residence in New Mexico prior to the appropriate date fixed by Section 72-1-11, N.M.S.A., 1953 Compilation, 1957 Supplement, and thereafter lost New Mexico residence by virtue of residence acquired in another state, but then subsequently returned to New Mexico and acquired residence again, is he eligible to again take his veteran's exemption on the basis of his initial qualifications?

2. Is it necessary for the applying veteran to prepare two affidavits proving his New Mexico residency for the required amount of time—one signed by him and another signed by witnesses to certify his residency?

CONCLUSIONS

1. Yes.
2. Veterans Service Commission has discretion.

OPINION

ANALYSIS

Your first question demands an interpretation of Section 72-1-11, supra, which provides:

"'Soldier' shall include every honorably discharged member, of either sex, of the armed forces, who served in the armed forces of the United States for ninety days at any time during any period in which the military forces are engaged in armed conflict under orders of the president of the United States, and shall include persons of either sex as such honorably discharged members of the armed forces. **Provided, however, that World War I veterans shall have become residents of the state prior to January 1, 1934; that World War II veterans shall have become residents of the state prior to January 1, 1947; and Korean conflict veterans shall have been residents of the state prior to January 1, 1955;** and Provided, further, that such honorably discharged members of the armed forces shall also include resident unmarried widows of such

honorably discharged members of the armed forces; and Provided further, that the period of ninety days' service shall be waived in any instance where the soldier's discharge was brought about by service connected disabilities. **Provided further that soldiers who prior to January 1, 1947 lived in an area within the exterior boundaries of New Mexico which was then under the exclusive jurisdiction of the United States of America, who became and continue to be residents of New Mexico after cession of jurisdiction back to the state, may claim and be allowed such exemption.**" (Emphasis ours.)

In Opinion of the Attorney General No. 3134, dated May 12, 1939, this office was confronted with a proviso in the then Veterans Exemption Laws which was quite similar, as to this issue, with the first proviso emphasized by us. On similar facts, the Attorney General held the otherwise qualified veteran was entitled to claim his exemption on the basis of his initial qualification, upon his return to New Mexico, notwithstanding intervening residency in Oklahoma. We adhere to such ruling.

Of course, it is fundamental that when residence is acquired in another jurisdiction, it is lost in New Mexico, or more accurately speaking, does not continue in New Mexico. This however, is beside the point. The proviso first emphasized by us does not require continuing residence in New Mexico; if it did, another conclusion might be required. But we take statutes as we find them, and all that is required is New Mexico residence prior to January 1, 1934, January 1, 1947 and January 1, 1955, for World War I, World War II, and Korean veterans, respectively.

Now, to reach a contrary conclusion, it is necessary to find that the proviso first emphasized contains language either expressly or by implication, which requires a continuous residence. Such requirement is manifestly not met in express words. Nor do we believe it exists by implication, and it is at this point the second proviso emphasized by us gains great significance. There, you will observe a continued residence is required. If then, the Legislature meant to include continued residence as part of the requirements in the first proviso, it would have been the easiest of matters to have said so expressly. Not having done so a comparison of the two provisos not only discloses a lack of continued residence as part of the requirement of the first proviso, conspicuous in its absence, but is strong indication the Legislature used all words very advisedly and clearly intended a distinction. When the continued residence was **expressly** made a requirement in the second proviso, it is difficult if not impossible to **imply** it in the first proviso.

All will readily acknowledge that tax exemption statutes are to be strictly construed, and that such rule of construction is applicable to veterans exemption statutes. *Flaska vs. State*, 51 N.M. 13, 177 P. 2d 174. Yet this is exactly what we have done, i.e., a strict construction has been followed. In any event, the foregoing rule of construction is itself subject to the cardinal rule in interpreting statutes that the intent of the Legislature is the primary and controlling consideration. *Rees vs. Dempsey*, 48 N.M. 417, 152 P. 2d 157. In other words, the intention of the Legislature is first to be sought in the meaning of the words used. When they are free from ambiguity and express distinctly the sense of the

Legislature, no other means of interpretation should be resorted to. *George vs. Miller and Smith, Inc.*, 54 N.M. 210, 219 P. 2d 285.

Applying the rules given to the statute at hand, we find the words of the first proviso emphasized to be clear, free from doubt and to distinctly express the will of the Legislature. Comparison of the first with the second emphasized proviso points unerringly to this conclusion. If it should be that continued residence ought to be a requirement in the first proviso such would be a simple task for the Legislature. But that is not a function for this office to undertake.

In regard to your second question, relative to proof furnished by the veteran, we do not believe a definite answer should be given us, since in our opinion, the Veterans Service Commission has a great amount of discretion vested in it over this and related matters. See Section 74-1-5, N.M.S.A., 1953 Compilation. For specific details on what should be furnished by the applicant to the commission, we suggest you contact Mr. Manuel Armijo, Director, Veterans Service Commission, Santa Fe, New Mexico, who has offered full cooperation in this respect.