

Opinion No. [30-108]

May 29, 1930

BY: M. A. OTERO, JR., Attorney General

TO: Mr. Alejandro Padilla, Assessor, Mora, New Mexico.

TAXATION -- Exemption to residents.

OPINION

I am in receipt of your favor of the 28th inst. in which you state that a discussion has arisen in your office as to the proper interpretation to be placed on the word "resident", as set forth in our revenue laws. In this connection you ask whether or not a man who has been out of the State for over a year, and who owns property only in New Mexico, is entitled to an exemption under our laws.

In reply thereto will state that residence in New Mexico depends entirely upon the intention of the individual. It is perfectly possible for a person to maintain his residence in the State of New Mexico and live practically all of the time outside of the State, just as it is possible for a person to claim his residence in Mora County, for example, and spend two or three years working on a job in Santa Fe. This is the general rule.

As to what is a man's intention in any particular case, that is something which is not so easy to define, in fact, about the only way you can really get at what a man's intention is is to judge him by his actions.

In the case which you mention, if a man moves his family out of the State and goes somewhere else and settles down permanently to make his home there, and perhaps registers to vote in elections to be held there, then, in such a case, it is fairly safe to assume that his intention is to make his residence in the new place, and that, regardless of the fact that he still happens to own property in New Mexico.

On the other hand, if he simply moves out of the State as a temporary proposition, for example in order to obtain employment in another State, and does not register to vote in the new State, nor purchase any property there, but, on the contrary, considers New Mexico as his home, then, in such a case, he can hardly be said to have lost his residence in New Mexico.

It is all a matter of the intention of the person, which said intention is to be judged on the facts surrounding each particular case.

Trusting that the foregoing gives you the information you desire, I am