

Opinion No. 36-1279

January 21, 1936

BY: FRANK H. PATTON, Attorney General

TO: Mr. P. M. Baldwin, Dean, School of General Science, New Mexico State College of Agriculture and Mechanic Arts, State College, New Mexico.

{*97} We have your letter of January 18, 1936, in which you ask for our opinion regarding the determination of residence of certain students of your institution. This matter was fairly well covered in an opinion written by Mr. Neumann to Dr. Kent, under date of January 31, 1931, to which you refer in your letter.

It is impossible to give any definite, ironclad rule, which can be applied in every situation. The only thing that we can do is to lay down some general rules which will be applicable in the great majority of cases. When cases arise which are deemed exceptional, they should be dealt with as the circumstances may require and, if necessary we will give our opinion in regard to any such exceptional cases.

You state in your letter that there are various categories of persons for whom it is necessary to have some valid basis of classification and you mention the following:

- (1) Minors wholly or partially dependent on their parents.
- (2) Minors entirely self-supporting and living apart from their parents.
- (3) Married women living with their husbands.
- (4) Single women over twenty-one years of age, widows, divorcees, or married women living apart from their husbands.
- (5) Persons who have attained their majority, but are still wholly or partially dependent on their parents for support.
- (6) Persons who have attained their majority and are entirely self-supporting.
- (7) Minors who claim as their guardian some person other than their parents, even though the latter are still living. In such cases, how is the fact of guardianship to be established?

I will deal with each of the cases above mentioned separately according to their numbers.

- (1) Such minors have the same residence as their parents.

(2) Ordinarily, such minors would have the same residence as their parents.

(3) The husband's residence governs that of the wife.

(4) Single women over twenty-one years of age may establish their own residence, likewise widows and divorcees. Married women living apart from their husbands, except for some good cause such as abandonment or brutal treatment and except when separated by judicial decree, would have the same residence as their husbands.

(5) Such persons would have the right to establish their own residence but the fact that they depend on their parents for support and probably spend their vacations at home with their parents would be strong evidence that they have the same residence as their parents. *Hall vs. Schoenecke*, 128 Mo. 661, 31 S.W. 97.

(6) Persons who have attained their majority and are entirely self-supporting could, of course, establish a residence wherever they choose.

(7) This seems to be a rather unusual situation, but if such a case exists I should think that the minor would have the same residence as his parents. 19 C.J. 414.

The fact of guardianship could be determined by requiring a certified {*98} copy of the order of appointment from the clerk of the court which made the appointment.

In all of these cases it should be borne in mind that under Section 4 of Article VII of our State Constitution a person can neither acquire nor lose residence "while a student at any school." As explained in Mr. Neumann's opinion, the fact of residence or non-residence within this state depends principally upon intention. I find no requirement in our law regarding the payment of tuition (Section 130-1314, 1929 Code) which requires residence for a period of one year.

The intention to become a resident of this state may be tested in many ways. If an adult person moves his family to this state and obtains work here that is evidence, even though not conclusive, that he intends to make this state his permanent abode. If he registers here for the purpose of voting, that would be an indication of his intention to make this state his residence and would be almost conclusive, in my opinion. The mere payment of taxes on property owned in this state would not, in my opinion, be any test whatever of whether or not a person is a resident. There are many non-residents who own property in this state and pay taxes on it. There are many people who own property in a number of different states and pay taxes in all of the states. They could not be residents of all of the states in which they pay taxes. They can be residents of only one state at a time.

It is true that the fact of intention is sometimes hard to determine. We can give you no definite rule for arriving at such a determination. As stated by Mr. Neumann in his opinion, "a resident of a place is one whose place of abode is there and who has no present intention of removing therefrom." That is about all that we can say on the

subject and if any particular case arises which you find is impossible to determine for yourself, I would suggest that you write to us giving us full details and we will express our opinion regarding such case.

By QUINCY D. ADAMS,

Asst. Atty. General