

## Opinion No. 46-4903

May 21, 1946

**BY:** C. C. McCULLOH, Attorney General

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

{\*230} We have your letter of May 20, 1946, wherein you ask our opinion as to whether or not deaf or hard-of-hearing children whose parents formerly resided within the State of New Mexico, and still own land here, but do not presently live here, are entitled to attend the New Mexico School for the Deaf without paying a non-resident fee.

Section 55-2304 of the New Mexico 1941 Compilation as amended by Chapter 80 of the Laws of 1945, provides in part as follows:

"All instruction shall be free: Provided, that deaf or hard-of-hearing children from other states or territories and Indian children under the control of the U.S. 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 on the payment or guarantee of at least \$ 615.00 for the school year on the basis of 9 months for such year \* \* \*;"

Thus, an independent investigation should be made as to each student in question as to whether or not his or her parents are still residents of the State of New Mexico.

If any student's parents are found to be non-residents, then the minor child would also be a non-resident and the tuition charge for non-resident students should be paid.

The term "resident" has not a technical meaning. In some statutes and for some purposes it means one thing, and in other statutes and for other purposes it means another thing (See U.S. v. Nardello, D. C., 4 Mackey, 503, 512, or 37 Words and Phrases, p. 277).

I am of the opinion that in the section of the New Mexico statutes hereinbefore set forth that the Legislature in its use of the word "resident" had in mind persons who maintained their domicile in New Mexico.

It should be borne in mind that a person may actually reside outside the state for a period of time and still maintain a legal domicile in the State of New Mexico, as much depends upon the intent of the party during that particular time.

In view of the fact each case rests on a different set of facts, it is impossible for me to make any broad statement in answer to your inquiry.

If furnished with the facts in any particular case, we would be more than glad to give you our opinion as to whether or not a particular student was a non-resident and thus { \*231 } subject to the payment of the sum provided for by statute for non-resident students.

By ROBERT V. WOLLARD,

Asst. Atty. General