

Opinion No. 54-5946

May 14, 1954

BY: RICHARD H. ROBINSON, Attorney General

TO: Miss Era Rentfrow Registrar A. & M. College State College, New Mexico

{*398} In your letter dated April 21, 1954, you request an opinion regarding resident students with reference to {*399} Section 7, Chapter 156, Laws of 1953, being the General Appropriation Act. The relevant portion of this section provides as follows:

"A resident student is defined as one who has legally resided in the State of New Mexico for at least one year before enrolling as a student in a college or university in the State of New Mexico or whose parents or guardians shall have legally resided in the State of New Mexico for at least one year before the student's enrolling in any college or university in New Mexico; provided that students or their parents or guardians may during the students' enrollment, declare their intent to become citizens of the State of New Mexico, in which case the student may enroll as a resident student after the one year's residence requirement stated above is met by the student or the parents or guardian of the student; provided further that the Attorney General shall pass on any doubtful interpretations of this section."

I shall answer your questions in the same manner as they are listed in your letter, as follows:

1. If a student and his parents have not lived in New Mexico, but the parents own property in New Mexico, is the student entitled to resident tuition?

The answer to this question is "no". Ownership of property is not sufficient to constitute the parents as residents of New Mexico.

2. If a student has relatives who live in New Mexico, other than parents, is the student entitled to resident tuition if the relatives are responsible for tuition?

Unless the relatives are the legal guardians of the student, their residence in New Mexico and payment of the tuition would not entitle the student to resident tuition since his residence in the case of a minor would follow that of his parents or legal guardian.

3. Can a person be considered a resident of two states at the same time if he owns property in both states?

A person may be a resident of only one state at a time regardless of how much property he may own in different states.

4. If a male student, who is a resident of New Mexico, marries a non-resident, is the wife entitled to resident tuition because of the fact that she married a resident?

Ordinarily the domicile or residence of the wife follows that of the husband, and in the absence of facts tending to prove otherwise, the wife of a resident would be entitled to resident tuition.

5. Can a person be considered a resident if he has been in the Armed Services and stationed in New Mexico for a year immediately prior to enrolling?

A person in the Armed Services subject to orders of his superior officers does not acquire residence merely by being stationed at a place in the Armed Services. However, such a person by forming an intention to become a resident and performing one or more overt acts to accomplish change of residence to New Mexico could acquire a year's residence and then be entitled to resident tuition. See *Allen v. Allen*, 52 N.M. 174.

By: C. C. McCulloh

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