

Opinion No. 57-282

October 30, 1957

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

TO: Mrs. Georgia L. Lusk, Superintendent of Public Instruction, State Department of Education *2* Santa Fe, New Mexico

QUESTION

QUESTIONS

1. Are the children of military personnel who are stationed at an installation within New Mexico entitled to enroll at one of the State Colleges of Universities at resident rates?
2. If the answer to the previous question is yes, and the father is subsequently transferred out of the state, can the children continue to enroll within New Mexico at resident rates?
3. Are the children of military personnel who are stationed at an installation outside of New Mexico entitled to enroll at one of the State Colleges or Universities at resident rates?

CONCLUSIONS

- 1 See opinion.
2. It is doubtful.
3. No.

OPINION

ANALYSIS

What is or is not residence is a question of fact, depending upon the circumstances of each particular case, and in the absence (as here), of a given factual situation of the particular person seeking enrollment in one of our institutions of higher learning, it is impossible to give a definite answer. All of which is pointed out in Opinion of the Attorney General No. 1279, dated January 21, 1936, and in which, however, certain general rules applicable to some of your questions are set out. We are attaching a copy of said opinion for your perusal. You will note that therein the Attorney General admonished that he should be consulted on doubtful cases. We re-affirm that advice.

Of interest is Laws 1957, Chapter 235, Section 10, paragraph 1, which provides:

"The university of New Mexico, the college of Agriculture and mechanic arts, the institute of mining and technology, New Mexico western college, eastern New Mexico university, Highlands university. and the New Mexico military institute shall charge a minimum tuition for resident students of one hundred dollars (\$ 100) per year and shall charge for nonresident students not less than one hundred dollars (\$ 100) per year in addition to that charged resident students, except that the institute of mining and technology shall charge nonresident students not less than three hundred dollars (\$ 300) per year for tuition; provided further, that the board of educational finance shall define resident and nonresident students for the purposes of administering tuition fees, in accordance with the constitution and statutes of the state of New Mexico and after consultation with the appropriate officials of the institution concerned, and each of said institutions shall use the uniform definition so established in assessing and collecting tuition fees from students."

The Board of Educational Finance has endeavored to make the definitions called for, and which were revised effective September 27, 1957. While said definitions recite that they are pursuant to Laws 1955, Chapter 287, Section 12, we do not feel this presents any problem, inasmuch as the statute last cited contains language to the same effect as that quoted insofar as this problem is concerned. However, we do not, under present circumstances, believe it would serve any purpose at the present time for this office to express itself upon the above mentioned definitions.

The quoted section sets out that the definitions are to be in accordance with the Constitution and statutes of this State. A statute of considerable significance is Laws 1953, Chapter 156, Section 7, the first two paragraphs of which are:

"The University of New Mexico, the College of Agriculture and Mechanic Arts, the Institute of Mining and Technology, New Mexico Western College, Eastern New Mexico University, Highlands University and the New Mexico Military Institute shall charge a minimum tuition for resident students of one hundred dollars (\$ 100) per year and shall charge not less than two hundred dollars (\$ 200) per year for nonresident students, except that the Institute of Mining and Technology shall charge nonresident students not less than three hundred dollars (\$ 300) per year for tuition; provided that these charges for tuition shall be in addition to all fees other than tuition now charged to resident and non-resident students.

"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 student 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."

Clearly, legal residence of at least one year in New Mexico is thus required, (or the same period of residence for the parents) before one can register as a resident student.

Since the above cited Opinion of the Attorney General pointed out how, generally, residence of a minor follows that of his parents, transferral of the father out of New Mexico, standing alone, would constitute an adverse factor in determining residence of the student.

As an extension of the foregoing it would then follow that children of military personnel stationed elsewhere than in New Mexico could not be considered residents, unless of course, they had established residence by some independent means. This assumes the father had never established residence in New Mexico.