

Opinion No. 60-94

May 18, 1960

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

TO: Clay Buchanan, Director New Mexico Legislative Council State Capitol Santa Fe, New Mexico

QUESTION

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1. Can a student paying non-resident tuition and living in a dormitory at one of the institutions of higher education in the state of New Mexico vote in either the primary or general elections?
2. Can a student in one of these institutions establish voting residence as long as he lives in a dormitory?
3. If a student has met the requirements for securing resident tuition, would this make him eligible to vote?

CONCLUSION

See analysis.

OPINION

{*459} ANALYSIS

The questions do not lend themselves to categorical answers and will be answered together by general principles of law long recognized as controlling on the question of residence in New Mexico.

In Opinion of the Attorney General No. 58-68, uttered April 1, 1958, the following reasoning was applied:

"Of more fundamental importance is the language of Article VII, Section 4, New Mexico Constitution:

'No person shall be deemed to have acquired or lost residence by reason of his presence or absence while employed in the service of the United States or of the state, nor while a student at any school.'

This section was specifically considered by this office in Opinion No. 1451, October 20, 1936, and it was stated 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."

It has been held in a number of cases that constitutional provisions of this type do not prevent persons who are attending school in a state from acquiring a residence in that state if said persons actually have the intention so to do coupled with some overt act corroborating the aforesaid intention.

The fact of residence or non-residence within this state depends principally upon intention coupled and connected with some overt act. Intention is sometimes hard to determine. Therefore, we must look to anything of an evidentiary nature which would tend to reveal that intention."

Also, in Opinion of Attorney General No. 5490, uttered February 11, 1952, we stated:

"Legal residence is the place where a man intends to reside. A person's domicile is largely a matter of intent. For the purposes of our election {**460*} laws, legal residence and domicile are synonymous, as stated in 17 Am. Jur. at 592:

. . . 'a home may be relinquished and abandoned, while the domicile of the party upon which depend many civil rights and duties, may in legal contemplation remain.'"

Thus, it can be seen that for the purpose of casting a ballot in any election in New Mexico, residence is to be determined on the basis of the intention of the party desiring to vote. The Constitution, in Article VII, § 1, requires that a person in order to be eligible to vote, among other things, must have resided in New Mexico twelve months, in the county ninety days, and in the precinct in which he offers to vote thirty days, next preceding the election.

The fact that a student is paying non-resident tuition and living in a dormitory is not controlling on the question of whether he is a resident of New Mexico for voting purposes. As previously pointed out, it could be considered as an evidentiary matter supporting his intent or lack of intent to become a resident of this State.

We are under the impression that many institutions of higher learning require first year students to reside in a dormitory for a stated length of time. It cannot be said that in complying with such a regulation the student would be barred from acquiring legal residence in New Mexico. His intention to become a resident may be manifested in many other ways which would control and which are, of course, far too numerous and varied to be enumerated in this opinion.

On the other hand, if a student has met the requirements for securing resident tuition, this would be strong evidence that it is his intention to become a resident of the State of

New Mexico, but again, we do not hold that this evidentiary fact alone shall in all cases be sufficient to establish the fact of legal residence in this State. We should like to point out that it should not be the policy of this State to discourage citizens seeking higher education in our state institutions from remaining in this State as legal residents. Consequently, evidentiary facts supporting the intention of a student to establish residence in New Mexico should be construed with a liberal view.

Once the fact of residence is determined, the student must meet the constitutional requirements in Article VII, § 1, supra, as to the length of time such residence has been established. Upon meeting these qualifications, the student would be permitted to vote in any election and the fact that he is paying one type of tuition as opposed to another, or residing in a dormitory as opposed to a private residence, would not and should not affect his status as a resident of this State for the purpose of exercising his constitutionally granted elective franchise.

By: B. J. Baggett

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