

Opinion No. 87-76

December 9, 1987

OPINION OF: HAL STRATTON, Attorney General

BY: Katherine Zinn, Assistant Attorney General

TO: Michael C. D'Arco, Director of Veteran's Affairs, New Mexico Veteran's Service Commission, P.O. Box 2324, Santa Fe, New Mexico 87503

QUESTIONS

Whether an individual, who was a minor temporarily living outside the State of New Mexico at the time of entry into the armed forces in California, is eligible for a Vietnam Veterans' Scholarship provided for in Article IX, Section 14 of the New Mexico Constitution.

CONCLUSIONS

No.

ANALYSIS

The information provided to our office is as follows: the individual in question was born in New Mexico on June 1, 1934. This individual resided in New Mexico until early September, 1951, when he travelled to California for the purpose of finding temporary employment as a migrant farm worker. He did not intend to move permanently to California. While in California, the individual stayed with his sister. The individual enlisted in the United States Marine Corps on September 26, 1951. Because he was a minor, his mother was required to sign a parental consent form allowing her son to serve in the armed forces. The individual continued his military service until honorably discharged on December 31, 1971. Throughout his military career, he maintained his status as a registered New Mexico voter and, upon discharge from the service, returned to New Mexico to live. Because we have not conducted an independent investigation of these facts, we base our opinion upon an assumption that they are accurate and true.

Article IX, section 14 of the New Mexico Constitution reads, in part, as follows:

Neither the state, nor any county, school district, or municipality, except as otherwise provided in this constitution, shall directly or indirectly lend or pledge its credit, or make any donation to or in aid of any person, association or public or private corporation, or in aid of any private enterprise for the construction of any railroad; provided, nothing herein shall be construed to... prohibit the state from establishing a veterans' scholarship program for Vietnam conflict veterans who are post-secondary students at educational institutions under the exclusive control of the state by exempting such

veterans from the payment of tuition. For the purposes of this section a "Vietnam conflict veteran" is any person who has been honorably discharged from the armed forces of the United States, who was a resident of New Mexico at the original time of entry into the armed forces from New Mexico and who has been awarded a Vietnam campaign medal for service in the armed forces of this country in Vietnam during the period from August 5, 1964 to the official termination date of the Vietnam conflict....

(emphasis added). The State has established such a scholarship program under Section 21-21E-1 NMSA (1987 Supp.). The statute authorizes the State treasury to establish a scholarship fund for Vietnam veteran undergraduate post-secondary students attending educational institutions, pursuant to article IX, section 14 of the Constitution of New Mexico. § 21-21E-1(B). The statute does not define "Vietnam conflict veteran", and explicitly defers to the Constitutional definition.

The individual in question clearly meets two of the four constitutional requirements for eligibility. He was honorably discharged, and he was awarded a Vietnam campaign medal for the relevant period. The issues are whether this individual was a resident of New Mexico at the original time of entry into the armed forces and, if so, whether this individual entered the armed forces from New Mexico. We note that the individual's discharge papers list the home of record at the time of entry into active service as Dinuba, California. The individual has stated by affidavit, however, that he was a New Mexico resident when he entered into the armed forces in 1951, and that the address listed in his discharge papers was only a temporary address.

As used in article IX, section 14, the term "resident" is synonymous with the term "domiciliary". 1955-56 Attorney General Opinion No. 6208. See also Gosney v. Department of Public Welfare, 206 Neb. 137, 291 N.W.2d 708 (1980). To be eligible to receive a Vietnam Veterans' Scholarship, an individual therefore must have been a domiciliary of New Mexico at the original time of entry into the armed forces. The individual in question was born in New Mexico and lived here with his mother for seventeen years. Then, while temporarily absent from the State in September, 1951, he decided to join the armed forces in California. A mere temporary absence, however long, from one's permanent home or domicile does not change that domicile. Hagen v. Hardwick, 95 N.M. 517, 624 P.2d 26 (1981). A change of residence or domicile can be accomplished only by the act of moving to another place, coupled with the intention to remain in that other place indefinitely. Kiehne v. Atwood, 93 N.M. 657, 604 P.2d 123 (1979); In re Peck's Estate, 80 N.M. 290, 454 P.2d 772 (1969), cert. denied sub nom. Chambers v. Beauchamp, 396 U.S. 942 (1969).

On the evidence reported to us, it does not appear that the individual in question intended to remain indefinitely in California. He therefore had not relinquished his status as a New Mexico domiciliary by temporarily leaving this state and going to California. Moreover, the individual in question did not lose his New Mexico domiciliary status merely by joining the armed forces while in California:

[T]he domicile of a soldier is not, in the absence of any intention to effect a change of domicile, affected or changed by reason of his entering the military. He does not, merely by reason of entry into the service, abandon or lose the domicile which he had when he entered, or acquire a new one at the place where he serves.

Blessley v. Blessley, 91 N.M. 513, 514, 577 P.2d 62, 63 (1978) (citations omitted). See also N.M. Const., art. VII, § 4.

It is our opinion that, although temporarily living in California, the individual in question remained a New Mexico domiciliary upon entry into the armed forces. Article IX, section 14 requires, however, not only that recipients of Vietnam Veterans' scholarships be New Mexico residents, but also that they entered the armed forces from New Mexico. This individual was inducted into military service in California, and he thus is not eligible for a Vietnam Veterans' Scholarship. By including this constitutional provision, the voters must have intended it as a requirement for eligibility for a Vietnam Veterans' scholarship. We cannot ignore this requirement, and we must give article IX, section 14 effect as it is plainly written. *Flaska v. State*, 51 N.M. 13, 177 P.2d 174 (1946); see *Wittkowski v. Corrections Dept. of New Mexico*, 103 N.M. 526, 710 P.2d 93 (Ct.App. 1985). We emphasize that our opinion is limited to the specific facts as presented to this office.

ATTORNEY GENERAL

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