

Opinion No. 41-3695

January 18, 1941

BY: EDWARD P. CHASE, Attorney General

TO: Mr. Alfonso C. de Baca Chief Clerk Motor Vehicle Division Bureau of Revenue
Santa Fe, New Mexico

{*27} This will acknowledge receipt of your letter of January 17 {*28} wherein you inclose a letter from Mr. Eddie D. Walton, a World War veteran, wherein he desires to know if he is entitled to soldier's exemption as provided in Section 1, Chapter 44 of the Laws of 1933, because of the fact that he served in the Army in New Mexico on recruiting duty during the years 1927 and 1928.

Article VII, Section 4 of the New Mexico Constitution, reads as follows, to-wit:

"Section 4. **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."

From the meager facts set forth in Mr. Walton's letter, it is impossible for me to ascertain his **intention** as to his residence.

The general rule of law is, and this office has many times held, that residence is a matter of intention, and each case must stand or fall on its own merits. The phrase in the above quoted section of the Constitution which reads, "No person shall be deemed to have acquired * *", does not prohibit one from becoming a resident of this state if he intends to do so.

The cases define "domicile" to be that place where a person has his fixed and permanent abode, and to which he intends to return when absent. The mere fact that Mr. Walton served in the United States Army in New Mexico during the years 1927 and 1928 would not, within itself, be sufficient evidence of **residence** in the State of New Mexico to allow him soldier's exemptions as provided by law.

Trusting that the foregoing sufficiently answers your inquiry, I am,