

Opinion No. 44-4543

July 14, 1944

BY: EDWARD P. CHASE, Attorney General

TO: Mrs. Georgia L. Lusk, Superintendent of Public Instruction, Santa Fe, New Mexico

We are in receipt of your letter of July 10, 1944 in which you state that you have a problem concerning a person enrolled at the University of New Mexico, and in which you ask the following question:

"If a person comes to the State of New Mexico before reaching the age of 21 years for the purpose of establishing a residence, and after having lived in the State for one year becomes 21 years of age, and registers as a voter, does this constitute a valid basis for having become a citizen of the State, thereby becoming exempt from the payment of out-of-the state tuition to a State institution where he might be enrolled?"

With respect to the general proposition involved, I enclose herewith copy of an opinion dated October 20, 1936 addressed to the then Superintendent of Public Instruction. What was said in that opinion, however, has been limited by the 1943 Appropriation Act which after making an appropriation to the University of New Mexico provides as follows at page 285 of Chapter 127 of the Laws of 1943:

"Provided that this appropriation shall be contingent upon charging non-resident students not less than One Hundred Fifty Dollars (\$ 150.00) per year based on a nine-month school year; providing that any student having graduated from a non-resident high school shall be considered a non-resident unless he or she shall have spent not less than twelve (12) months in residence in the State of New Mexico after becoming twenty-one (21) years of age while not attending school, or whose parents are legal residents of the State; and, provided, further, that non-resident summer school students shall be charged Fifteen Dollars (\$ 15.00) per summer session."

In view of the foregoing provision of the Appropriation Act, it is my opinion that if a student graduated from a non-resident high school that he must be considered a nonresident for school purposes, unless he shall have spent not less than 12 months in residence in New Mexico after becoming 21 years of age, while not attending school, or unless his parents are legal residents of New Mexico.

Trusting that the foregoing fully answers your question, I remain

By ROBERT W. WARD,

Asst. Atty. General