



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable Clifford B. Jones, President  
Texas Technological College  
Lubbock, Texas

Dear Sir:

Opinion No. 0-1459  
Re: Reciprocal fee law as  
applied to minor son  
of army officer.

We are in receipt of your letter of September 15, 1939, requesting the opinion of this department which reads as follows:

"The nineteen year old son of Major H. B. Pettit, U. S. Army, Engineers Corps, and nephew of Captain Frank Pettit, U. S. A., assigned by the War Department as instructor of our R.O.T.C. Unit, is desirous of enrolling as a student at this College.

"It will be deeply appreciated if you will kindly advise us at your early convenience, with reference to the application in this case of what is known as the reciprocal fee law of Texas, the question at issue being the amount of the fee which should be charged this prospective student, by this institution.

"It is my understanding that officers of the United States Army have no legal status; that is to say, no legal residence. The above mentioned Major Pettit is at the present time on detail at Detroit, Michigan, in connection with river and harbor matters, and it is my understanding that he has pending orders for service in the Philippine Islands. I am informed that last year Major Pettit's son was a student at one of the schools.

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in Virginia, which I believe makes some concession to the sons of Army officers.

"If you will be so kind as to construe the above mentioned reciprocal fee law, or any other existing statute for the benefit of this instant case, we shall be grateful."

Acts, 1933, 43rd Legislature, p. 596, ch. 196 (Vernon's Revised Civil Statutes, Article 2654e) provides in part as follows:

"2. From each non-resident student, who registers for twelve (12) or more semester or term hours of work an amount equivalent to the amount charged students from Texas by similar schools in the State of which the said non-resident student shall be a resident, said amount to be determined and fixed by the governing boards of the several institutions in which said students may register, but in no event shall such amount be less than that charged to students resident in Texas. Provided, however, that if this paragraph shall be held to be unconstitutional or void from any cause, there shall be collected from each non-resident student the sum of One Hundred (\$100.00) Dollars for each semester, or Sixty-six (\$66.67) Dollars and sixty-seven cents for each term. A non-resident student is hereby defined to be a student of less than twenty-one (21) years of age, living away from his family and whose family resides in another state or whose family has resided within the State for a period of time less than twelve (12) months prior to the date of registration, or a student of twenty-one (21) years of age or over who resides out of the State or who has resided within the State for a period of less than twelve (12) months prior to the date of registration."

The terms "reside", "residence" and "domicile" have been given varied meanings and shades of meaning. In some instances they are construed to be different and in others they are held to be identical depending upon the apparent sense in which they are employed when considered together with the whole context of a statute. It was stated in an opinion by this department, dated September 13, 1933,

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addressed to Dr. H. Y. Benedict, that "reside" as used in this statute has the same meaning as "domicile". This same ruling was made in Conference Opinion No. 2977, dated January 10, 1936, Attorney General's Reports 1934-1936, p. 114, directed to Dr. H. Y. Benedict.

The student in question being less than twenty-one (21) years of age, under the reciprocal fee law he is a non-resident although living in Texas away from his family, if his "family resides in another state", or his family has resided within this State for a period of time less than twelve (12) months prior to the date of registration. We assume from your letter that the family of this student has never resided in Texas.

The general rule at common law is well established that the residence or domicile of an infant is ordinarily that of the parents. If the father is living, the domicile of the family and the child follows that of the father. 9 R.C.L. 547; Gulf C. & S. F. Ry. Co. v. Lemons, 109 Tex. 244, 206 S. W. 75, 5 A.L.R. 943; Deterly v. Bellis, (T.O.S. 1932) 53 S. W. (2d) 547.

Your question is apparently based upon the assumption that officers of the United States Army have no legal residence. With this we cannot agree. It is sometimes broadly stated that all persons must at all times have some residence. This is true because the domicile of origin remains the domicile of an individual until changed. Officers in the service of the United States Army are no exception to the rule. Trigg v. Trigg (Mo. 1931) 41 S. W. (2d) 563; Harris v. Harris (Iowa 1927) 215 N. W. 661; Suit v. Shailer, 18 Fed. Supp. 568; Sealey v. United States, 7 Fed. Supp. 434.

It is stated in Trigg v. Trigg, supra:

"It must be conceded that plaintiff was a resident of California when he entered the army in 1917, and that his legal residence would be presumed to remain the same until changed. However, it is equally true that there is no inability on the part of a soldier to effectually change his residence as a citizen if he so desires."

As an aid in determining the true residence of

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the student in question, we quote the following language from *Owens v. Stovall* (T.C.A. 1933), 64 S. W. (2d) 360:

"No better definition has been given of 'residence' than that given by Circuit Judge Jenkins in *Re Carnean*, 127 F. 677, 62 C. C. A. 403, 406, where the court said: Residence has been defined to be a place where a person's habitation is fixed, without any present intention of removing therefrom. It is lost by leaving the place where one has acquired a permanent home and removed to another *animo non revertendi*, and is gained by remaining in such new place *animo mandandi*. . . . The term is an elastic one, and difficult of precise definition. The sense in which it should be used is controlled by reference to the object. Its meaning is dependent upon the circumstances then surrounding the person, upon the character of work to be performed, upon whether he has a family or a home in another place, and largely upon his present intention."

The length of absence from the domicile of origin would not be controlling where the necessary intention and other circumstances indicating a change of residence are not present. In the case of *Harris v. Harris*, *supra*, one of the parties graduated from high school in Des Moines in 1887 and went to West Point. Subsequently he was transferred to many military posts including the Philippine Islands and the Panama Canal Zone. In 1925 he was transferred from the Panama Canal Zone to Fort Banks, Mass., where he was stationed at the time of the trial. It was held that his residence was still in Iowa, since he never had the intention to establish another residence, the moves were not of his own volition and he lived on the reservations.

In Conference Opinion No. 2977, dated January 10, 1936, *supra*, several questions concerning the residence of Army Officers were answered in construing Article 2654c. We quote the pertinent parts of that opinion:

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"An army officer can have legal residence in Texas for fee purposes under the terms and provisions of the statute in question. The general principles determining his residence are the same as those determining the residence of any other person. The bona fide intention of the army officer would largely control the question of residence in connection with the statute in question.

"Of course, he would have to comply with the provisions of Article 2654c, and would have to reside within the State of Texas for a period of time of at least twelve (12) months prior to the date of registration of the student before he would be entitled to be classified so as to receive the benefits of a resident of the State of Texas.

"(1). The residence status under the statute referred to of an army officer who is stationed in Texas and who has been so stationed for at least twelve (12) months prior to the registration in the University of his minor children would depend largely upon the bona fide intention of the army officer.

"If a bona fide intention was to become a resident of the State of Texas when he so moved to Texas, we see no reason why at the end of twelve (12) months his minor child would not be entitled to register in the University as a resident student.

"(2). If an army officer has been in Texas for less than twelve (12) months prior to the child's registration in the University of Texas, the child could not be classified as a resident student because of the specific particular provision of Article 2654c, R. J. S., which provides that a student is a non-resident unless he has resided in Texas twelve (12) months prior to the date of registration. Since a minor child's domicile is that of its parents

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the length of time of the residence of the parents would determine under this statute.

"If, however, at the time of the moving of the army officer to Texas his intention was to make Texas his domicile, then at the end of twelve (12) months after he has become a resident of Texas, his minor child can register as a resident student.

"(3). The residence classification of an army officer might be affected by his legal residence at the time he entered the army. Unless he had some reason to change his place of residence, which would have to be coupled with both facts and intention, his place of residence would be that of his legal residence at the time he entered the army. Most army officers retain their legal residence which they had at the time they entered the army, but this is not mandatory or compulsory. If conditions were to change or facts were to shift wherein they desired to change their residence, there is nothing under the law to prevent them from doing so.

"We do not think they could arbitrarily choose out a state as their place of residence without some facts which would permit them to do so, but if facts were such as would permit them to become a resident of a certain state, and if their intention was to become a resident of that state, then there would be no reason why they could not do so.

"(4). If an army officer stationed in Texas establishes a home for his family in the place where he is stationed but not on the government reservation, if his bona fide intention was that of becoming a resident of the State of Texas, he would be entitled to the benefits of a resident citizen under this statute after he had become a resident of the State of Texas for twelve (12) months prior to the registration in the University of Texas of

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his minor children.

"As in determining many of the questions asked in this letter, the intention of the army officer would largely govern.

"(5). If an army officer who has served for one or more years in Texas followed by one or more years of service out of Texas, he may immediately claim the benefit of Texas residents for a minor child if at the time he was in Texas he established his legal residence in Texas and did not abandon his legal residence when he moved out of Texas.

"B. It is our opinion that the general rules and principles governing residences and domiciles generally would apply to an officer who is classified as a non-resident of Texas. If conditions, coupled with the intention of the officer, did not change his legal residence from the state in which he was a resident at the time he enlisted, then, of course, he would be classified as a resident of the state from which he enlisted; but if facts, and circumstances, coupled with his intentions, changed his place of residences, then he would be classified according to the state under the circumstances which claimed him as a resident.

"We do not think that an army officer could arbitrarily pick any state in the Union as his place of residence, if he had never been stationed there, or had never lived there, but we do think that an army officer can change his residence from the state from which he enlisted if he resides in a state and at the time of his residence in the said State it is his intention to choose that state as his legal residence."

It is our opinion that the residence of a nineteen year old son of an army officer is in the state of the residence of his father. The residence of the father is presumed to be in the state of his residence when he entered the army, however, it may be changed in accordance with the rules herein discussed.

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The facts set out in your letter are not sufficient for us to categorically state the residence of the student in question, however, we trust that our discussion will enable you to apply the reciprocal fee law in this instance.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

*Cecil C. Cammack*

Cecil C. Cammack  
Assistant

CCO:BT

APPROVED SEP 30, 1939

*Gen. B. Mann*

ATTORNEY GENERAL OF TEXAS

