



THE ATTORNEY GENERAL
OF TEXAS

AUSTIN 11, TEXAS

WATKINSON CARR
ATTORNEY GENERAL

November 9, 1965

Hon. R. Wright Armstrong
Chairman, Board of Directors
Texas Technological College
5803 El Campo Terrace
Fort Worth, Texas 76107

Opinion No. C-540

Re: Whether, under the facts
submitted, a student is
properly classified as
"resident" or "non-resi-
dent" for tuition purposes
under Article 2654b, Ver-
non's Civil Statutes.

Dear Mr. Armstrong:

You have requested the opinion of this office on the
above question. In this connection, you have furnished us
with the following facts:

The student in question is a school teacher,
having taught school in the State of Texas
for six (6) years. Last year, she went to
Germany to teach in a service school and for
the purpose of touring Germany, all as part
of her further education as a teacher. She
was out of the State of Texas on this tem-
porary tour ten (10) months. She returned
to Lamesa, Texas, on July 2, 1965. She
registered at Texas Technological College
on September 14, 1965, and was ruled to be
a non-resident for the purpose of paying
tuition rates as provided in Article 2654c,
Vernon's Civil Statutes.

The student has lived in Texas during her
entire life and for the past 28 years has
been a resident of Dawson County, Texas.
She is a qualified voter of Dawson County,
Texas, and voted in that county last year
as an absentee voter.

The following pertinent portions of Article 2654c,
Vernon's Civil Statutes are quoted:

"Section 1(e). The term 'residence' as used in this Act means 'domicile'; the term 'resided in' means 'domiciled in'; provided, the Governing Board of each institution required under this Act to charge a nonresident registration fee is hereby authorized and directed to follow such rules, regulations and interpretations as are issued by the Commission on Higher Education for the effective and uniform administration of the nonresident tuition provisions of this Act. Any such rules, regulations, and interpretations as may be issued by said Commission shall also be furnished to the presidents or executive heads of public junior colleges in this state. For the purposes of this Act, the status of a student as a 'resident' or 'non-resident' student, is to be determined as follows:

(1) A nonresident student is hereby defined to be a student of less than twenty-one (21) years of age. . . ; or a student of twenty-one (21) years of age or over who resides out of the state or who has not been a resident of the state twelve (12) months immediately preceding the date of registration." (Emphasis supplied)

The Texas Commission on Higher Education has issued its rules and regulations interpreting the non-resident tuition provisions of the above-quoted statute. These rules do not, however, provide any real assistance in the determination of the question before us. We must, therefore, turn to other sources for our solution.

The term "domicile" may have a variety of significations, dependent on its various applications. "What has been said to be the most comprehensive and correct definition which could be given is that, in a strict legal sense, the domicile of a person is the place where he has his true, fixed, permanent home and principal establishment, and to which, whenever he is absent, he has the intention of returning." 28 C.J.S. 3 DOMICILE, § 1. Also, "temporary residence, even if long, merely for the purpose of transacting business or of engaging in employment, or for the sake of health or pleasure, with the intention of returning to the original home, is not sufficient for the acquisition or change of domicile." 28 C.J.S. 19, § 11. See also Peacock vs. Bradshaw, 145 Tex. 68, 194 S.W.2d 551 (1946), wherein it is

Hon. R. Wright Armstrong, page 3 (C- 540)

stated, at page 555, "A domicile which has once attached is retained until a new domicile is attained. . . . Before a change of domicile of an adult can be effected there must exist both the fact of personal presence in the new place and the intention to make that new place a home."

We turn now to the problem of applying the statutes and legal interpretations to the facts of the case at hand. The student here involved is a native Texan, and under the facts given, her domicile has been in Dawson County, Texas, all her life. Her absence from this State, apparently from September, 1964 to July, 1965, was pursuant to a teaching contract with an armed forces school in Germany, and for the purpose of touring Germany, all as part of her further education as a teacher. During her absence from Texas she paid her poll tax and voted absentee in Dawson County, Texas. Upon the expiration of her teaching contract and tour of Germany, she returned to Dawson County. It is the opinion of this office that the foregoing facts constitute no basis for divesting the student of her established domicile in Texas.


On the basis of the facts submitted by you, it is the opinion of this office that the student in question retained her domicile in Texas and is entitled to be charged resident tuition rates under Article 2654c, Vernon's Civil Statutes.

S U M M A R Y

When a resident of Texas leaves the State under an armed forces teaching contract, and stays in Germany for the contract period, with the intention of returning to his domicile in Texas, and returns to Texas upon the expiration of his contract, he has not relinquished his domicile in Texas. Such a person, under these facts, is a resident of Texas for purposes of college tuition under Article 2654c, V.C.S.

Very truly yours,

WAGGONER CARR
Attorney General

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Hon. R. Wright Armstrong, page 4 (C-540)

APPROVED:
OPINION COMMITTEE

W. V. Geppert, Chairman
Marietta Payne
Wade Anderson
John Reeves
Terry Goodman

APPROVED FOR THE ATTORNEY GENERAL
BY: T. B. Wright