

February 9, 1948

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ARIZONA ATTORNEY GENERAL

Mr. A. J. Eddy,
Deputy County Attorney,
Yuma, Arizona

Dear Sir:

Reference is made to your letter dated January 29, 1948, requesting answers to three questions propounded therein relating to residence in connection with the question of soldiers' right to tax exemption under Section 2, Article 9 of the Arizona Constitution, as amended.

Preliminary to answering your questions, I would like to give you the general view of this office as to the law governing residence.

The use of the term "residence" as found in Article 9, section 2 of the Arizona Constitution is one in which it is believed that the terms "residence" and "domicile" are considered synonymous. 20 C.J.S. page 7, paragraph 2 (a).

There are three types of domicile:

- (1) domicile of origin, which is generally the place where one is born;
- (2) domicile by operation of law, which is that domicile attributed by the law to a person independently of his own intention or actual residence; and
- (3) domicile of choice, which is defined as the place which a person has elected and chosen for himself to displace his previous domicile and which has for its true basis or foundation the intention of the person.

It is with this last domicile that we are primarily concerned. Domicile of choice is entirely a question of residence and intention, or, as it is frequently put, of factum and animus.

To constitute such a domicile or to effect a change of domicile, there must appear both an actual residence in a particular location and an intention to remain there or to make it one's home.

Applying this rule it is seen that at sometime there must occur a union of residence and intention, and that at the moment that union occurs the person has acquired a new domicile and if his intention remains unchanged the person is domiciled at that location from then on.

Therefore, we may generally say that if a soldier or ex-serviceman or any other person is within the State of Arizona under such conditions as permit him to become a resident of the state, as distinguished from domiciled therein, and during that period forms the intention to reside primarily in Arizona and make it his home, from that moment on that person is domiciled in Arizona and is a resident of Arizona within the meaning of Article 9, section 2 of the Arizona Constitution, as amended.

There is a qualification to this rule. It is universally held that the fact that one is on military duty does not preclude him from establishing his residence where he is stationed, if he so desires, but he must have some period of residence off the military reservation. The cases without exception hold that there must be some period of time in which a person in military service resides on territory other than the military reservation where he is assigned. 148 A.L.R. 1411; 149 A.L.R. 1471; 150 A.L.R. 1463; 151 A.L.R. 1463; Arizona Constitution Article 7, section 6.

Applying the above rule to your questions, we believe the answers obviously to be as follows:

"1. Does a soldier, resident of and inducted from Arizona, who re-enlisted in the army immediately after securing his discharge from the service following World War II, and who at the time of his re-enlistment possessed all the qualifications necessary for exemption under Section 2 of Article 9 of the Arizona Constitution, as amended, lose his right to tax exemption by reason of his re-enlistment and present service in the United States Army?"

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The soldier does not lose his right to tax exemption by reason of his re-enlistment and present service in the United States Army under the circumstances stated in this question.

"2. Can a veteran of World War II, who never resided in Arizona prior to his induction into the army, but who served part of his enlistment in Arizona, claim residence arising from such service in Arizona and qualify for the benefit of Arizona veterans exemption law?"

Unless the soldier intends to make Arizona his home and resides for a period of time off the military reservation to which he is assigned in Arizona, he would not acquire exemption rights under the circumstances stated.

"3. Can a soldier, who never resided in Arizona prior to his induction into the army during World War II, but while on leave or furlough spent his leave or furlough in Arizona, claim residence in the state of Arizona sufficient to qualify him for the benefits of the Arizona veterans exemption law?"

It is believed that the mere spending of a furlough or leave in Arizona would not be considered conformity with the conditions such as to permit of the soldier's becoming a resident of the State. Therefore, he could not acquire any right thereby to the benefits of the Arizona veterans exemption law.

Very truly yours,

EVO De CONCINI,
Attorney General

FRED O. WILSON,
Assistant Attorney General

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