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ARIZONA ATTORNEY GENERAL

April 15, 1953
Opinion No. 53-68

TO: Honorable Alfred Thomas, Jr.
Registrar and Director of Admissions
Chairman, Admissions and Standards Committee
Arizona State College
Tempe, Arizona.

RE: Residence classification for college attendance

QUESTION: What factors are to be considered in determining residence for the purpose of ascertaining the amount of tuition a student must pay?

The Board of Regents of The University and State Colleges of Arizona is charged with the duty of fixing and graduating the tuition of students in the schools under their jurisdiction. Section 54-1602d, A.C.A. 1939, as amended, provides:

> "54-1602d. Administrative powers of board.--
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> * * * * *
>
> 5. fix tuitions and fees to be charged, and graduate the same between institutions and between residents, nonresidents, and students from foreign countries; * * *"

Since the Board of Regents must fix the tuition and graduate it between resident and nonresident students, it follows that the Regents must also classify the students as to residence upon their admission. In the absence of statutory direction, it is necessary to rely upon court interpretation and guidance for solution of the residence classification question.

The Arizona Supreme Court has said that a minor's residence must be considered to be that of his parents, guardian or person in the position of loco parentis. IN RE WEBB'S ADOPTION (1947), 65 Ariz. 176, provides, l.c. 179:

> "An infant is not sui juris and therefore cannot fix or change his domicile. His residence is that of his parents or the

> one of them who has the legal custody of him, or if neither parent has the legal custody, the one who stands in the relation of loco parentis to him. Johnson v. Smith, supra; Crain v. Walker, 222 Ky. 828, 2 S. W. 2d 654; Cribbs v. Floyd, supra."

Therefore, until a student has reached the age of legal majority his residence is presumed to be that of his parents or guardian.

After a person has reached legal age it would, of course, be possible for him to change his residence. The Supreme Court of Arizona has said that those rules used to determine residence for the purpose of voting, set forth the general rules for determining residence for other purposes. HEAT v. LEE (1936), 48 Ariz. 320, l.c. 323:

> " * * * Section 1216, Revised Code of 1928, gives certain rules for determining residence, and while these rules apply specifically only to voters, yet we think they also set forth the general rule for determining residence whenever that may be an issue. * * *"

The rules for determining residence as to voting are therefore controlling in the instant case so far as they may be applicable. Arizona Code 1939, as amended, Section 55-512:

> "55-512. Rules determining residence of voters--Reading rules when challenged.--The election board, in determining the place of residence of a person, shall be governed by the following rules, so far as applicable:
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> 1. That place is the residence of a person wherein his habitation is fixed, and to which whenever he is absent, he has the intention of returning;
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> 2. A person does not gain or lose his residence by reason of his presence at or absence from a place while employed in the service of the United States or of this state, or while engaged in navigation, or while a student in an institution of learning, or while kept in an almshouse, asylum or prison;

> 3. A person does not lose his residence who leaves his home to go to another county or state or foreign country for temporary purposes merely, with the intention of returning;
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> 5. If a person removes to another state with the intention of making it his residence, he loses his residence in this state;
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> * * * * * * *
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> 7. The place where a man's family permanently resides is his residence, unless he be separated therefrom, but if it be a place of temporary establishment for his family, or for transient objects, it is otherwise;
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> * * * * * * *
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> 9. The mere intention to acquire a new residence without the act of removal avails nothing; neither does the act of removal without the intention; the term of residence must be computed by including the day on which the person's residence commenced, and by excluding the day of election."

The Arizona Code also sets out that a person must be a resident of the state for a period of one year in order to qualify as an elector. Arizona Code Annotated 1939, Section 55-201:

> "55-201. Qualifications of electors.-- Every citizen of the United States, of the age of twenty-one years or over, who shall have been a resident of the state for one (1) year next preceding the election, * * *"

Intent plays a large part in the ultimate determination of a person's legal domicile. The Arizona Supreme Court in the case of CLARK v. CLARK (1950), 71 Ariz. 194, stated, l.c. 197:

> " * * * In order that a person may become a domiciliary of the state he must have the necessary intention to make a home here and perform some act to carry out such intention. A man's intention is a matter of fact and may be proved as such for as the Rhode Island court once phrased it, 'The state of a man's mind at a given time is as much a fact as is the state of his digestion.' "

The conclusion is, therefore, that some overt act must also accompany the declared intent to become a resident of this state.

A person wishing to become a resident student for the purposes of payment of tuition must have lived here a year, be of legal age (or his parent or guardian must be an Arizona resident) and he must also comply with the rules set forth in Section 55-512, supra.

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JRE:F

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