



DEPARTMENT OF LAW  
OFFICE OF THE  
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STATE CAPITOL  
Phoenix, Arizona 85007

(A75-541)

BRUCE E. BABBITT  
ATTORNEY GENERAL

McDougal

76-207

July 6, 1976

W. Michael Kelley, Esq.  
Deputy County Attorney  
Office of the County Attorney  
Yavapai County Courthouse  
Prescott, Arizona 86301

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ARIZONA ATTORNEY GENERAL

Dear Mr. Kelley:

This letter will inform you that this office has reviewed and generally concurs in the opinion expressed by you in your August 29, 1975 letter to Dr. Joe Russo, President, Yavapai College, Prescott, Arizona, regarding resident tuition. However, because of the inherent ambiguities contained in the terms "resident" and "domicile" utilized in your letter, the following discussion of the law regarding resident tuition is provided for your future assistance.

The term "domicile" as used in the university and community college tuition and fee context incorporates two factual requisite elements, namely, actual physical presence within the State of Arizona coupled with the manifested intention to permanently reside within Arizona. Board of Regents v. Harper, 108 Ariz. 223, 495 P.2d 453 (1972). Additionally, in order to qualify for in-state or resident tuition rates in a university or community college, the statutes require that a student have been a domicile for a period of at least one year prior to the last day of registration for the term at which he or she claims to be entitled to in-state or resident tuition rates. A.R.S. § 15-792. As you indicated, the student has the burden of proving both the fact that a domicile in Arizona has been established and that it has been established for the minimum amount of time. A.R.S. § 15-793. Thus, although it is possible for a student to become eligible for in-state tuition status upon the first anniversary of the day of his arrival within the state, insofar as such a student would have to prove by clear and convincing evidence that he or she had in fact formed the intention to reside permanently in the state by acts manifesting that state of mind undertaken on the day of his or her arrival, it probably will not be a likely occurrence. In any case, however,



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a student cannot qualify for in-state status or resident tuition rates for at least one year subsequent to the date upon which domicile, as distinguished from physical presence or mere residence, was acquired.

Sincerely,

BRUCE E. BABBITT  
Attorney General

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Assistant Attorney General

FGF:b



OFFICE OF

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YAVAPAI COUNTY COURTHOUSE

PRESCOTT, ARIZONA 86301

445-7450 EXT. 35

August 29, 1975

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Dr. Joe Russo, President  
Yavapai College  
1100 East Sheldon  
Prescott Arizona 86301

Dear Joe:

This is in response to your question concerning the determination of residency/non-residency for out-of-state students.

This area of the law is now governed by the 1972 Arizona Supreme Court case, Arizona Board of Regents v. Harper, 108 Ariz. 223, 495 P.2d 453 (1972). In that case, the Arizona Supreme Court stated that the term "residence" refers to "domicile", and that

"Domicile is primarily a state of mind combined with actual physical presence in the state. Either, without the other, is insufficient. One's domicile remains unchanged until a new one is acquired." (108 Ariz. at 228).

To establish the "state of mind" referred to by the court, several different factors should be determined. Besides the statutory requirement of one year residency, which was determined to be a legitimate requirement by this same court, the Harper court, in determining intent, looked at such factors as the following:

1. whether any state income tax return was filed in Arizona;
2. whether the student had his car licensed in Arizona;
3. whether the student was a driver licensed in Arizona;
4. where the student's financial support came from (ie, whether the student's parents lived in Arizona or elsewhere);
5. what address the student would give when making out certain forms, such as federal income tax returns, job applications, apartment rental agreements, and the like;

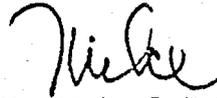
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6. what the student intentions were once he graduated from an Arizona college.

What this means from a practical standpoint is this: that a student who claims residency for purposes of tuition must meet a burden of proving that residency by clear and convincing evidence; he does not need to meet the burden beyond a reasonable doubt. To meet such a burden, the student must first fulfill the requirement of twelve months residency in the state; then, the student must present evidence to the reviewing committee that his intent is to become a resident of the state. That intent may be shown by a combination of the above enumerated factors. On this particular point, the list of factors outlined in the Yavapai College catalog, shown to me the other day, should serve as a good guide.

I hope this has answered your question. If you feel further discussion is necessary, please don't hesitate to contact me.

Yours truly,



W. Michael Kelley  
Deputy County Attorney

WMK:jlh

A copy of the foregoing opinion is being mailed to the Arizona Attorney General's office for their concurrence.