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Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

Robert R. Corbin

December 31, 1980

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ATTORNEY GENERAL

Ms. Ann L. Kirkpatrick
Deputy County Attorney
Office of the Coconino County Attorney
Coconino County Courthouse
Flagstaff, Arizona 86001

Re: I80-231(R80-231)

Dear Ms. Kirkpatrick:

Your opinion of October 24, 1980 to the Superintendent of Coconino County Schools, concerned the residency of a student whose parents listed a rental trailer space as their permanent address. Since the existence of the requisite intent to establish district residency is primarily a factual determination, we express no opinion with respect to this matter.

Sincerely,

Bob Corbin

BOB CORBIN
Attorney General

BC:cp



OFFICE OF

County Attorney

COCONINO COUNTY
COCONINO COUNTY COURT HOUSE
Flagstaff, Arizona 86001
774-6011 Ext. 204

TERENCE C. HANCE
COUNTY ATTORNEY

10-30-80afc
POLLARD

R80- 231

October 24, 1980

EDUCATION OPINION

ISSUE NO LATER THAN

12-29-80

Ms. Betty Jo Anderson
Coconino County School Superintendent
Coconino County Courthouse
Flagstaff, Arizona 86001

Dear Betty Jo:

This opinion is in response to your letter of October 16, 1980, wherein you asked the following question:

May the rental of a trailer space and the listing of same as a permanent address, although only occupied intermittently, be considered a legal residence within a school district?

It is my opinion that such rental of a trailer space and the listing of it as a permanent address cannot be considered a legal residence within a school district. Please see the enclosed memorandum for a more detailed discussion of my finding. A copy of this opinion is being sent to the Attorney General for his concurrence or revision.

Very truly yours,

COCONINO COUNTY ATTORNEY
Terence C. Hance

By Ann L. Kirkpatrick
Ann L. Kirkpatrick
Deputy County Attorney

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Enclosure

TO: BETTY JO ANDERSON, COCONINO COUNTY SCHOOL SUPERINTENDENT
FROM: ANN L. KIRKPATRICK, COCONINO COUNTY DEPUTY ATTORNEY
DATE: 10/22/80
RE: RESIDENCE OF PUPILS LIVING IN MOBILE VEHICLES

QUESTION PRESENTED

Whether the child of parents who travel within and without the state, living in a house trailer which they pull behind their motor vehicle, can be considered a resident of a school district if such transitory parents retain a trailer space and permanent address within such district?

ANSWER

See discussion.

DISCUSSION

Determination of the question presented hinges on the interpretation of the applicable residency laws established for the purpose of restricting to bona fide residents the free educational privileges within a specific school district.

ARS § 15-302, which governs admission of pupils to free schools, provides in material part:

"A. All schools other than high schools and evening or night schools shall, unless otherwise provided by law, admit children between the ages of six and twenty-one years who reside in the district."
(emphasis added)

According to ARS § 15-449, the residence of an individual having legal custody of a school age child determines the child's

residence. It reads in pertinent part:

"B. The residence of the person having legal custody of the pupil shall be considered the residence of the pupil, except as provided in § 15-304, subsection B. For the purposes of this section 'legal custody' means:

1. Custody exercised by the natural or adoptive parents with whom a pupil resides.
2. Custody granted by order of a court of competent jurisdiction to a person or persons with whom a pupil resides."

Arizona courts have made plain this residency requirement with regard to students employing their privilege of free education. In School District No. 3 of Maricopa County v Dailey, 106 Ariz. 124, 471 P.2d 736, (1970, the court said:

"...it is clear that 'residence' as used in the various statutes regarding children in the district [school] refers to actual physical presence of the children."

In addition to the specification of "actual physical presence", Arizona forums have stated that in order for one to establish a bona fide residency one must also manifest an intention to remain. Restated, Arizona authorities require that residence be a combination of physical presence and intention. O'Hern v Bowling, 109 Ariz. 90, 505 P.2d 550, (1973).

In 1959 the attorney general of this state rendered an opinion on a situation akin to the matter herein. That circumstance involved tuition requirements for children whose parents were non-resident mobile home owners temporarily residing in the district. That state of affairs was distinguished in that the parents of the children had not demonstrated any intention to make such district their permanent home. Thus, Arizona's foremost adviser remarked:

"Parents temporarily residing within the state are not residents of the state so as to entitle their children to enter the schools without payment of tuition." Op. Atty. Gen. No. 59-146

That legal authority continued:

"In order for parents who reside in mobile trailers to establish a residence or domicile in this state, it must appear that there is actual presence in the state, coupled with an intention to remain in the state and make this state their home."
Op. Atty. Gen. No. 59-146

Rules for determining residency and intent are set forth under ARS § 16-593, Added Laws 1979, Ch. 209, § 3. Albeit these rules apply specially only to voters, Arizona jurists have declared that "we think they also set forth the general rule for determining residence whenever that may be an issue". Haitt v Lee, 48 Ariz. 320, 61 P.2d 401, (1936).

The relevant provisions of ARS § 16-593, which guide us in the resolution of the matter herein, maintain that:

"1. The residence of a person is that place in which his habitation is fixed and to which he has the intention of returning when absent.

* * *

3. A person does not lose his residence by leaving his home to go to another county, state or foreign country for merely temporary purposes, with the intention of returning.

* * *

4. A person does not gain residence in any county into which he comes for merely temporary purposes, without the intention of making that county his home.

* * *

6. If a person removes to another state with the intention of remaining there for an indefinite time,

and of making the place his present residence, he loses his residence in this state, even though he has an intention of returning at some future time.

*

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*

9. The mere intention of acquiring a new residence without the act of removal avails nothing and neither does the act of removal without the intention." (emphasis added)

Based on the information supplied this office, the only evidence suggestive of the parent's intention to remain is the rental of a trailer space and the listing of such space as a permanent residence. Relying on the above statutory criteria for determination of residence, and absent any unexplored consequential facts, the efforts of the student's parents seem hardly adequate to make claim to residency in this district.

Ownership of property within a district does not, necessarily, infer residency. Grounds v Lawe, 67 Ariz. 176, 193 P.2d 447, (1948). And, the listing of a place as one's residence, while indicative, is not conclusive.

There is little judicial authority in point with regard to the residence of children of persons who make their homes in movable structures, i.e. boats, cars, vans or house trailers. However, the writers of American Jurisprudence, construing the scant law available, have put forth the following principle:

"...when a person makes a home of a boat, car, van or other vehicle, he can acquire a domicile only in the place, if any, where the vehicle regularly remains for a considerable time each year and for a longer time than it regularly remains in any other place. If the location of the vehicle is not so fixed during a considerable part of the year, the domicile of the occupant remains his last previous domicile." (emphasis added)

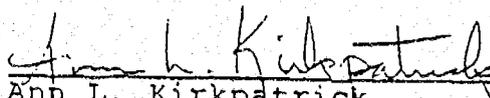
Hence, a time element, as well as presence and intention, is involved in determining the residence of persons living in mobile vehicles.

While we should note that there is authority to the effect that a home acquired for temporary purposes is sufficient to entitle children to attend a school in a specific district, such law was derived, in other jurisdictions, from a review of circumstances not in point with the matter herein.

Thus, in summary, determination of residence for school purposes requires investigation of the evidence as to actual physical presence, intention to remain and return, and in this instance, length of time the trailer is stationary in a particular area. The standard provided under ARS § 16-593, supra, serves as a guide in that determination. Consideration of factors detailed in Jizmejian v Jizmejian, 16 Ariz. App. 270, 492 P.2d 1208, (1972), will also aid the district in reaching its decision. The Jizmejian factors include:

"...the habits of the person, his business and domestic relations, declarations, exercise of political rights, community activities, payment of taxes, ownership of property..."

Again, if investigation of the above does not reveal further evidence sufficient to establish that the student's parents are residents, it is this office's opinion that the child in question is not entitled to the education privileges of the district.


Ann L. Kirkpatrick
Coconino County Deputy Attorney