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GRANT WOODS  
ATTORNEY GENERAL

January 30, 1997

The Honorable Judith Allen  
Clerk of the Court  
Maricopa County Superior Court  
201 West Jefferson  
Phoenix, Arizona 85003-2205

Re: I97-001 (R96-037)

Dear Ms. Allen:

You have asked two questions concerning residency qualifications for jurors: (1) whether jury commissioners may use the residency criteria in Arizona Revised Statutes Annotated ("A.R.S.") §§ 16-101 and -593 (defining "resident" for election purposes), and (2) whether military personnel and their dependents who obtain Arizona five-year temporary driver's licenses should be considered Arizona residents subject to jury duty. We conclude that jury commissioners may continue to apply the residency criteria in A.R.S. § 16-593 to determine who meets the residency qualifications for jury service. However, these criteria must be applied with an understanding that a prospective juror's intent to be an Arizona resident is the most critical factor in determining residency. Because the intent to maintain residency in Arizona is a question of fact, the jury commissioner must assess evidence concerning each prospective juror. This evidence may include a person's business and domestic relations, declarations, exercise of political rights, community activities, payment of taxes, ownership of property, and other pertinent objective facts.

Military personnel and their dependents who obtain Arizona five-year temporary driver's licenses have not, on that basis alone, demonstrated an intent to be Arizona residents. As with other prospective jurors, the jury commissioner must assess their intent to be Arizona residents when determining whether they qualify to serve as jurors in our State court system.

### Background

To understand the importance of residence to jury service we look to the protections established in our Constitutions. Both the United States and Arizona Constitutions entitle those accused of a crime to trial by an impartial jury. U.S. Const. amend. VI; Ariz. Const. art. II, § 24. The Sixth Amendment of the United States Constitution provides that the trial shall be "by an impartial jury of the State and district wherein the crime shall have been committed," whereas article II, § 24 of the Arizona Constitution requires that the trial shall be "by an impartial jury of the county in which the offense is alleged to have been committed."<sup>1</sup> Mandating the composition of the criminal jury was intended to prohibit the government from choosing a tribunal favorable to its case and to give the defendant the right to be tried by jurors from the locality in which the alleged criminal conduct occurred. *Travis v. United States*, 364 U.S. 631, 634 (1961). The selection of a jury from a representative cross-section of the community is an essential component of the Sixth Amendment right to a jury trial and is binding on the States through the Fourteenth Amendment. *Taylor v. Louisiana*, 419 U.S. 522, 526 (1975).

In Arizona, the Legislature has established the basic qualifications for jurors. See A.R.S. § 21-201. A juror must be at least eighteen years of age and be a "resident of the jurisdiction in which he is summoned to serve."<sup>2</sup> *Id.*

The Legislature also requires the jury commissioner of each county to prepare and maintain a current master jury list of eligible jury candidates. A.R.S. § 21-301(B). The list includes the names and addresses of eligible juror candidates who reside in the county, including individuals on the county's voter registration list, individuals who are licensed pursuant to title 28, chapter 4, article 2 (issuance, expiration, and renewal of driver's licenses), and individuals on lists established by the Arizona Supreme Court. A.R.S. § 21-301(B).

Neither the U.S. Constitution nor federal statutes address what constitutes the residence of military personnel for jury service purposes. Cf. 50 U.S.C. § 574 (discussing residence of military personnel for tax purposes). However, article 7, § 6 of the Arizona Constitution

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<sup>1</sup> The article II, § 24 right is substantially the same as that contained in the Sixth Amendment. *Rothweiler v. Superior Court*, 1 Ariz. App. 334, 336, 402 P.2d 1010, 1012 (1965), *aff'd*, 100 Ariz. 37, 410 P.2d 479 (1966).

<sup>2</sup> Title 21 contains no other residency requirements with regard to jurors. Arizona Revised Statutes § 21-201 used to specify that each juror meet "the qualifications for voter registration prescribed by §16-101." However, when the Legislature amended A.R.S. § 21-201 in 1991, it deleted the reference to A.R.S. § 16-101. 1991 Ariz. Sess. Laws, ch. 268, § 2.

provides that “[n]o soldier, seaman, or marine, in the army or navy of the United States shall be deemed a resident of this State in consequence of his being stationed at any military or naval place within this State.”

### Analysis

#### A. Considerations in Determining Residence

The Arizona statutes that establish eligibility for jury service do not contain standards that a jury commissioner can apply to decide which individuals are residents of the jurisdiction for the purpose of including them in the jury pool. Because “resident” is not defined in the statutes regarding jury service, we look to the common and approved use of the term. A.R.S. § 1-213. When words have “acquired a peculiar and appropriate meaning in the law” they are construed according to that meaning. *Id.*

The term “residence,” when used in a statute, generally has the same meaning as the term “domicile.” *Appeal in Coconino County Juvenile Action J-12187*, 180 Ariz. 509, 510, 885 P.2d 197, 198 (App. 1994); *see also McIntosh v. Maricopa County*, 73 Ariz. 366, 368-69, 241 P.2d 801, 802-03 (1952) (“residence” and “domicile” have the same meaning for purposes of article 9, § 2 of the Arizona Constitution). To be domiciled in Arizona a person’s actual presence in the State must coincide with the intent to remain permanently in Arizona. *Houghton v. Piper Aircraft Corporation*, 112 Ariz. 365, 367, 542 P.2d 24, 26 (1975); *McIntosh* 73 Ariz. at 369-70, 241 P.2d at 803; *Hiatt v. Lee*, 48 Ariz. 320, 323, 61 P.2d 401, 403 (1936); *see also* Ariz. Att’y Gen. Op. I75-15L.

The key factor in determining residence is intent, which is a question of fact evidenced by a person’s conduct. *Bialac v. Bialac*, 95 Ariz. 86, 87, 386 P.2d 852, 853 (1963). Factors that may be considered are the habits of the person, business and domestic relations, declarations, exercise of political rights, community activities, payment of taxes, ownership of property, and other objective facts ordinarily occurring when people intend to establish residence. *Jizmejian v. Jizmejian*, 16 Ariz. App. 270, 274, 492 P.2d 1208, 1212. (1972).

One concern posed in your opinion request is the ability to apply the factors in A.R.S. § 16-101<sup>3</sup> since the Legislature deleted the reference to A.R.S. § 16-101 from A.R.S. § 21-201. 1991 Ariz. Sess. Laws, ch. 268, § 2. Moreover, the current definition of “resident” in A.R.S. § 16-101 notes that it is applicable only to that Title. We conclude that the Legislature intended that the definition in A.R.S. § 16-101 not be used directly when determining jury qualifications.

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<sup>3</sup> The definition of “resident” in A.R.S. § 16-101(B) includes those individuals who have actual physical presence and an intent to remain in Arizona.

Nonetheless, the deletion appears to make little substantive difference because the definition of resident in A.R.S. § 16-101 is essentially the same definition adopted by the courts. *Houghton*, 112 Ariz. at 367, 542 P.2d at 26. The more important point, however, is that the Legislature has not limited the more descriptive standard for residence in A.R.S. § 16-593<sup>4</sup> to Title 16. Indeed, the Arizona Supreme Court noted that A.R.S. § 16-593 is generally applicable *whenever* residency is at issue. *McIntosh*, 73 Ariz. at 369, 241 P.2d at 804; *Hiatt v. Lee*, 48 Ariz. at 323, 61 P.2d at 403; *see also* Ariz. Att'y Gen. Op. I75-15L. Therefore, the jury commissioner may still apply the residency standards in A.R.S. § 16-593 in determining whether a prospective juror is qualified to serve in our State court system.

The Legislature has established a procedure for jury commissioners to decide issues regarding a prospective juror's qualifications, including residence. *See* §§ A.R.S. § 21-314 through -318. The jury commissioner is authorized to provide each person on the master jury list with a questionnaire to determine that person's qualifications for jury service. A.R.S. § 21-314. If the answers to the questions indicate that the person is not qualified to serve, the commissioner excludes that person from jury service and removes the person's name from the qualified juror list. A.R.S. § 21-315. When necessary, the presiding judge may require any person on the master jury list to appear before the jury commissioner to testify concerning the person's qualifications to serve as a juror. A.R.S. § 21-316. A person whom the jury commissioner refuses to excuse from jury service may apply to the presiding judge for review of the jury commissioner's decision, and the judge will then decide whether the person should be excused. A.R.S. § 21-318.

B. Special Residence Considerations for Military Personnel and Dependents

The Arizona Supreme Court considered the application of article 7, §§ 3<sup>5</sup> and 6 (residence of military personnel stationed within the State) of the Arizona Constitution in *Clark v. Clark*, 71 Ariz. 194, 225 P.2d 486 (1950). The plaintiff, who was in the Army, was sent to Arizona (without his wife), and then sought a divorce in Arizona. The court held that, while the two sections of the Arizona Constitution referred to "Suffrage and Elections," they "must govern domicile [sic] for all purposes." 71 Ariz. at 197, 225 P.2d at 488. The court held that the plaintiff's mere presence in Arizona for one year did not establish his domicile, and then it looked to evidence of his intention "to make a home here and perform some act to carry out

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<sup>4</sup> The Legislature established standards on which to determine residence for the election board in A.R.S. § 16-593(A). These include a person's place of habitation, the person's intention to return, and the permanent residence of a person's family. The statute also establishes standards for temporary relocation due to military service and educational commitments as well as incarceration.

<sup>5</sup> Article 7, § 3 of the Arizona Constitution provides: "For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States . . . ."

such intention." *Id.* The court held that military personnel may acquire domicile in Arizona when stationed here "if they have the necessary intent which is evidenced in some outward manner sufficient to satisfy the trier of fact that the person in truth and in fact is a bona fide resident." 71 Ariz. at 198, 225 P.2d at 488-89. The court found evidence of such intent because the plaintiff had resided with his foster mother in Tempe when he was off the army base.

The Arizona Court of Appeals later construed *Clark* to mean that, with regard to military personnel, physical presence creates no presumption of domicile, but that domicile must be determined from a person's intent as manifested by the person's acts. *Jizmejian*, 16 Ariz. App. at 274, 492 P.2d at 1212. The court noted that the plaintiff wife and defendant husband had been domiciled in Illinois before the defendant was recalled to service and stationed (accompanied by his wife) in Arizona, and concluded that there was insufficient evidence to rebut the presumption that the parties had not changed their domicile from Illinois to Arizona. *Id.*

Your question specifically concerns the effect that obtaining a "five year temporary Arizona driver's license" has in determining the residence of military personnel. The fact that the person has sought a temporary driver's license indicates an intent not to permanently or indefinitely reside in Arizona.<sup>6</sup> If, on the other hand, military personnel obtain (or even seek) regular Arizona driver's licenses, that would certainly denote an intent to permanently or indefinitely reside in Arizona. The "driver's license factor," of course, must be considered in conjunction with other related factors denoting an intent to reside in Arizona.

You should be aware that criminal defendants have alleged the exclusion of military personnel from a jury pool violates their Sixth Amendment right to jury trial by a fair cross-section of the community, and their Fourteenth Amendment right to equal protection of the laws. There are no Arizona opinions on these issues, but courts in other States have rejected such challenges to systemic exclusion of military personnel from jury service. *See, e.g., Walker v. State*, 652 P.2d 88, 92 (Alaska 1982) (rejecting Sixth Amendment challenge); *People v. Brown*, 275 Cal. Rptr. 268, 274 (Cal. App. 1990) (rejecting Sixth Amendment challenge); *Davis v. State*, 524 P.2d 46, 48 (Okla. Crim. App. 1974) (rejecting both Sixth Amendment and equal protection challenges).

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<sup>6</sup> The parties in *Jizmejian* had lived in Arizona from 1964 to 1967, but the court found that they had not demonstrated an intent to be Arizona residents. 16 Ariz. App. at 271, 492 P.2d at 1209. The wife could not recall if the husband had retained his Illinois driver's license. 16 Ariz. App. at 273, 492 P.2d at 1211. Obviously, if a person retains his out-of-state driver's license, it manifests his intent not to become an Arizona resident.

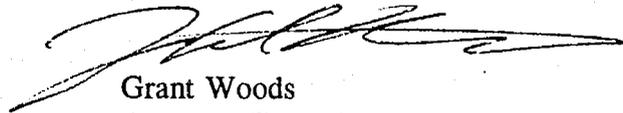
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Conclusion

Jury commissioners may apply the criteria in A.R.S. § 16-593 to determine which individuals meet the residency qualifications for jury service. However, the commissioners must apply these criteria with an understanding that a prospective juror's intent to be an Arizona resident is the critical factor in determining residency. The issue of intent is a question of fact that must be addressed on an individual basis.

Military personnel and their dependents who obtain Arizona five-year temporary driver's licenses have not, on that basis alone, demonstrated an intent to be Arizona residents. The jury commissioner must ascertain their intent to be Arizona residents when determining whether they qualify to serve as jurors in our State court system.

Sincerely,



Grant Woods  
Attorney General