

The State of South Carolina



Office of the Attorney General

Opinion No 87-34

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April 16, 1987

Paul J. Ward, General Counsel
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Dear Paul:

You have requested the advice of this Office as to whether military personnel domiciled in South Carolina must actually reside in this State to be entitled to in-state tuition rates. A previous opinion of this Office concluded that military personnel returning to and residing in South Carolina after an out-of-state assignment would be eligible for in-state rates if they were domiciled here prior to the transfer and if they had not shown an intent to establish a new domicile out-of-state. Ops. Atty. Gen., (December 18, 1986). Because South Carolina law requires persons to "reside in" South Carolina for no less than twelve months as well as be domiciled here, you have raised the question of whether military personnel stationed elsewhere and their dependents would be eligible for in-state rates in South Carolina. Section 59-112-20(A) of the Code of Laws of South Carolina 1976, as amended.

Although no South Carolina case has addressed this issue, authority elsewhere makes clear that military personnel would not lose either their actual residence in South Carolina or their domicile here by being stationed elsewhere in the military unless they showed an intent to establish domicile and actual residence where stationed. St. John v. St. John, 291 Ky. 363, 163 S.W.2d 820 (1942); Radford v. Radford, 26 Ky. L. Rep. 652, 82 S.W. 391 (1904); 25 Am.Jur.2d Domicile, §39. In Radford, the court held as follows:

It has never been the policy of the law to add to the burdens of one serving his country in its Army or Navy the loss of residence in his native state from his constrained and involuntary absence therefrom. Such a one cannot be said, in any proper sense of the term, to have a residence anywhere other than the home he has left, since he has no choice as to where

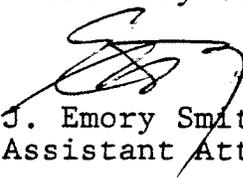
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he goes, the time he can remain or when he shall return....[He] cannot be said in any sense to have lost either his actual or legal residence by [assignment elsewhere for military service]. 82 S.W. at 392.

Therefore, military personnel that have established domicile and residence in South Carolina, would lose neither status upon their military assignment elsewhere absent an intent to establish residence and domicile elsewhere. Accordingly, for such personnel, the twelve months of residency required for in-state tuition in South Carolina could include time in out-of-state military service provided that they have established residence and domicile in South Carolina before leaving this State and have not reestablished residence and domicile elsewhere. Under the provisions of §59-112-20(A), the dependents of such personnel entitled to in-state rates would also be entitled to in-state rates themselves. Of course, application of these requirements to particular individuals must be determined by the factual circumstances of their association with South Carolina.

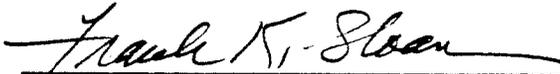
If you have any questions, please let me know.

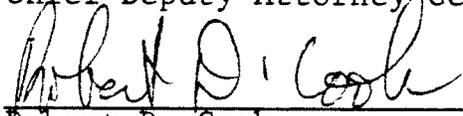
Yours very truly,


J. Emory Smith, Jr.
Assistant Attorney General

JESjr/srcj

REVIEWED AND APPROVED:


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