

8065 Liberty



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

November 28, 2005

The Honorable Chip Huggins
Member, House of Representatives
30 Wayworth Court
Columbia, South Carolina 29212

Dear Representative Huggins:

In a letter to this office you requested an opinion regarding the eligibility of Mr. Glenn Anderson for in-state tuition at the University of South Carolina. Mr. Anderson is a Canadian citizen but has lived in South Carolina since April, 1998.

S.C. Code Ann. §§ 59-112-10 et seq. authorizes the rates for fees and tuition at State institutions of higher learning in South Carolina. Section 59-112-20 provides that:

South Carolina domicile for tuition and fee purposes shall be established as follows in determinations of rates of tuition and fees to be paid by students entering or attending State Institutions:

A. Independent persons who reside in and have been domiciled¹ in South Carolina for a period of no less than twelve months with an intention of making a permanent home therein, and their dependents, may be considered eligible for in-state rates.

¹The term "domicile" is defined by Section 56-112-10(D) as

The word "domicile" shall mean a person's true, fixed, principal residence and place of habitation; it shall indicate the place where such person intends to remain, and to which such person expects to return upon leaving without establishing a new domicile in another state. For purposes of this section one may have only one legal domicile; one is presumed to abandon automatically an old domicile upon establishing a new one....

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B. Independent persons who reside in and have been domiciled in South Carolina for fewer than twelve months but who have full-time employment in the State, and their dependents, may be considered eligible for in-state rates for as long as such independent person is employed on a full-time basis in the State.

C. Where an independent person meeting the provisions of § 59-112-20 B above, is living apart from his spouse, or where such person and his spouse are separated or divorced, the spouse and dependents of such independent person shall have domiciliary status for tuition and fee purposes only under the following circumstances:

(1) if the spouse requesting domiciliary status for tuition and fee purposes remains domiciled in South Carolina although living apart or separated from his or her employed spouse;

(2) if the dependent requesting domiciliary status for tuition and fee purposes is under the legal custody or guardianship, as defined in § 59-112-10 I above, of an independent person who is domiciled in this State; or if such dependent is claimed as an income tax exemption by the parent not having legal custody but paying child-support, so long as either parent remains domiciled in South Carolina.

D. The residence and domicile of a dependent minor shall be presumed to be that of the parent of such dependent minor.

Pursuant to Regulation 62-604 of the State Commission on Higher Education,

(A) Except as otherwise specified in this section or as provided in Section 62-609(1) and (2)², independent non citizens and non permanent residents of the United States will be assessed tuition and fees at the non resident, out of state rate.

I regret that this office cannot resolve the question raised in your opinion request in much as to resolve this question, a factual determination would have to be made as to Mr. Anderson's status. As repeatedly indicated in numerous opinions of this office, an opinion of the Attorney General cannot investigate or determine facts. See: Ops.Atty.Gen. dated October 27, 2004 and November 4, 2003. A comprehensive review of all the relevant facts necessary to resolve the matter, which would be necessary, cannot be made in the opinion process of this office.

Moreover, pursuant to Regulation 62-600(B)

²Such Regulations allow for the payment of in state tuition and fees for military personnel and their dependents and faculty and administrative employees with full time employment and their dependents without those individuals having to establish a permanent home in South Carolina for twelve months.

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Institutions of higher education are required by the Statute to determine the residency classification of applicants. The initial determination of one's resident status is made at the time of admission. The determination made at that time, and any determination made thereafter, prevails for each subsequent semester until information becomes available that would impact the existing residency status and the determination is successfully challenged. The burden of proof rests with the students to show evidence as deemed necessary to establish and maintain their residency status.

An appeal process is provided. Pursuant to Regulation 62-612(B),

Each institution will develop an appeals process to accommodate persons wishing to appeal residency determinations made by the institution's residency official.

Therefore, pursuant to such regulations, Mr. Anderson would have to show sufficient facts as necessary in order to establish his residency status. As indicated, an appeal from any decision by an institution's residency official is made available.

In making any argument regarding the question of Mr. Anderson's status, in addition to the regulations cited above, other regulations of the South Carolina Commission on Higher Education are also relevant. I am enclosing a copy of the most recent regulations for Mr. Anderson's review in order that he may present his case to the University.

I regret that we cannot be of further assistance at this time.

Sincerely,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General