

## The State of South Carolina



Office of the Attorney General

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December 18, 1986

The Honorable T. Ed Garrison  
Member, South Carolina State Senate  
Route 2  
Anderson, South Carolina 29621

Dear Senator Garrison:

You have requested the advice of this Office as to two matters concerning the eligibility of military personnel for in-state tuition rates for attendance at public institutions of higher education. See §59-112-10 et seq. of the Code of Laws of South Carolina, 1976, as amended. Those questions are separately addressed below.

- 1) If a South Carolina resident enters the military, serves two years outside of the State and, upon discharge, returns to South Carolina to live permanently, is the resident eligible for in-state tuition rates?

Except under certain specified circumstances, South Carolina law requires that persons "reside in and have been domiciled in South Carolina for a period of no less than twelve months" to be eligible for in-state rates. §59-12-20 (A) and §59-12-30 (A); see also §59-112-20 (B) and (C) and §59-112-50 through §59-112-70. "Domicile" is defined by statute to mean "...a person's true, fixed, principle 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." §59-112-10 (D). "Residence" or "reside" is defined to mean "... continuous and permanent physical presence within this state, provided, that temporary absences for short periods of time shall not affect the establishment of a residence." §59-112-10 (B).

South Carolina law contains specific provisions for military personnel in §59-112-50, but they do not appear to apply here.

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This statute indicates that discharged military personnel are eligible for in-state rates for a period of twelve months after their discharge if they show domiciliary intent and if they have resided in this State for a period of at least twelve months immediately preceding their discharge. Therefore, this provision, would not extend benefits for the person that you have described in the above question because that person would not have resided in South Carolina for the last twelve months; however, the earlier reference in this statute to military personnel "stationed in South Carolina" indicates that §59-112-50 was intended to provide benefits to military personnel who did not reside in South Carolina prior to their being stationed here. Sutherland Statutory Construction Vol. 2A, §46.05. No legislative intent is indicated that would alter the benefits to personnel otherwise domiciled in South Carolina. Id. Therefore, reference to the general provisions of §59-112-20 is necessary to answer your question.

Whether the provisions of §59-112-20 (A) could be met would be dependent upon whether the individual that you have described has been domiciled in South Carolina during at least the last twelve months of the two years that he or she was stationed elsewhere and that they are residing in South Carolina at the time that they apply for in-state rates. 1/ The common law indicates that domicile does not change merely because of transfers to military installations at other locations. Finger v. Masterton, 152 F. Supp. 224 (D.C.S.C. 1957); Small v. Small, 96 Misc. 2d 469, 409, N.Y.S.2d 379 (1978); 25 Am. Jur. 2d Domicile §39. Because §59-112-20 (A) indicates no legislative intent to impose different requirements from the common law, the assumption may be made that personnel domiciled in South Carolina prior to military transfers do not lose that domicile upon transfers to other locations absent other facts showing an intent to establish domicile elsewhere. Id. and Sutherland Statutory Construction Vol. 2A §50.01 (4th ed.). Such personnel who did not establish domicile elsewhere would be eligible for in-state rates upon their return to South Carolina to reside.

These questions may be avoided for military personnel who are employed full time. Under §59-112-20 (B) persons residing in the State who have been domiciled here for fewer than twelve months may be considered eligible for in-state rates provided that they are employed full time in the State.

- 2) If military personnel pay appropriate taxes,  
and for the purposes of the military, South

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1/ If the individual could not make a showing of maintenance of domicile, the individual would be required to be domiciled for twelve months after his return to the State under §59-112-20 (A) unless they were employed full time as provided in §59-112-30 (B) (See infra). See §59-112-20 (A) and §59-112-20 (B); Sutherland, Vol. 2A §46.05.

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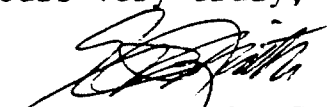
Carolina is considered their permanent residence, must those personnel satisfy the twelve month residency requirement before being eligible for in-state tuition rates?

If this question refers to military personnel who are assigned to duty in South Carolina, under §59-112-50, they would be eligible for in-state rates while they are assigned to duty in South Carolina. No statutory provision requires twelve months residency for these personnel except that, upon discharge, they are eligible for in-state rates only if they have evinced an intent to establish domicile here and they have resided in South Carolina for at least twelve months. §59-112-50. See also answer to question 1, supra.

In conclusion, military personnel stationed in South Carolina are entitled to in-state rates while stationed here. §59-112-50. If such personnel have resided here for twelve months and show domiciliary intent, they may be eligible for in-state rates upon their discharge. Id. Personnel returning to and residing in South Carolina after two years of out of state assignment would be eligible for in-state rates if they were domiciled here prior to transfer and if they had not shown an intent to establish a new domicile at the transfer location. In addition, §59-112-20 (B) permits residents domiciled for less than twelve months to receive in-state rates if they are employed full time.

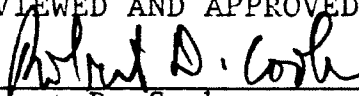
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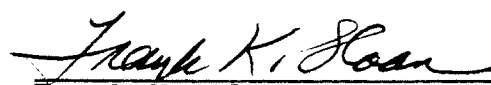
Yours very truly,

  
J. Emory Smith, Jr.  
Assistant Attorney General

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