

The State of South Carolina



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Opinion No 87-70

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T. TRAVIS MEDLOCK  
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING  
POST OFFICE BOX 11549  
COLUMBIA, S.C. 29211  
TELEPHONE 803-734-3636

July 24, 1987

Paul Jerald Ward, Esquire  
General Counsel  
System Legal Department  
University of South Carolina  
Columbia, South Carolina 29208

Dear Paul:

You have requested the advice of this Office as to whether the "physical presence" requirements for in-state tuition rates must be met by military personnel who attempt to change their domicile to South Carolina while in military service elsewhere when such personnel were not residing in South Carolina immediately prior to entering service. A previous opinion of this Office concluded that military personnel that have established domicile and residence in South Carolina would lose neither status upon their military transfer to another state absent an intent to establish residence and domicile elsewhere. Ops. Atty. Gen., April 16, 1987. South Carolina law requires persons to "reside in" South Carolina for no less than twelve (12) months as well as to be domiciled here in order to receive in-state rates. §59-12-20(A) of the Code of Laws of South Carolina, 1976, as amended.

The following statement is applicable here:

"Where a soldier or sailor claims residence in a State which is neither the state in which he is stationed nor the State from which he entered the service, the fact of military service appears to have little effect on the problem, and the courts apply the rules which would ordinarily be applicable under similar circumstances involving a civilian. 25 Am.Jur.2d Domicile §39; see also, 21 A.L.R.2d 1185 §17

Campbell v. Campbell, 57 So.2d 34 (1952) found that a soldier stationed in Germany did not meet actual residence requirements to obtain a divorce in Florida when he was stationed in the military

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service elsewhere and did not live in Florida prior to entering the service. The court made the following applicable statement that is relevant here:

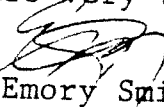
"The fact that the Appellant was in military service at the time he attempted to establish residence here, and thus because of the call of duty was not able to reside here the ninety days required under the statutes, is an unfortunate circumstance over which this court has no control, and as to which only the legislature can grant relief." 57 So.2d at 36. See also, Hampshire v. Hampshire, 70 Idaho 522, 223 P.2d 950, 952 (1950).

Both Campbell and Hampshire, supra, found that an intention to reside in a state at a future time was insufficient to meet actual residence requirements. This authority appears to apply here to preclude the military personnel stationed elsewhere from satisfying residency requirements in South Carolina when they resided elsewhere prior to entering the service.

The Soldiers' and Sailors' Civil Relief Act, 50 USC App. §510 provides no aid to military personnel in meeting the residency requirements for in-state rates. The purpose of that law was to provide for the "temporary suspension of legal proceedings and transactions which may prejudice the civil rights of persons in...military service." §510; see also 54 Am.Jur.2d Military and Civil Defense, §§302 and 303. Nothing in that law authorizes military personnel to acquire new benefits such as in-state rates in a state in which they were neither stationed then nor resident prior to entering service.

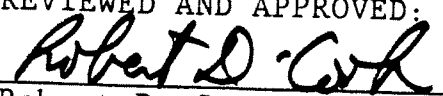
Applying this authority here requires a conclusion that military personnel cannot satisfy actual residency requirements in South Carolina while stationed in another state when such personnel were not domiciled and residing in South Carolina at the time of entry into military service. If you have any questions, please let me know.

Yours very truly,

  
J. Emory Smith, Jr.  
Assistant Attorney General

JESjr/srcj

REVIEWED AND APPROVED:

  
Robert D. Cook  
Deputy Attorney General