

OPINION NO. 74-093

Syllabus:

1. A person is a bona fide resident of a county for purposes of R.C. 5901.08 if his domicile is in that county.

2. While a presumption exists that a student or soldier, who is living in a county while attending school or on assignment at a nearby military installation, continues to maintain his domicile of origin, it may be rebutted by a showing that he has changed his domicile to the county of actual residence. Such a change of domicile may be shown by a preponderance of evidence that he has the present intent to remain indefinitely in the county.

To: Nicholas A. Carrera, Greene County Pros. Atty., Xenia, Ohio
By: William J. Brown, Attorney General, November 15, 1974

Your request for my opinion reads as follows:

"It has come to our attention as legal adviser to the Veterans' Service Officer here in Greene County that he has confronted a problem of definition as to the meaning of residence as applied to an applicant for soldier's relief. We are well aware that Section 5901.08 of the Ohio Revised Code specifically states that a person must have resided in the state one year and in the county six months; however our Veterans' Officer seems to believe that a problem arises in the specific classifications of students attending college inside Greene County, and those still under the authority of the armed services. As you know, Greene County has several educational institutions, and also is the domicile of many servicemen at Wright Patterson Air Force Base.

"The specific questions that we would like you to direct your attention to are:

"1. Is a person who has gone to school and is going to school in Greene County for six months or over, and also has met the one year requirement as to state residence, eligible for soldier's relief when his home is in another county? Does the six months still apply to these people, even though they are not orig-

inally from this county, and are only here to attend school?

"2. May those people who are in the service, living off base and inside Greene County, be eligible for soldier's relief? Does the six months apply to them even though the reason they are in this county is that they are stationed at Wright Patterson and, therefore, living in Greene County, and for no other reason?"

R.C. 5901.08, to which you refer, reads:

"Each township and ward soldiers' relief committee shall receive all applications for relief under sections 5901.02 to 5901.15, inclusive, of the Revised Code, from applicants residing in such township or ward. Such committee shall examine carefully into the case of each applicant and on the first Monday in May in each year make a list of all needy soldiers, sailors, marines, and airmen and of their needy parents, wives, widows, and minor children, who reside in such township or ward. The list shall include soldiers, sailors, marines, and airmen of the Spanish-American War, World War I, World War II, or the Korean War and their wives, widows, needy parents, minor children, and wards, who have been bona fide residents of the state one year, and of the county six months, and who, in the opinion of such committee, require aid and are entitled to relief under such sections."
(Emphasis added.)

With respect to each of your questions, the specific issue is what constitutes a bona fide county resident for the purposes of R.C. 5901.08.

I recently stated in Opinion No. 74-046, Opinions of the Attorney General for 1974, with respect to eligibility for the Vietnam veterans' bonus:

"There can be little question that the term 'resident of the state' refers to legal residence, or domicil, as opposed to mere temporary residence. A person has a residence wherever he dwells, even if temporarily, but his domicil is his legal home, where he abides with the present intent to remain indefinitely."

In Opinion No. 707, Opinions of the Attorney General for 1957, p. 263, my predecessor applied the following rules, set out in Sturgeon v. Korte, 34 Ohio St. 525, 534 (1878), to define residency for the purposes of R.C. 5901.08:

"It is not, however, necessary that he should intend to remain there for all time. If he lives in a place, with the intention of remaining for an indefinite period of time, as a place of fixed present domicile, and not as a place of temporary establishment, or for mere

transient objects, it is to all intents, and for all purposes, his residence. * * * These are well settled rules relating to the selection or change of residence, existing when the constitution was adopted, and consequently apply in all cases where a change of residence results from or depends upon choice. The question is, and must always remain, one of fact, often attended with much difficulty; but to be determined by the preponderance of evidence favoring one place as against another. (Emphasis added.)

Thus, a bona fide county resident for purposes of R.C. 5901.08 is a person whose domicile is in the county. State, ex rel. Kaplan v. Kuhn, 11 Ohio Dec. 321, 8 Ohio N.P. 197 (1901), set out four general rules for determining domicile:

- "1. Every person must have a domicil somewhere.
- "2. No person can at the same time have more than one domicil.
- "3. Every person who is sui juris and capable of controlling his personal movements
- "4. A change of domicil is a question of act and intention."

See also, Sturgeon v. Korte, *supra*; State, ex rel. May v. Jones, 16 Ohio App. 2d 140 (1968); Draper v. Draper, 107 Ohio App. 32 (1958); Baucher v. Bd. of Education, 31 Ohio Misc. 49 (1971); Spires v. Spires, 7 Ohio Misc. 197 (1966); Opinion No. 74-046, *supra*; and Opinion No. 73-080, Opinions of the Attorney General for 1973.

With respect to the first two rules described in Kuhn, *supra*, both a student and a soldier have a residence or domicile of origin determined at the time of their entrance into school or the service. Since no one can have more than one domicile, when a person resides away from the original domicile for the temporary purpose of schooling or service, the domicile of origin has, in the absence of evidence of a change, been presumed to be the current domicile. In Opinion No. 74-046, *supra*, I stated as follows:

"Accordingly, the domicil of a person in the military service remains the same as it was upon his entry into the service, even though he is shifted from post to post, so long as he retains the intent to return eventually, when free to do so, to that original domicil. This is so because the various transfers are not necessarily of his own volition. On the other hand, if, while residing at one post of duty, he forms the intent to remain there permanently and to abandon his original domicil, he thereby establishes a new domicil. Spires v. Spires, 35 Ohio Op. 2d 289 (1966); Glassman v. Glassman, 75 Ohio App. 47 (1944).
* * *"

This language sets forth the basic test for determining a change of domicile. As I stated in Opinion No. 73-080, *supra*, present intent to remain indefinitely is the factor which

distinguishes domicile from mere residence. In the cases of both students and soldiers the courts have employed a variety of criteria to determine whether a person did in fact have the requisite capacity and intent to effect a change of domicile. As to what evidence should control that determination the following guideline was cited by the court in State, ex rel. Kaplan v. Kuhn, supra, at p. 332, 333.

"With respect to the evidence necessary to establish the intention, it is impossible to lay down any positive rule. Courts of justice must necessarily draw their conclusions from all the circumstances of each case, and each case must vary in its circumstances; and moreover, in one a fact may be of the greatest importance, but in another the same fact may be so qualified as to be of little weight. 12 Moore Priv., C.C. 330."

That court went on to consider acts and declarations of the individual, family relations, business pursuit and vocation in life, mode of life, means, fortune, earning capacity, conduct, habits, disposition, age, prospects, residence, lapse of time, voting and payment of taxes.

Furthermore, it has been held that state statutes which create an irrebuttable presumption of non-residency are arbitrary and unreasonable and, therefore, violative of due process, when alternate means are available to determine whether a change of domicile has been effected. Vlandis v. Kline, 412 U.S. 441 (1973); Kelm v. Carlson, Case No. 72-1241 (U.S. Ct. App., 6th Cir., Feb. 1973), in which the court held that the absence of future job prospects in the community does not preclude a showing of domicile.

Therefore, in regard to your specific questions, a student who initially comes to a county for the purpose of pursuing an education may not be conclusively presumed to remain a non-resident, when a consideration of all relevant evidence indicates that he has changed his domicile.

Similarly the fact that a person in the service has moved to a county because of an assignment to duty at a nearby military installation does not preclude him from establishing a domicile and becoming a bona fide resident of the county. It is necessary to consider all relevant aspects of the individual's situation and conduct and make a determination based upon a preponderance of evidence favoring one place over others as the person's domicile.

In specific answer to your questions, it is my opinion and you are so advised that:

1. A person is a bona fide resident of a county for purposes of R.C. 5901.08 if his domicile is in that county.

2. While a presumption exists that a student or soldier, who is living in a county while attending school or on assignment at a nearby military installation, continues to maintain his domicile of origin, it may be rebutted by a showing that he has changed his domicile to the county of actual residence. Such a change of domicile may be shown by a preponderance of evidence that he has the present intent to remain indefinitely in the county.