



STATE OF KANSAS

## Office of the Attorney General

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Curt T. Schneider  
Attorney General

January 3, 1977

ATTORNEY GENERAL OPINION NO. 77- 1

Mr. Clayton R. Thurman  
Harper County Sheriff  
Law Enforcement Center  
Anthony, Kansas 67003

Re: Fish and Game--Licenses--Definition: Bona Fide Resident

Synopsis: The term bona fide resident as used in K.S.A. 32-104a denotes any person who by his or her deliberate good faith acts and intentions has established an abode in Kansas to which whenever such person is absent he or she intends to return.

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Dear Mr. Thurman:

You inquire concerning the residency requirements specified in K.S.A 32-104a, which provides in pertinent part thus:.

"Subject to K.S.A. 1972 Supp. 32-401 to 32-403, inclusive, any citizen residing in Kansas may secure a license to hunt in Kansas upon application to any county clerk in this state, and payment of a fee of three dollars (\$3). From and after January 1, 1976, such residents shall pay a fee of five dollars (\$5) for a license to hunt. Any nonresident may secure a license to hunt in Kansas upon application to any

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clerk in the state and payment of a fee of twenty-five dollars (\$25) . . . . Any person residing in Kansas sixteen (16) years of age or older may secure a license to fish by applying to any county clerk in this state and payment of a fee of three dollars (\$3). From and after January 1, 1975, such residents shall pay a fee of five dollars (\$5) for a license to fish. Any nonresident may secure a license to fish in Kansas upon application to any county clerk in the state and payment of [a] fee of ten dollars (\$10) . . . .

". . . . That for the purpose of this act any person who has not been a bona fide resident of the state for sixty (60) days then last past is considered a nonresident of the state . . . ." [Emphasis supplied.]

Specifically you ask for a definition of "bona fide resident."

As a general rule of statutory construction it can be stated that "in the absence of a manifested legislative intent to the contrary, or other overriding evidence of a different meaning, legal terms in a statute are presumed to have been used in their legal sense." 2A *Sutherland Statutory Construction* § 47.30. See, *Case v. Los Angeles Lumber Products Co.* 308 U.S. 106, 84 L.Ed 110, 60 S. Ct. 1, reh. den. 308 U.S. 637, 84 L. Ed. 529, 60 S. Ct. 258; *Morissette v. United States*, 342 U.S. 246, 96 L. Ed 288, 72 S. Ct. 240; *McNally v. Hill*, 293 U.S. 131, 79 L. Ed 238, 55 S. Ct. 24. See generally, 73 Am.Jur.2d *Statutes* § 239.

We find no decision of the Kansas Supreme Court which defines the specific term "bona fide resident." *Ballantine's Law Dictionary* (1969) defines "resident" as "[o]ne who resides in a place. One having legal residence or domicil." That dictionary further defines "bona fide" as "[a]cting in good faith." So the issue here presented essentially becomes that of determining the residence which the applicant for a hunting or fishing license has legally established in good faith for the requisite sixty days prior to his application.

K.S.A. 1975 Supp. 77-201, *Twenty-third* provides:

"The term 'residence' shall be construed to mean the place adopted by a person as his place of habitation, and to which,

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whenever he is absent, he has the intention of returning. When a person eats at one place and sleeps at another, the place where such person sleeps shall be deemed his residence."

The Kansas Supreme Court held in *Roberts v. Robertson*, 123 Kan. 222, 254 Pac. 1026 (1927):

"Ordinarily the residence of a person is the place where he has established his abode and to which whenever he is absent he has the intention of returning. To accomplish a new residence there must be not only the intention to establish a new residence, but also the fact of removal thereto."

The Court further held in *Harwi v. Harwi*, 143 Kan. 710, 56 P.2d 449 (1936):

"It is elementary law that to establish a residence two essentials are necessary -- a deliberate intention to do so, and the carrying of that intention into effect by some appropriate and operative action. An intention alone to establish a residence is insufficient."

And, in *Arnette v. Arnette*, 162 Kan. 677, 178 P.2d 1019 (1947) it was held that:

"A citizen may change his residence, either temporarily or permanently. Whether he does so, or which he does, is determined by his acts and his intentions."

Thus, through application of the definition provided by K.S.A. 1975 Supp. 77-201, *Twenty-third*, and the decisions of the Kansas Supreme Court, it is the opinion of this office that the term "bona fide resident" as employed in K.S.A. 32-104a denotes any person who by his or her deliberate good faith acts and intentions

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established an abode in Kansas to which whenever absent such person has intention of returning. Of course, determining the efficiency of an individual's compliance with the above definition to qualify for a hunting and/or fishing license will per-est with the county clerk in his or her evaluation of the facts presented in each case.

Yours very truly,



CURT T. SCHNEIDER  
Attorney General

WPS:kj

cc: Mr. Fred Warders  
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