



STATE OF KANSAS

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Curt T. Schneider
Attorney General

December 2, 1977

ATTORNEY GENERAL OPINION NO. 77- 376

Mr. Merle R. Bolton
Commissioner of Education
Department of Education
120 East 10th Street
Topeka, Kansas 66612

Re: Community Junior Colleges--Out-District Tuition--Liability

Synopsis: A county is not liable for payment of out-district tuition for students residing on a federal military reservation located in such county and attending a community junior college in this state.

* * *

Dear Commissioner Bolton:

You request my opinion whether a county is obligated to pay out-district tuition for students enrolled in a community junior college if the students reside on a military reservation located in the county.

The question is apparently prompted by a dispute over liability of Geary County for out-district tuition for two students who are enrolled in Pratt Community College and who reside on the Fort Riley military reservation in Geary County. You advise that each of the two students has graduated from Junction City High School, and each has resided on the Fort Riley military reservation for a period exceeding six months. Each, I have assumed, comes from a military family, *i.e.*, a family residing on the reservation pursuant to a military assignment of one or both parents in each family.

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In a letter dated November 7, 1972, the Geary County counselor concluded that Geary County was not liable for the out-district billings respecting these two students, stating that it is "well established that the legal residence and the domicil of a person in the military service who is there because of orders of the military, and his dependents, is the legal residence where they came from." Although correct as a statement of the general rule, it is not correct to suggest that persons in the armed forces are legally incapable of establishing a new residence, even at a place of assignment. At 25 Am.Jur.2d, *Domicil*, § 39, the writer states thus:

"As a general rule, the domicil of a person is not, in the absence of any intention to effect a change of domicil, affected or changed by reason of his entering the military or naval service. He does not, merely by reason of entry into the service, abandon or lose the domicil which he had when he entered, or acquire a new one at the place where he serves. It has been pointed out, however, that during a long period of military service one may not be viewed as occupying, in a residential sense, 'no man's land.' And the fact that one is on military duty does not preclude him from establishing his domicil where he is stationed if the circumstances show an intent on his part to abandon his original domicil and adopt the new one. A new domicil can be acquired by a soldier as well as any civilian where the fact of physical presence and the intent to become domiciled at the place of military service concur." [Footnotes omitted.]

The writer goes on, however, to point out that the common difficulty is in showing freedom of choice and actual intention to live in a place where one's military obligation compels the individual to live.

Assuming, as we must, that a person in the armed forces is legally capable of establishing legal residence at a place of assignment, assuming a sufficient persuasive factual showing is made, the question here is complicated by two further matters, first, the fact that the parental residence, which is apparently that of the student in each instance, is located on the military reservation

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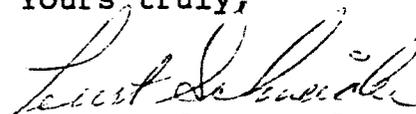
itself, and that the students may have reached the age of eighteen years, thus constituting them adults and legally capable of establishing a legal residence independent of the parents.

In *Pendleton v. Pendleton*, 109 Kan. 601 (1921), the court affirmed findings of fact that the plaintiff, wife of an army captain stationed at Fort Riley, had not established domicil in Kansas and therefore could not maintain an action for divorce in Kansas courts. The trial court had made a further finding that "Fort Riley is on that part of the reservation which, prior to the cession by the legislature of the state of Kansas of the jurisdiction of said reservation to the Federal government, was situated in Geary County, Kansas." Having affirmed dismissal of the action based on factual findings related to domicil, the court stated it was "not necessary to discuss the subject of the jurisdiction of the state of Kansas over the Fort Riley military reservation, and the question whether or not an officer of the army of the United States may establish a domicile [sic] on such a reservation, is not decided." 109 Kan. at 602. However, in *Miller v. Hickory Grove School Board*, 162 Kan. 528, 178 P.2d 214 (1947), the court found expressly that the military reservation of the Olathe naval base was not a part of Johnson County, but rather that the county adjoined the reservation." See also *United States Auto Association v. Harman*, 151 S.W.2d 609 (Tex.Civ.App.), error dismd, cert. denied, 315 U.S. 807, 86 L. Ed. 1206, 62 S. Ct. 640.

Thus, as a matter of law, the military reservation is not, and of itself, a part of Geary County. Even if each student is eighteen years of age or older, their respective residences, on the military reservation itself, do not constitute them residents of Geary County, which is liable only for out-district tuition respecting residents of the county itself. If each student is an adult, each, of course, is legally capable of establishing a legal residence independent of that of their parents. However, to establish a Geary County residence, it would be necessary for the students to demonstrate some residence within the county itself, and not on the military reservation, which is not a part of the county.

Thus, we agree that Geary County is not liable for out-district tuition respecting the two students involved here. It is my opinion that a county is not obligated to pay out-district tuition for students enrolled in community junior colleges for such students who reside within a federal military reservation in such county.

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj