



STATE OF KANSAS

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October 15, 1980

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ATTORNEY GENERAL OPINION NO. 80- 230

Philip E. Winter
Administrative Aide
Lyon County Commission
Lyon County Courthouse
Emporia, Kansas 66801

Re: Schools--Community Junior Colleges--Residency for
Determination of Out-District Tuition; Aliens

Synopsis: A county may not refuse to pay out district tuition for a student of a Kansas community junior college solely by reason of such person's foreign citizenship. Residency is to be determined by the facts of each case tending to show location of abode and intent of the person to remain at such location. Cited herein: K.S.A. 1979 Supp. 71-301 (as amended by L. 1980, ch. 209, §1), 71-402, K.S.A. 72-1046 and 77-201.

* * *

Dear Mr. Winter:

You have inquired as to whether Lyon County is obligated to pay out-district tuition for an alien who resides in Lyon County and attends a community junior college outside of the county. Specifically, you describe the student as a "resident foreign national refugee."

K.S.A. 1979 Supp. 71-301 as amended by L. 1980, ch. 209, §1 provides in pertinent part:

"The board of trustees [of a community junior college], in accordance with rules and regulations of the state board, shall determine and collect an amount of out-district tuition

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to be charged for each student attending the community college whose residence is outside of the community college district. The board of county commissioners of any county charged with payment of out-district tuition shall levy a tax on all of the taxable property of the county sufficient to pay all out-district tuition charges authorized by this act." (Emphasis added.)

The foregoing statutory requirements are predicated on "residence," rather than citizenship. And it is the factual issue of residency that determines a student's eligibility for public tuition aid and not his or her national origin or current citizenship. Indeed, the denial of public tuition support based solely on foreign citizenship would be unlawful. In a similar situation, a classification of all aliens as non-residents for purposes of charging tuition and fees at state supported institutions of higher education was held to violate both the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution. See Jagmandan v. Giles, (D.C. Miss.) 379 F.Supp. 1178, aff'd in part (5th Cir.) 538 F.2d 1166, U.S. cert.den. 432 U.S. 910, 53 L.Ed.2d 1083, 975 S.Ct. (1977). Hence, the issue of citizenship is irrelevant to a determination of out-district tuition except to the extent that citizenship may be some evidence of the intent of a person to be a resident. But as previously noted, a determination of residency is a factual issue to be decided in each instance.

Under Kansas law, if a student is living in a neighboring county, residency for out-district tuition purposes is to be determined in accord with K.S.A. 1979 Supp. 71-402 which states:

"[R]esidency of minors shall be determined as provided in K.S.A. 72-1046 and acts amendatory thereof and of adults as provided in subpart Twenty-third of K.S.A. 77-201 and acts amendatory thereof."

If the student is a minor, K.S.A. 72-1046 is the applicable law and it provides as follows:

"Any person of school age whose natural legal guardian resides within the limits of the school district or city, or whose family home with his father and mother is not available to him by reason of the separation of his parents, or the death of either or both of them,

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and who is living with a friend or relative or with a person who is a resident within the limits of the school district or city, or when such person is contributing the major portion of the cost of the support of such child, shall be deemed to have a school residence in such district or city, in which he lives."

If the student is an adult, residency is to be determined by applying the test contained in K.S.A. 77-201 twenty-third as follows:

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

In Kansas Attorney General Opinion No. 76-51, we observed some of the relevant factors for determining residency under Kansas law:

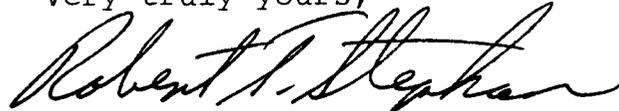
"The establishment of residence requires the concurrence of two factors: one physical, the other intellectual. There must be bodily presence at a location coupled with intent to remain there either permanently or for an indefinite period, before residence can be said to have been acquired. A residence once established is presumed to continue until the same has been abandoned. Keith v. Stetter, 25 Kan. 100 (1880); Palmer v. Parish, 61 Kan. 311, 313, 59 P. 6400 (1900). To effect a change of residence, there must be transfer of bodily presence to another place coupled with an intent to abide in the new location either permanently or indefinitely. Ford, Adm'x. v. Peck, 116 Kan. 74, 225 Pac. 1054 (1924). The length of the stay in the new abode is not of controlling importance, for no stated period of time is required to complete a change of residence; the change may be effectuated on the first day of arrival in the new location provided the requisite intent to establish residence therein be present. Blair v. Blair, 149 Kan. 3, 85 P.2d. 1004 (1939); Arnette v. Arnette, 162 Kan. 677, 178 P.2d. 1019 (1947)."

Therefore, a county may not refuse to pay out-district tuition for a student solely by reason of such person's foreign citizenship.

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Residency is to be determined by the facts of each case tending to show location of abode and intent of the person to remain at such location.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Bradley J. Smoot
Deputy Attorney General

RTS:BJS:phf