



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

March 29, 1990

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

ATTORNEY GENERAL OPINION NO. 90- 38

Neil H. Arasmith
Consumer Credit Commissioner
Landon State Office Building
900 Jackson, Room 352
Topeka, Kansas 66612

Re: Consumer Credit Code--Scope and Jurisdiction--
Territorial Application

Synopsis: For purposes of the uniform consumer credit code, the residence of military personnel is the address listed as the person's residence in any signed writing in connection with the consumer transaction. If the individual's residence is called into question, it must be determined on a case-by-case basis taking many factors into consideration in an attempt to ascertain the individual's intended residence. Cited herein: K.S.A. 16a-1-201; K.S.A. 77-201.

* * *

Dear Commissioner Arasmith:

You have inquired whether military personnel stationed in Kansas are residents of this state for purposes of the uniform consumer credit code (UCCC), K.S.A. 16a-1-101 et seq.

K.S.A. 16a-1-201 provides in part:

"(1) Except as otherwise provided in this section, K.S.A. 16a-1-101 through 16a-9-102, and amendments thereto, apply

to consumer credit transactions made in this state. For purposes of such sections of this act, a consumer credit transaction is made in this state if:

"(a) A signed writing evidencing the obligation or offer of the consumer is received by the creditor in this state; or

"(b) the creditor induces the consumer who is a resident of this state to enter into the transaction by face-to-face solicitation in this state.

. . . .

"(5) Except as provided in subsection (3), a consumer credit transaction made in another state to a person who was not a resident of this state when the sale, lease, loan or modification was made is valid and enforceable in this state according to its terms to the extent that it is valid and enforceable under the laws of the state applicable to the transaction.

"(6) For the purposes of K.S.A. 16a-1-101 through 16a-9-102, and amendments thereto, the residence of a consumer is the address given by the consumer as the consumer's residence in any writing signed by the consumer in connection with a credit transaction. Until the consumer notifies the creditor of a new or different address, the given address is presumed to be unchanged.

"(7) Notwithstanding other provisions of this section:

"(a) Except as provided in subsection (3), K.S.A. 16a-1-101 through 16a-9-102, and amendments thereto, do not apply if the consumer is not a resident of this state at the time of a credit transaction and the parties have agreed that the law of the consumer's residence applies; and

"(b) K.S.A. 16a-1-101 through 16a-9-102, and amendments thereto, apply if the consumer is a resident of this state at the time of a credit transaction and the parties have agreed that the law of the consumer's residence applies. . . ." (Emphasis added).

The Kansas comment on this provision states that "[t]his section enables Kansas to apply this act for the protection of its own consumer residents in multi-state transactions to the extent consistent with the need for workable operating procedures on the part of creditors." While perhaps military personnel should be protected by the provisions of the Kansas UCCC, we are constrained to interpret the jurisdictional provisions pursuant to the language used in the statute and common statutory construction rules. We have been unable to locate any cases which deal directly with the question you have raised. However, the statute specifically provides that, for the purposes of K.S.A. 16a-1-101 through 16a-9-102, the residence of a consumer will be the address given by the consumer as his residence. If more than one address is listed as the consumer's residence, or the actual residence is called into question for any other reason, we must look to the definition established in K.S.A. 77-201 twenty-third to determine the individual's residency. See Personal Thrift Plan of Wichita, Inc. v. State, 229 Kan. 622, 624 (1981) (words not defined by applicable act must be afforded meanings pursuant to K.S.A. 77-201).

K.S.A. 77-201 twenty-third provides:

"'Residence' means the place which is adopted by a person as the person's place of habitation and to which, whenever the person is absent, the person has the intention of returning. . . ."

The Kansas Supreme Court has considered and construed the term residence on many occasions. The court has held that "[a]lthough the terms 'domicile' and 'residence' may have different legal meanings, 'residence' as defined in the statute is substantially the equivalent of 'domicile' -- the adoption of a place of habitation with the intent to return thereto. [Citations omitted.] While in a technical sense a person may have more than one residence, he has only one domicile." Lines v. City of Topeka, 223 Kan. 772, 776

(1978). Thus, as defined in K.S.A. 77-201, an individual can have only one residence.

"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; Palmer v. Parish, 61 Kan. 311, 313, 59 Pac. 640.) 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). 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; Arnette v. Arnette, 162 Kan. 677, 178 P.2d 1019.) In 17A Am.Jur., Domicile, § 34, it is said:

" . . . Mere absence from a fixed home, however long continued, cannot work the change. On the other hand, the shortest absence if intended as a permanent abandonment, is sufficient to effect such abandonment, although the party may soon after change his intention." (p. 223.)"
Estate of Schoof v. Schoof, 193 Kan. 611, 614 (1964).

In determining the residence of a particular individual, the courts will consider all relevant facts and common indicia of residence, including where the individual's mail is sent, where he registered his car, where he pays taxes, where he

votes, etc. In Friedman v. Alliance Inc. Co., 240 Kan. 229, 237 (1986), the court lists factors which other courts have used in determining whether a child is a residence of the parents' household:

- "1) The child's intent;
- 2) the child's bodily presence in the home;
- 3) whether there exists a second place of lodging, a second address, and if so, the relative permanence or transient nature thereof;
- 4) the child's relationship with the parents'
- 5) whether the child has a key to the home, his or her own room, and personal belongings there;
- 6) whether the child is self-supporting;
- 7) whether a new residence has been established;
- 8) where one votes, gets mail, pays taxes, registers vehicles, banks, and has permanent ties, and
- 9) the length of time the child has actually resided in the home; the permanency of the living arrangements."

The court in Friedman cites an annotation which states:

"Focusing upon such matters as the temporary nature of military assignments, the lack of control which a member of the Armed Forces has over the location at which he is stationed, and the physical presence of the named insured's child under the same roof as the named insured prior to such child's entry into the Armed Forces, the courts under the circumstances of each of the following cases held that despite the fact that on the date of the occurrence giving rise to the lawsuit the child was living apart from the named insured while serving in the Armed Forces, the child qualified at the time of the particular occurrence as a 'resident' of the named insured's 'household,' within

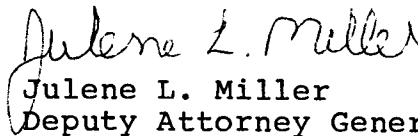
the meaning of liability policy language
defining additional insureds."

In Knuth v. Kansas Compensation Board, 137 Kan. 392, 394 (1933), the court states that "it is elementary that [a military man] neither gained nor lost his domicile by reason of service in the United States army." The fact that military personnel are stationed in Kansas does not, in and of itself, make those personnel residents of the state. Each case must be determined on its own facts taking many things into consideration in an attempt to determine "the place to which the person has the intention of returning."

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
Deputy Attorney General

RTS:JLM:jm