

The commission shall have the power, after hearing, to issue or refuse such certificate of public convenience, or to issue it for the construction only of the contemplated line, plant or systems, or extension thereof, *and may attach thereto such terms and conditions* as, in its judgment, the public convenience and necessity may require. (Italics supplied.)

We are therefore of the opinion that terms and conditions may be attached in the certificate if issued, and that the fact that it could not issue as to telephone answering service, will not prevent it from issuing as to the radio paging service.

Finally, does the fact that this radio paging service is owned by an individual, rather than a corporation, preclude and prevent it from being classified as a public utility, and thus prevent the issuance of the certificate of public convenience and necessity? We are of the opinion that it does not, for as defined in NRS 704.020, the term "public utility" embraces private or sole ownership. In part this section provides as follows:

1. As used in this chapter, "public utility" shall mean and embrace:
  - (d) Radio or broadcasting instrumentalities and airship common carriers.
3. The provisions of this chapter and the term "public utility" shall apply to:
  - (a) The transportation of passengers and property and the transmission or receipt of messages, intelligence or entertainment, between points within the state.

NRS 704.020 1.(a) mentions a number of legal entities, including "individuals," indicating that a business may be classified as a public utility, even though individually owned.

For the reasons heretofore given, and no other objections occurring to us, which would cast any doubt upon the authority to issue the certificate, we are clearly of the opinion that the certificate should issue, to the individual applicant, doing business as aforesaid, and for the limited purpose, and within the limited scope heretofore mentioned.

Respectfully submitted,  
ROGER D. FOLEY, *Attorney General*  
By: D.W. PRIEST, *Chief Deputy Attorney General*

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**OPINION NO. 1959-84 University of Nevada—Registrar's Office. Effect of employment in military and civil service of United States upon residence, as required for admission to University of Nevada, construed. Burden of proof as to such residence found to be insufficient, on the basis of facts submitted.**

CARSON CITY, August 10, 1959

MR. C.E. BYRD, *Registrar, University of Nevada, Reno, Nevada*

STATEMENT OF FACTS

DEAR MR. BYRD: You have requested our opinion and advice as regards residence requirements for admission to the University of Nevada, specific reference being made to the nature and extend of proof thereof, as affected by employment in the military or civil service of the United States.

On the basis of the documents submitted to us, it appears that an applicant for admission to the University has, himself, never resided in Nevada. Applicant therefore

seeks to qualify, and secure the benefit of authorized allowance in tuition charges, as provided by law to bona fide residents of the State of Nevada (NRS 396.540), on the basis of his father's claimed residence in this state.

Applicant's father submits the following statements in the foregoing connection: That he established residence in Reno, Nevada, in 1927, remaining in Nevada until 1935, at which time he entered upon United States military service; that he declared and maintained Nevada as his legal residence, paying poll taxes, voting therein, and refraining from establishment of residence elsewhere, until his retirement from said military service on October 1, 1956, because of physical disability. Further, that he was immediately employed in the civil service of the United States, which employment presently requires maintenance of offices, and performance of duties, both in the State of Michigan and in Washington, D.C., with presumed residence in both such localities, at least for an indefinite future period, since he is subject to transfer anywhere in the United States at any time. Finally, it is claimed that legal residence has not been established, either in Michigan, or anywhere else.

Information secured from other sources indicates no registration in Nevada for voting purposes, since 1953, on the part of applicant's father.

#### QUESTIONS

1. What constitutes "bona fide" residence for purposes of admission to the University of Nevada, as contained in NRS 396.540?
2. How does absence from the state because of employment in the military or civil service of the United States affect "bona fide" residence, as prescribed for admission to the University of Reno?
3. Has applicant submitted sufficient and satisfactory evidence of "bona fide residence," as prescribed by NRS 396.540, to entitle him to admission to the University of Nevada, as a resident of this state?

#### CONCLUSIONS

Question No. 1: The actual establishment or taking up of a place of abode by a person, with intention of there remaining permanently or for an indefinite time, then and there not expressly determined, is deemed to constitute "bona fide residence." (A.G.O. 858, January 27, 1950; A.G.O. 321, October 23, 1928; A.G.O. 9 to University of Nevada, February 18, 1959.) Presumptively, at least six months residence, prior to matriculation, is required. (See NRS 396.540, subsection 1(b).)

Question No. 2: "No person shall be deemed to have gained or lost a residence:

1. By reason of his presence or absence while employed in the military, naval or civil service of the United States or of the State of Nevada \* \* \*" (NRS 292.080: While this statutory provision is specifically applicable to the right of suffrage, it is, undoubtedly, equally valid for other purposes.)

Question No. 3: No.

#### ANALYSIS

It is believed that the conclusions and references hereinbefore set forth suffice as regards our opinion and advice in questions Nos. 1 and 2. Some amplification would appear to be necessary, however, as regards the conclusion stated for question No. 3.

Preliminarily, it should be noted that "residence" is variously defined by law for different purposes. Thus:

NRS 292.080 Legal residence; right of suffrage. The legal residence of a person with reference to his right of suffrage is that place where he shall

have been actually, physically and corporeally present within the state or county, as the case may be, during all of the period for which residence is claimed by him. Should any person absent himself from the jurisdiction of his residence with the intention in good faith to return without delay and continue his residence, the time of such absence shall not be considered in determining the fact of such residence. (See also NRS 10.101 Legal residence; NRS 281.050 Legal residence: Eligibility to office.)

NRS 292.090 (as here pertinent) has been quoted above in our conclusion, as regards the effect of employment in the military or civil service of the United States or of the State of Nevada on such right of suffrage.

As defined in connection with Property Taxes, "resident" or "bona fide resident" means any person who has established a residence in the State of Nevada, and has actually resided in this state for at least 6 months. (NRS 361.015, 360.040.)

For Poll Tax purposes, any person shall be deemed to be a resident of this state who shall reside in this state or who shall be employed therein upon any public or private works for a period exceeding 10 days. (NRS 363.010.)

We are of the opinion that "bona fide residence," as prescribed for admission to the University of Nevada, requires at least six months residence prior to matriculation. (See NRS 396.540, subsection 1(b).)

We also believe that it is proper and necessary to evaluate the facts, as herein submitted and above stated, in the light of the *intention* of applicant's father, as regards his, the father's residence, and the effect of his employment in the military and civil service of the United States in connection with same. (Italics supplied.)

In this regard, there are certain general legal presumptions which become relevant. One such presumption is:

If a person having a fixed and permanent home in this state break up such home and remove to another state, territory or foreign country, the intent to abandon his residence in this state shall be presumed, and the burden shall be upon him to prove the contrary. (NRS 292.120, subsection 1.)

Applied to the factual situation here presented, we next consider specifically, whether such burden has been satisfactorily sustained. While employment in the military and civil service of the United States on the part of applicant's father would, as we have already noted, operate so as to effect no gain or loss of residence, the long period of time involved (1935-1959), lack of more definite information as to the period of time that intervened between retirement from military service and employment in the civil service of the United States, and the further absence of any evidence that applicant's father affirmatively took any action indicating an intention to preserve legal residence in Nevada, substantially indicate an intention to abandon such Nevada residence. In this connection, the alleged established failure on his part to register for voting purposes since at least 1953 must be deemed significant and determinative, in the absence of other proof to the contrary.

In our considered opinion, therefore, the burden imposed by the legal presumption to prove that there was no intention on the part of applicant's father to abandon his Nevada residence, has not been sufficiently or satisfactorily sustained on the basis of the facts presented herein.

Consequently, since, admittedly, applicant himself cannot establish Nevada residence, and proof of such residence through his father is also insufficient, we conclude that any admission of applicant to the University of Nevada, as a resident of this state, would be unwarranted and unauthorized.