

**OPINION**  
**65-257**

April 21, 1965 (OPINION)

Mr. Kenneth E. Raschke, Commissioner

Higher Education

RE: Schools - Higher Education - Non-Resident Tuition

This is in reply to your letter of April 13, 1965, in which you enclose a letter from Mr. E. W. Olson, Business Manager, University of North Dakota, Grand Forks, North Dakota, dated April 5, 1965 relative to House Bill 543.

House Bill 543 amends and reenacts Section 15-10-19 of the North Dakota Century Code, as amended, governing the definition of a non-resident student at the institutions under the control of the Board of Higher Education insofar as tuition purposes are concerned.

As Mr. Olson has noted in his letter, the Bill makes several changes in the existing law. These changes will become effective July 1, 1965, in the absence of any referendum or intervening legislative action.

The present law provides:

"NONRESIDENT STUDENT FOR TUITION PURPOSES DEFINED - EXCEPTIONS.  
- a nonresident student is defined as follows:

- "1. A student less than twenty-one years of age whose family resides in another state, a territory, or a foreign country, or whose family has resided within this state for a period of less than twelve months immediately prior to the date of his registration;
- "2. A student of the age of twenty-one years or over who resides outside of this state; or
- "3. A student of the age of twenty-one years or over who has moved into and become a resident of this state within a period of twelve months immediately prior to the date of registration.

"Dependents of instructors who live in this state and teach in any institution of higher learning in this state are excluded from the foregoing provisions, and shall be regarded as residents of this state for purposes of tuition, whether such dependents are over or under twenty-one years of age."

Section 15-10-19, as amended by House Bill 543, enacted by the recent Legislative Assembly, provides:

"NONRESIDENT STUDENT FOR TUITION PURPOSES DEFINED - EXCEPTIONS.

A nonresident student is defined as follows:

- "1. A student less than twenty-one years of age whose parents, custodial parent or guardian resides in another state, a territory, or a foreign country, or whose parents, custodial parent or guardian has resided within this state for a period of less than twelve months immediately prior to the date of his registration;
- "2. A student of the age of twenty-one years or over who resides outside of this state; or
- "3. A student of the age of twenty-one or over who has moved into and become a resident of this state within a period of twelve months immediately prior to the date of registration, and after reaching the age of twenty-one.

"Military personnel assigned to a military installation in this state and their dependents, dependents of instructors who live in this state and teach in any institution of higher learning in this state and the spouse of a resident of this state, are excluded from the foregoing provisions, and shall be regarded as residents of this state for purposes of tuition, whether such dependents are over or under twenty-one years of age."

Mr. Olson's first question is concerned with the substitution of the words "parents, custodial parent or guardian" for the word "family" in Subsection 1 of Section 15-10-19. As Mr. Olson has noted, the word "family" created some difficulties with regard to married persons since a question arises as to whether the "family" of a married person continues to be his parents or whether the "family" is the wife and/or children of such person. By the amendment the 1965 Legislative Assembly removed any question as to this matter. If the student is under twenty-one years of age and if his parent, custodial parent or guardian reside outside of the state, such person is a nonresident student for tuition purposes regardless of whether he is married and, if so, whether his wife and/or children live in this state or outside of this state. Mr. Olson's conclusion "that a student under twenty-one years of age, whether married or unmarried, cannot qualify on a resident fee basis if his "parents, custodial parent or guardian' reside in another state, territory or foreign country is correct." The only exception to this conclusion would be if the student's spouse was a resident of this state as provided in the last paragraph of the section as amended by House Bill 543.

Mr. Olson's second question is concerned with Subsection 3 of Section 15-10-19 as amended by House Bill 543. Under the existing statute, a student of the age of twenty-one years or over who has moved into and become a resident of this state less than twelve months immediately prior to the date of his registration is considered as a nonresident student. The implication of this provision is, of course, that a student over twenty-one years of age who has resided within this state for a period of twelve months or more prior to the date of his registration is considered as a resident student for tuition purposes. The difficulty with this provision arose with regard to the student who had been attending school in this state prior to his 21st birthday but, because his family lived outside of the state, was

classified as a nonresident for tuition purposes. Since, under the statute, the person could not acquire residence for tuition purposes in North Dakota until he was 21, (Subsection 1) there was considerable question whether such student could, on his 21st birthday, qualify for resident status for tuition purposes since Subsection 3 requires the student to have moved into the state "and become a resident" thereof at least twelve months prior to the date of registration. It was therefore felt that the student must have resided in the state twelve months after becoming twenty-one and prior to the date of registration in order to gain status as a resident for tuition purposes.

The new provision in House Bill 543 defining a nonresident student as a person of the age of twenty-one years or over who has moved into and become a resident of this state within a period of twelve months immediately prior to the date of registration, and after reaching the age of twenty-one, does, as Mr. Olson has noted, in effect require such student to have reached the age of 22 before becoming eligible as a resident for tuition purposes. Again, the only exception to this requirement is the student whose spouse is a resident of this state.

Mr. Olson also raises a question with regard to the provision exempting "dependents of instructors who live in this state and teach in any institution of higher learning in this state" from the definitions of nonresident students for tuition purposes and providing that such persons "shall be regarded as residents of this state for purposes of tuition, whether such dependents are over or under twenty-one years of age." As Mr. Olson has noted, this provision is found in the existing statute and also in House Bill 543. Mr. Olson's question is: "Is the word 'instructors' used synonymously with the term 'faculty'? Would the statute apply to assistant professors, associate professors, full professors, deans, etc.? Our Librarian, for instance, has faculty rank as do also our deans. They may or may not 'teach' during a given semester. Again, on occasion, an 'instructor' (faculty) may be employed exclusively in research under some grant. Would the dependents of such an individual, who may not actually 'teach', be exempt from the nonresident fee?"

"Also it is noted that the terminology 'dependents of instructors' is used. Does this imply that the husband and/or wife and children of an 'instructor' is exempt from the nonresident fee but the 'instructor' himself, or herself, would have to pay the nonresident fee?"

While the term "instructor" is used in the statute, we believe it is broad enough to include, and believe it was the Legislature's intent to include, all dependents of faculty members whether, in fact, such faculty members teach, are involved in administrative functions or do research work. However, the statute does use the term "dependents of instructors" and it would appear that the "instructor" himself would not be exempt from the payment of nonresident tuition fees if such "instructor" also enrolls as a student in one of the colleges or universities. This is particularly true when it is compared with the exemption provision relative to military personnel which was inserted by the 1965 Legislature. This provision expressly exempts "military

personnel assigned to a military installation in this state and their dependents." Had the Legislature intended to exempt instructors as well as their dependents from the payment of nonresident tuition fees, it appears they would have used the terminology "instructors and dependents of instructors" or something similar. Since the Legislature did not include instructors within the exemption provision, we can only conclude they did not intend the exemption provision to extend to the faculty personnel, but only to dependents thereof.

Mr. Olson also questions the provision adopted by the 1965 Legislature relative to the exemption of a "spouse of a resident of this state." This has been referred to in the comments to some of the previous questions presented. Mr. Olson states: "Heretofore it has been uniformly held that a nonresident student who marries a North Dakota resident does not immediately assume the resident status of the spouse but must, under the statute, fulfill the 12-month resident law. If I understand the statute correctly, it now means that the spouse of a resident student, immediately upon marriage, would automatically attain resident status for fee purposes. On occasion we find a situation where a North Dakota resident marries a foreign student who is here on a student visa and therefore cannot normally gain residence for fee purposes. This is particularly true with our Canadian friends. Would a foreign student who is here on a student visa and is neither a 'citizen' or a 'national' automatically attain resident status for fee purposes immediately upon marrying a resident of North Dakota?"

We must answer Mr. Olson's question in the affirmative since the statute, as amended by House Bill 543, clearly provides that "the spouse of a resident of this state" is excluded from the definitions of nonresident students for tuition purposes and "shall be regarded as residents of this state for purposes of tuition,". In reality, the status of the person as a citizen or alien of the United States would appear to have little importance since the statute only purports to define nonresident students for tuition purposes. The statute has no effect on the actual status of such person as a resident of this state for other purposes.

While this opinion is lengthy, we believe the points raised in Mr. Olson's letter require an extensive discussion relative to the interpretation of the law for future questions which might arise. We trust the discussion will adequately set forth our position on the matters presented.

HELGI JOHANNESON

Attorney General