

**OPINION**  
**68-137**

February 15, 1968            (OPINION)

Colonel Ralph M. Wood, Superintendent

Highway Patrol

RE: Motor Vehicles - Registration - Nonresidents

You have requested this office's opinion on the registration of a motor vehicle under the following factual situation.

The vehicle is owned by a citizen of the Philippines who is serving on active duty with the U.S. Air Force at the Minot Air Force Base. The motor vehicle which is owned by the Philippine citizen is licensed in the Philippine Islands.

Section 39-04-18 of the N.D.C.C. provides generally for the exemption of motor vehicles from the registration fees. After stating the exemption, subsection 1 more specifically provides:

"Passenger motor vehicles owned and operated by nonresident military personnel stationed in this state, provided such motor vehicle is registered in the state or territory whereof such military person is a resident and provided further that current license plates from such state or territory are displayed on such motor vehicles.

Apparently, there is no question in the present request that the owner of the motor vehicle is a nonresident. The question is whether or not he is a nonresident within the purview of the language set forth in the exemption. The exemption requires that the nonresident have a residence in a state or territory and further that the vehicle must display current license plates from that state or territory.

Subsection 60 of section 39-01-01 of the N.D.C.C. defines the word state. Therein it is provided:

"'State' shall mean a state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico or a province of the Dominion of Canada;"

It would appear therefore that the exemption provided for nonresident military personnel is applicable only to citizens of a state or territory as heretofore defined.

While it is apparent that an alien would not qualify for the exemption under the North Dakota statutes, the North Dakota law would not be conclusive with respect to any determination made on the question raised. The Soldiers & Sailors Civil Relief Act of 1940, 50 U.S.C. Appendix provides for the exemption of certain military personnel from various civil liabilities.

The question then becomes whether or not a Philippine citizen is entitled to the benefits of the Soldiers & Sailors Civil Relief Act.

Section 510 of that Act provides:

"Purpose suspension of enforcement of civil liabilities. In order to provide for, strengthen and expedite the national defense under the urgent conditions \* \* \* provision is made to suspend enforcement of civil liabilities, in certain cases, of persons in the military service of the United States in order to enable such persons to devote their entire energy to the defense needs of the nation. \* \* \*

Subsection 2 of section 574 provides:

"When used in this section (a) the term 'tangible personal property' shall include tangible and intangible property (including motor vehicles) and (b) the term 'taxation' shall include but not be limited to license, fees or excises imposed in respect to motor vehicles for the use thereof; provided, that the license, fee, or excise required by the state, territory, possession or District of Columbia of which the person is a resident or in which he is domiciled has been paid."

From your letter it is apparent that this vehicle has never been registered in any other state, territory, possession, or the District of Columbia. It is further apparent that the owner of the motor vehicle is not a resident of nor is he domiciled in one of the enumerated political subdivisions.

In the case of Patrikes v. J.C.H. Service Stations, 41 N.Y Supp. 2d. 158, 168 the following observation was made relative to the application of the Soldiers & Sailors Civil Relief Act. The court said:

"\* \* \* Had Congress intended to abrogate a lease in toto so as to end the liability of joint obligators thereon, it must be inferred that it would have so declared in express terms. In this aspect therefore, the maxim, expressio unius exclusio alterius, supplies the controlling rule, so as to exclude from the benefits of the act all persons other than the class therein stated."

While the owner in this instance is in the military service, he does not qualify for an exemption of the registration fees by virtue of his lack of a domicile or residency in another state, territory, possession, or the District of Columbia. Therefore, it is the opinion of this office that the motor vehicle in question would be subject to the registration laws of this state. The type of registration, being a matter for administrative determination is not considered in this opinion.

HELGI JOHANNESON

Attorney General