

**OPINION  
72-579**

August 4, 1972 (OPINION)

Mr. Byron L. Dorgan  
Tax Commissioner  
State Tax Department  
State Capitol  
Bismarck, ND 58501

Dear Mr. Dorgan:

This is in response to your letter in which you make reference to the increased mobility of society and the reduction of durational residency requirements for voting, together with the recent reapportionment order which also recognizes military installations in determining the population for representation in the State Legislature.

You further advise that you have been receiving inquiries from residents of the military installations which express concern that if they cast their ballot in North Dakota, they subject themselves to all other residency provisions including becoming a permanent resident for tax purposes. Specific concern is with reference to driver's license, car license, income tax, Viet Nam bonus, motor vehicle tax, etc.

You then specifically ask for an opinion outlining those obligations that a serviceman may face in exercising his right to vote as a resident of North Dakota.

The tenor of your letter seems to suggest that an individual, by exercising the elective franchise, may subject himself to the payment of certain taxes, he might not be required to pay if he had not voted. If this is the thought your letter intended to convey, it is erroneous and has no support in law.

Even though the slogan "no taxation without representation" has been used and repeated for numerous purposes, there is legally no direct correlation between the two. We would suspect if the law were that if a person did not vote, he would not be taxed, very few people would ever vote.

The only tax which had a direct relation to the exercise of the elective franchise was the poll tax which has been declared invalid and unconstitutional. (We recognize that in bond issues, excess levies, or in special levies, the imposition of the tax first requires a favorable vote, but even here it is not the voting which imposes the tax, but rather the aggregate result of the vote which imposes the tax.

We recognize that residence may be a factor in determining whether or not a person is subject to or liable for the payment of a certain tax, but in such instances, the critical criteria is residence, and not the exercise of the elective franchise.

To be eligible to vote on state and local matters, a person must first be a resident. By voting, such person clearly acknowledges that he is a resident (we also recognize it is possible for a person to violate the law by voting if he is not a resident). However, we must advise that residence is not established by voting. In sequence, residence is established before voting may be legally accomplished.

There is further distinction between ordinary residence and durational residence for voting purposes. The former is acquired by intent coupled with an overt act. (See Section 54-01-26 which sets forth rules in determining residence). The latter, in addition to ordinary residence, requires a durational residence of thirty days immediately preceding the election on state and local matters. Even in voting for the president of the United States under the new laws, in which the durational residency requirements need not be met, the individual must be a resident of this state to be eligible to vote, except for absentee voting on a limited basis. Whether a person is or is not a resident is resolved by the laws and rules established to determine residency and not on the proposition whether he had or had not voted. We must, however, recognize that the person having voted may find it difficult to deny residency without exposing himself to jeopardy.

It therefore necessarily follows that if a person is a resident, whether he votes or not, he becomes subject to and is liable for those taxes which, among other things, use residence as a factor in determining liability.

Based on the foregoing views, observations and legal conclusions, we do not find it necessary to enumerate those taxes which take residency into account in determining liability. However, if you still deem it advisable to furnish such list, we would suggest that your office, which is charged with the administration of the tax laws and has personnel with expertise, prepare such list and make whatever distribution you deem is appropriate.

It is our assumption that the laws in most instances are clear with reference to the proposition whether or not residency is a factor in determining liability for the tax, but if there are any instances where the statutes need to be construed or interpreted, upon request setting forth the specific instance, we will provide you with an appropriate answer or opinion.

Sincerely yours,

HELGI JOHANNESON

Attorney General