

**OPINION
46-299**

March 25, 1946 (OPINION)

VETERANS

RE: Preference - Residence Qualifications

Re: Chapter 238, 1945 Session Laws

I acknowledge your letter of March 21, 1946, in which you seek the opinion of this office upon the portion of the above referred statute which reads as follows: "and shall have been a resident of the State of North Dakota at the time of his or her induction or enlistment in the armed forces and where a county, city or village appointment is involved the applicant shall have been a resident of such political subdivision for at least six months immediately preceding the appointment sought." The specific question involved is whether or not a veteran who was not a resident of the state of North Dakota at the time of his entry into service in World War I would have any benefits available under chapter 238 of the 1945 Session Laws.

It seems to us that reading the whole of section 1 of chapter 238 of the 1945 Session Laws the benefits and privileges available under the same are contingent upon whether the veteran or his widow or wife was a resident of the state of North Dakota at the time of entry into service. The right of a widow or wife, of course, would be based on the residence of the veteran. It seems to us that the pertinent language of the statute is this, "provided further, that to be eligible under the provisions of this Act the person applying shall be a citizen of the United States and shall have been a resident of the State of North Dakota at the time of his or her induction or enlistment in the armed forces * * *." This language seems to imply that the veteran must have been a resident of the state as that word is ordinarily understood. In other words, he must have been either a physical resident of the state of North Dakota, or if temporarily absent from the state, his legal residence must have been in the state of North Dakota. In still other words, North Dakota must have been his or her home and to which he or she came after being temporarily absent.

If the facts indicated that there was a loss of residence in the state by the veteran or those mentioned in the statute, then it would seem to us that such loss of residence would bar the veteran or others mentioned in the statute from any benefits or privileges available under chapter 238 of the 1945 Session Laws. As you realize, residence is sometimes a question of fact. We feel that to limit the residence to those physically in the state at the time of entry into the service would in effect bar many from the benefits of this statute who in fact were legal bona fide residents of the state of North Dakota although temporarily absent at the item of enlistment or induction into the service. It may become a question of fact whether the circumstances indicate a residence. The basis for a residence is different under different circumstances. We feel that when the word "resident" was used in this statute it was meant to

cover those who were in the state at the time of induction or enlistment and also those who made North Dakota their homes, and while they might have been temporarily absent this was their usual place of abode and to which they came when not temporarily employed outside of the state. In other words, North Dakota was their permanent home. Facts indicating that North Dakota had been abandoned as their home or residence would bar them from the benefits of the statute.

Although you did not raise the question in your letter to me, it is possible that a veteran, after induction or enlistment, may have lost his residence in this state. Should the occasion arise as to the intent and meaning of chapter 238 in a case of that kind, we will pass on it.

NELS G. JOHNSON

Attorney General