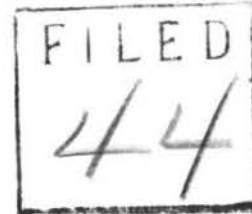


SCHOOL: Eligibility of applicants - Missouri School for
the Deaf.

September 2, 1937. 9/2



Honorable Truman L. Ingle
Superintendent
Missouri School for the Deaf
Fulton, Missouri

Dear Sir:

This will acknowledge receipt of your request
for an official opinion, which reads as follows:

"The writer of the enclosed letter
has given me considerable concern in
regard to the eligibility of his son
as a pupil here in the Missouri
School for the Deaf.

"The parents have actually been out
of the state for more than a year.
The father claims residence in
Missouri because of having register-
ed in St. Louis. My understanding
is that he must not only be regis-
tered but must have voted and lived
in the state, to be classed as a
legal citizen of the state of Missouri.

"I have just received this letter, and
had previous to its arrival planned
not to allow this boy to return. He
was in school last year with us.

"May I ask that you give me an opinion
as to whether or not I should readmit
the boy this year under the present
circumstances."

In addition to the above information you advised the writer over the telephone today that the parents of this student were residents of this State, having lived in St. Louis, Missouri, and have been out of the State for about one and one-half years; also, that the father registered in St. Louis, Missouri, last year, with full expectations of returning to St. Louis to live. This is further confirmed by the attached letter of the father, stating that he expects to sell out and return to St. Louis by the 6th of September, and purchase a hotel in St. Louis, Missouri.

Section 9696, R. S. Mo. 1929, reads in part:

"All blind and deaf persons under twenty-one (21) years of age, of suitable mental and physical capacity, who are residents of this state, shall be entitled to admission to the school for the blind and the school for the deaf, respectively. * * *"

The above provision requires the applicant for admittance to the School for the Deaf to be a resident of this State, amongst other prerequisites for admittance to said school.

Section 9696, supra, further provides:

"All admissions and discharges, and the length of the period of instruction of each pupil, shall be determined by the board of managers."

In defining "residence" the determining factor is the intention of the party and the facts connected with such party in the establishment of a residence.

In *Trigg v. Trigg*, 226 Mo. App. 284, l. c. 296, the court said:

"Residence involves a question of fact controlled mainly by intention."

In discussing the word "residence" in the case of *In re Ozias' Estate*, 29 S. W. (2d) 240, l. c. 243, the court

had the following to say:

"The ruling herein depends upon the proper construction of the word domicile. Our Supreme Court held in *Re Estate of Lankford*, 272 Mo. 1, 197 S. W. 147, that residence is largely a matter of intention, to be deduced from the acts of a person.

"Residence and domicile are used interchangeably, and in so far as they apply to the situation here presented are synonymous.

"Domicil. That place where a man has his true, fixed and permanent home and principal establishment, and to which whenever he is absent he has the intention of returning."

"Bouv. Law Dict., Vol. 1, page 915. Proof of domicile, or legal residence, does not depend upon any particular fact, but upon whether all the facts and circumstances taken together tend to establish the fact. Engaging in business and voting at a particular place are evidence of domicile there, though not conclusive. *Hayes v. Hayes*, 74 Ill. 312; *Inhabitants of East Livermore v. Inhabitants of Farmington*, 74 Me. 154. To constitute a change of domicile three things are essential: (1) Residence in another place; (2) an intention to abandon the old domicile, and (3) an intention of acquiring a new one. *Berry v. Wilcox*, 44 Neb. 82, 62 N. W. 249, 48 Am. St. Rep. 706. It has been held a wife's removal into another state for the benefit of her husband's health and a residence there for twelve years will not change the original domicile. *In re Reed's Will*, 48 Or. 500, 87 P. 763; *Ensor v. Graff*, 43 Md. 291.

"A person can have but one domicile, which, when once established, continues until he renounces it and takes up another in its stead. It is not lost by temporary absence. The question is one of fact which is often difficult to determine."

In view of the foregoing authorities and the fact this applicant was a student in your school last year and the parents of said student lived in the City of St. Louis, Missouri, until a year and a half ago, also that the father registered in St. Louis, Missouri, last year and further states that he now expects to return to St. Louis to establish himself in business, indicates that it was never his intention to discontinue his residence in this State.

Therefore, it is the opinion of this Department that if said applicant qualifies in all other respects he may also qualify under Section 9696, supra, as a resident of the State of Missouri.

Yours very truly,

AUBREY R. HAMMETT, Jr.,
Assistant Attorney-General

APPROVED:

J. E. TAYLOR
(Acting) Attorney-General

ARH:EG