

MOTOR VEHICLES: ) Evidence that a person maintains a home and family in this  
 ) state to which he returns on weekends, although he rents  
 DOMICILE: ) a room in a foreign state, carries a notarized statement  
 ) that he is a resident of such foreign state and registers  
 RESIDENCE: ) his truck in the foreign state, constitutes substantial  
 ) evidence from which the trier of fact could find that such  
 ) person was a resident of the State of Missouri; and that  
 ) the operation of his truck on the highways of this state  
 ) without having registered the same with the Director of  
 ) Revenue as provided in Section 301.020 would be a violation  
 ) of Section 301.020.

FILED  
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May 21, 1953

Colonel Hugh H. Waggoner  
 Superintendent  
 Missouri State Highway Patrol  
 Jefferson City, Missouri

Dear Colonel Waggoner:

We render herewith our opinion on your request of April 17, 1953, which request reads as follows:

"Because of an increase in the truck registration fees in this State we have found that some residents are moving to other states, particularly Alabama, and renting a room and paying the license in that State. The trucker frequently carries with him a notarized paper stating that he is a resident of Alabama, etc. These people maintain a home and family in the State of Missouri and usually return on week ends, and it is our opinion that they are not legal residents of a foreign State.

"We request your opinion as to what would constitute residence in the State of Missouri for the purpose of determining registration of such commercial vehicles, and whether or not these persons would be in violation if they operated these vehicles on the highways of the State of Missouri."

The questions involved are: (1) whether nonresident owners of trucks operated within Missouri are required to register them in Missouri, assuming the owner otherwise falls within the terms of Section 301.270, RSMo 1949, with regard to registration in state of residence, reciprocity and display of tags; and (2) whether a person situated as

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described in your request is a nonresident of Missouri for the purposes of this act.

In the course of the opinion reference will be made to Sections 1.020, 301.020 and 301.270, RSMo 1949, the pertinent parts of which read as follows:

Section 1.020, RSMo 1949:

"(9) 'Place of residence' means the place where the family of any person shall permanently reside in this state, and the place where any person having no family shall generally lodge;"

Section 301.020, RSMo 1949:

"Registration of motor vehicles.--Every owner of a motor vehicle or trailer, which shall be operated or driven upon the highways of this state, except as herein otherwise expressly provided, shall file, by mail or otherwise, in the office of the director of revenue, an application for registration on a blank to be furnished by the director of revenue for that purpose, \* \* \*"

Section 301.270, RSMo 1949:

"Registration of nonresidents--reciprocity. --A nonresident owner, except as otherwise herein provided, owning any motor vehicle which has been duly registered for the current year in the state, country or other place of which the owner is a resident and which at all times when operated in the state has displayed upon it the number plate or plates issued for such vehicle in the place of residence of such owner may operate or permit the operation of such vehicle within this state without registering such vehicle or paying any fee to this state, provided that the provisions of this section shall be operative as to a vehicle owned by a

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nonresident of this state only to the extent that under the laws of the state, country or other place of residence of such nonresident owner like exemptions are granted to vehicles registered under the laws of and owned by residents of this state."

The first question must be answered in the negative, nonresidents, assuming the other conditions of Section 301.270 are met, being specifically excepted from the operation of the act by the terms of Section 301.270.

As to the second question, "residence" is a question of fact to be determined by the trier of fact and not a question of law. It is dependent upon all the facts and circumstances in evidence and not upon any particular fact. In *Re Ozias Estate*, (Mo. App.), 29 S.W. (2d) 240, at 243. Many facts and circumstances other than those set out in your request might enter into determination of the question of residence -- but nothing else appearing, we believe that the facts and circumstances set out in your letter would constitute substantial evidence of residence in the State of Missouri from which the trier of fact could well find that the person so situated was a resident of this state, and hence, would not be relieved of the duty of registration in this state under Section 301.270, quoted above.

The concept of residence has been before the courts of Missouri in innumerable cases. We here set out excerpts from a few of those cases, which we believe to be pertinent to the problems presented in your request.

In *Greene v. Beckwith*, 38 Mo. 238, l.c. 239, the court said:

" \* \* \* A man's residence, like his domicil, or usual place of abode, means his home, to and from which he goes and returns, daily, weekly, or habitually, from his ordinary avocations and business, wherever carried on--*Chaine v. Wilson*, 1 Bosw. (N. Y.) 673. \* \* \*"

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In Re Ozias Estate, (Mo. App.), 29 S.W. (2d) 240,  
1.c. 243, the court said:

"\* \* \* 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.  
\* \* \*"

In Chariton County v. Moberly, 59 Mo. 238, 1.c. 242,  
the court said:

"\* \* \* If a married man has two places of residence at different times of the year, that will be deemed his domicile which he himself selects or describes or deems to be his home, or which appears to be the centre of his affairs, or where he votes or exercises the rights and duties of a citizen. (Sto, Con. Laws, § § 47, 6 and 8.)"

Proof of the maintenance of a home and family in Missouri to which the person returns on weekends is very persuasive that he is a resident of Missouri under the above-quoted Section 1.020 and the foregoing cases, and would constitute evidence from which the trier of fact could well find he was a resident of Missouri. The self-serving notarized statement is of little or no probative weight on the question of residence. The renting of a room in the foreign state, assuming he returns to it on occasion, and the registration of his truck in the foreign state, is evidence of domicile or residence in such other state but probably not of such weight as the evidence to the contrary.

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CONCLUSION

It is the opinion of this office that evidence that a person maintains a home and family in this state to which he returns on weekends, although he rents a room in a foreign state, carries a notarized statement that he is a resident of such foreign state, and registers his truck in the foreign state, constitutes substantial evidence from which the trier of fact could find that such person was a resident of the State of Missouri; and that the operation of his truck on the highways of this state without having registered the same with the Director of Revenue, as provided in Section 301.020, would be a violation of Section 301.020.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. W. Don Kennedy.

Yours very truly,

WDK/rh

JOHN M. DALTON  
Attorney General