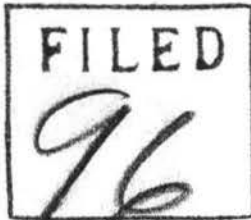


TAXATION:

Students at School of Mines are subject personal property tax assessment in Phelps County, only if they establish legal residence in that county.

February 10, 1953



Honorable Jay White  
Prosecuting Attorney  
Phelps County  
Rolla, Missouri

Dear Sir:

We have received your request for an opinion of this department, which request is as follows:

"The County Court of Phelps County has requested that I obtain an opinion as to whether students attending the School of Mines and Metalurgy here in Rolla will be subject to assessment for personal property tax for their personal property located here in Phelps County.

"In my experience, some of the students qualify as voters, while some others do not. Perhaps this would have some bearing on the question. I hope you can give me an opinion on this without too much trouble."

Section 137.075, RSMo 1949, provides:

"Every person owning or holding real property or tangible personal property on the first day of January including all such property purchased on that day, shall be liable for taxes thereon during the same calendar year."

Section 137.090, RSMo 1949, provides:

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"All tangible personal property of whatever nature and character situate in a county other than the one in which the owner resides shall be assessed in the county where the owner resides, except tangible personal property belonging to estates, which shall be assessed in the county in which the probate court has jurisdiction."

These statutes have been held to have fixed the situs of tangible personal property for the purpose of taxation at the domicil of the owner. State ex rel. Kelly v. Shepherd, 218 Mo. 656, 117 S.W. 1169; State ex rel. American Automobile Insurance Company v. Gehner, 320 Mo. 702, 8 S.W. (2d) 1057.

In State ex rel. Kelly v. Shepherd, the court discussed the meaning of residence, as used in the personal property tax statute, and stated (218 Mo. 1.c. 665):

"We have been cited to no statute embraced within the revenue laws of the State which attempts to define or fix the residence of any person for the purposes of taxation, and we have searched those laws in vain for such a statute, and consequently feel satisfied that no such exists. In the absence of any such statute, we must look to the common law and to other statutes in determining the meaning of the words 'residence' and 'domicile' as they are used by the Legislature in the revenue statutes.

"At common law, all of the authorities agree that those words are used interchangeably and have practically the same meaning. The latter seems to have been more generally used by the text-writers and in the adjudicated cases, but our statutes more frequently use the word 'residence.' The word

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'domicile' is defined by Mr. Burrill in the following words: 'A residence at a particular place accompanied with positive or presumptive proof of an intention to remain there for an unlimited time;' and Mr. Blackstone defines the word 'residence' to be 'the abode of a person or incumbent or his benefice--opposed to non-residence.'

"While this court has not attempted to give a technical definition of either of said words, yet it has in numerous cases used them in the sense before mentioned. (Citations omitted).

"In this State we have many statutes which employ the words 'resident,' 'citizen,' 'domicile', 'place of residence,' etc., which relate to exemptions, elections, officers, taxation, attachments, place of bringing suits, etc., but none of those statutes seem to have undertaken to define any of those words; and in all of the cases to which our attention has been called, the courts, in construing their meaning, have been controlled very largely by the intention of the person whose residence or domicile was in question. That was the sole controlling fact in the case of State ex rel. v. Renshaw, supra, which involves the question as to where his personal property should be taxed. The authorities are also uniform in holding that when a person has once acquired a residence or domicile, then such residence or domicile is not lost by reason of his temporary absence therefrom on pleasure or business. \* \* \*"

Section 1.020 (9), RSMo 1949, defines "place of residence" as used generally in our statutes, as follows:

"'Place of residence' means the place where the family of any person shall

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permanently reside in this state, and the place where any person having no family, shall generally lodge."

In the Shepherd case the court considered whether or not the definition in the latter part of this section (then Section 4160, RSMo 1899) was conclusive in determining the place of residence for purpose of personal property taxation. The facts of that case showed that the taxpayer, a single person without a family, resided on a farm outside of a school district, which was attempting to levy the tax. His parents lived within such school district and the taxpayer lodged there with his parents at night, because they were old and helpless and needed his care and attention. Every morning, however, he did return to his farm for the purpose of looking after it. The trial court expressly found (218 Mo. 1.c. 661):

"That at the time of the assessment of the taxes herein sued for and prior to that time defendant had never considered the home of his parents in Plattsburg as his home, but intended and considered his farm house as his home, where he occasionally took a meal with his tenant who occupied a portion of said farm house."

The Supreme Court held that the legislative definition was not conclusive and that it could "ascertain the prime meaning of the words 'residence' and 'domicile.'" (218 Mo. 1.c. 668). Thus, the court held in effect that a person is subject to personal property taxation where his "home" is.

That is in accord with the general concept of domicil. The Restatement of Conflict of Laws, states (Section 12, page 24):

" \* \* \* (W)hen a person has one home, and only one home, his domicil is the place where his home is."

Some cases have indicated that a domicil can be established only when there is no definite intention of leaving

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the present place of abode at some future time. Very few students at Rolla have any intention of remaining there after completing their education. However, everyone must have a domicile (Restatement of Conflict of Laws, Section II, page 23), and the law now recognizes that, although a person may intend to leave a dwelling place at some future date, he may, nevertheless, have his home there. Comment a, Section 18, Restatement Conflict of Laws, page 36, states:

"The intention to make a new home involves to a certain extent the idea of fixity. A person does not intend to make a place his home unless he has an intention to remain there for a time at least. If he intends to remain there permanently, it is easier to find that he intends to make his home there than if he intends to move away at some time in the future. If he does not intend to move at a definite time, it is easier to find that he has made his home there than if he intends to move at a definite time. It is possible, however, for a person to make his home in a place even though he does intend to move at a definite time; although the more distant that time is the easier it is to find that he has an intention to make his home there."

In the case of Klutts v. Jones, 21 New Mexico, 720, 158 Pac. 490, the question of residence for the purpose of voting was involved and, in the course of its opinion, the court stated (158 Pac. 1.c. 491):

"Appellant argues that, because the witness testified that she did not intend to remain in Taiban should she find a situation in some other place that suited her better, or should she fail to secure employment in the schools at that place, she was not a resident of such voting precinct within the meaning of the Constitution. This is the extreme

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view, which finds some support in the earlier cases. In the case of *Berry v. Wilcox*, 44 Neb. 82, 62 N. W. 249, 48 Am. St. Rep. 706, the court says:

"The older cases and some of the modern ones require as an essential element the *animus manendi*, and construe this term as meaning an intention of always remaining.'

"In this case, the question was as to whether or not a student at an institution of learning was a resident of the town in which such institution was located, and entitled to vote at elections held there. The opinion is so instructive upon the point here raised that we quote at length therefrom:

"That what place is any one's domicile is a question of fact; that if a student have a father living; if he remain a member of his father's family; if he return to pass his vacations; if he be maintained by his father--these are strong circumstances repelling a presumption of a change of domicile. But if he be separated from his father's family, not maintained by him; if he remove to a college town and take up his abode there without intending to return to his former domicile--these are circumstances more or less conclusive to show the acquisition of a domicile in the town where the college is situated. The same view was taken in *Sanders v. Getchell*, 76 Me. 158, 49 Am. Rep. 606. The Supreme Court of Ohio, quoting Story's definition of "Domicile", adds: "It is not, however, necessary that he should intend to remain there for all time. If he lives in a place with the intention of remaining for an indefinite period of time as a place of fixed present domicile, and not as a place of temporary establishment, or for more transient purposes, it is, to all intents and for all purposes, his residence." *Sturgeon v. Korte*, 34 Ohio St. 525.

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"In Dale v. Irwin, 78 Ill. 170, the court said: "What is 'a permanent abode'? Must it be held to be an abode which the party does not intend to abandon at any future time? This, it seems to us, would be a definition too stringent for a country whose people and characteristics are ever on the change. No man in active life in this state can say, wherever he may be placed, This is and ever shall be my permanent abode. It would be safe to say a permanent abode, in the sense of the statute, means nothing more than a domicile, a home, which the party is at liberty to leave, as interest or whim may dictate, but without any present intention to change it.

"These authorities, we think, present the law in its true aspect. The fact that one is a student in a university does not of itself entitle him to vote where the university is situated, nor does it prevent his voting there. He resides where he has his established home, the place where he is habitually present, and to which, when he departs, he intends to return. The fact that he may, at a future time, intend to remove will not necessarily defeat his residence before he actually does remove. It is not necessary that he should have the intention of always remaining, but there must coexist the fact and the intention of making it his present abiding place, and there must be no intention of presently removing."

The court further stated (158 Pac. 1.c. 492):

"The question of whether a person is a resident of one place or another is largely a question of intention, and, where the intention and the acts of the party are in accord with the fact of residence in a given place, there can be no doubt of the fact that such a party is a bona fide resident of the

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place where he intends to and does reside, and that he has the right to exercise all the rights and privileges accorded actual residents of such place, provided he comes within the provisions of the law regulating such rights."

The authorities cited in the Klutts case may appear to conflict with the decision of the Kansas City Court of Appeals in the case of Goben v. Murrell, 195 Mo. App. 104, in which it was held that students attending the American School of Osteopathy at Kirksville had not fulfilled the requirement of residence necessary to qualify them as voters there. That case, however, had been submitted to the court on an agreed statement of fact, which included the following (195 Mo. App. l.c. 106):

"\* \* \* It is further agreed that at the election held on the 4th day of April, 1916, there were cast and counted for the contestee more than two hundred votes cast by persons who came to the city of Kirksville from their respective homes and places of residence outside of the city of Kirksville and Adair county, Missouri, and were, before and at the time of leaving their said homes and places of residence to come to Kirksville, residents of the places from whence they came. That said persons came to Kirksville for the sole purpose of becoming students at the American School of Osteopathy, an institution of learning located at said city, with the intention of remaining in said school three years and of then locating at places elsewhere for the practice of osteopathy. And that they did so become students in said school and were such students at the time of said election and time of voting, and had been such students in said school for one year next before said election, and that each of said persons voted in the respective wards in which they lodged during said time. And that said persons have never altered their intentions of leaving the city of Kirksville as soon as their course of study at said school shall have been completed. \* \* \*"



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There was nothing in this statement to show that any of the students had evidenced any intention to make Kirksville their home. As the court pointed out (195 Mo. App. l.c. 109):

"Under our election law a student neither loses his old residence nor gains a new one during his absence from the former, or presence at the latter. It is true that this law does not preclude his becoming a resident and voter at the school town or city, but his intention must be evidenced by something more than his mere physical stay in the place. He must intend to make it his home--not that he shall remain for life--but his home indefinitely. And so if he comes into the place for the temporary purpose of getting an education and then to leave for other parts, he has not such a residence as entitled him to vote." (Emphasis ours)

From the foregoing it can be seen that no hard and fast rule can be laid down, which would cover every situation which might arise under your question. However, certain situations might be pointed out. Insofar as unemancipated minors who are students are concerned, their domicile is fixed by law as that of their parents. 17 American Jurisprudence, Domicil, Section 57, page 625. Thus, they would not be taxable in Phelps County unless their parents were domiciled there. A single student over the age of twenty-one, who attends school there, residing at a dormitory or boarding house, and remaining in Rolla only during the school year, and returning to his parents' residence during vacation, and having no intention of remaining in Rolla after having completed his education would not be considered, by reason of his presence there to attend school, to have established a residence in Phelps County for the purpose of taxation. Restatement of Conflict of Laws, Section 18, page 37, Section 22, page 46. On the other hand, a student who has married, and definitely left his family home and taken a house in Phelps County to live there with his family until he graduates, should be considered to have established his residence there for the purpose of taxation. Restatement of Conflict of Laws, Section 22, page 46.

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Cases which lie between these two extremes must depend largely upon the intention of the persons involved. A previous domicile is presumed to have continued it until it is shown to have changed. 17 American Jurisprudence, Domicil, Section 81, page 637. Intention to change domicile may be shown by declarations of the party, (Id. Section 88, page 641), and by acts and conduct indicating an intention to change domicile. (Id. Section 89, page 641). Acts and conduct tending to throw light on the subject include " \* \* \* identification with regard to social and business life of a place; his membership in lodges and clubs; his church activities; \* \* \*". (Id. Section 89, page 642).

The exercise of political rights is a fact and circumstance which may be considered. However, the fact that a student has exercised his right to vote in Phelps County does not conclusively establish that place as his residence for the purpose of taxation. State ex rel. Dowell v. Renshaw, 166 Mo. 682, 66 S.W. 953, Annotation, 107 A.L.R. 448.

Another problem must be considered insofar as students who are not residents of Missouri are concerned. Section 137.090, RSMo 1949, quoted above, merely provides the place where property of a Missouri resident having personal property in more than one county in the state should be assessed. In the case of City of St. Louis v. Wiggins Ferry Company, 40 Mo. 580, the court held that personal property of a non-resident which had acquired a situs in Missouri was subject to taxation here.

The principle behind this and similar cases is stated at 110 A.L.R. 715, as follows:

"The maxima 'mobilia sequuntur personam' has never been allowed to stand in the way of the power of a state to tax property having an actual permanent situs within its jurisdiction; and it has always been held, assumed, or conceded that tangible personal property having an actual situs in a state, is there taxable, regardless of the foreign domicile of its owner, the theory being that inasmuch as the property enjoys the protection of the state, it must be made to contribute to its maintenance. \* \* \*"

\* \* \* \* \*

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"The courts are all agreed that before tangible personal property may be taxed in a state other than its owner's domicil, it must acquire there a location more or less permanent. It is difficult to define the idea of permanency that this rule connotes. It is clear that 'permanency,' as used in this connection, does not convey the idea of the characteristics of the permanency of real estate. It merely involves the concept of being associated with the general mass of property in the state as contrasted with a transient status--viz., likelihood of being in one state today and in another tomorrow."

The cases in which this question has arisen, so far as we have been able to determine, have involved personal property used in business in a state other than that of the domicil of the owner. However, there would appear to be no reason for not applying the rule to personal property not used in business owned by a non-resident of Missouri, which has become permanently located in this state. As stated, exact definition of the degree of permanency required is impossible. Each case must depend upon its particular facts.

#### CONCLUSION

Therefore, it is the opinion of this department that personal property belonging to students at the Missouri School of Mines is subject to assessment in Phelps County only if the owner thereof is a resident of said county. Whether or not a person not otherwise a resident of Phelps County becomes such by reason of his attendance at the School of Mines, depends principally upon whether or not such student intends to make his place of abode there his home during the time that he is in school. Unemancipated minors, in no event, acquire residence there by reason of their attendance, as their domicil remains that of their parents. Personal property belonging to students, who are in no event residents of Missouri, may become taxable in Phelps County if its location there is of such a permanent nature as to give it a situs there.

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This opinion, which I hereby approve, was prepared  
by my Assistant, Mr. Robert R. Welborn.

Yours very truly,

JOHN M. DALTON  
Attorney General

RRW:lw