

Residents—University of Montana—Students—Non-Residents—Fees.

Under the circumstances mentioned in opinion person mentioned is a resident of Montana and not required to pay non-resident tuition fees for attending the University of Montana.

Mr. Melvin A. Brannon,

February 10, 1931.

Chancellor of the University of Montana,
Helena, Montana.

My dear Chancellor Brannon:

You have submitted a copy of petition made by Miss Dorothy Lewis of Missoula, which asks that she be permitted to attend the university without the payment of non-resident student fees.

It appears from this petition that Miss Lewis came to Missoula in November, 1929, for the purpose of giving music lessons and opened up a studio for that purpose. Two months later she found that most of her students were in school at the university and did not come to the studio for lessons until after 3:00 o'clock P. M. and she therefore determined to enroll in classes at the university herself as she could pursue these studies and still carry on her teaching of music at her studio and that she does continue giving music lessons to pupils who number now about forty. Miss Lewis is 23 years of age and a citizen of the United States. She also registered as a voter in Missoula county and claims Missoula as her residence and she earns her livelihood in the manner aforesaid.

At the time Miss Lewis entered the university during the first part of the year 1930 she had not at that time been a resident of the state for one year next preceding her admission to the university and she was charged tuition, which was proper under the provisions of section 866 of the Revised Codes of Montana, 1921. She now claims that inasmuch as she has been a resident of Montana for more than one year she should be permitted to continue her studies at the university without the payment of non-resident tuition fees. You inquire if her contention is correct.

Said section 866 reads as follows:

"Tuition shall ever be free to all students who shall have been residents of the state for one year next preceding their admission, except in the law and medical departments, and for extra studies. The state board of education may prescribe rates for tuition for any student in the law or medical departments, or who shall not have been a resident aforesaid, and for teaching such studies."

In my opinion, the word "admission" appearing in the above section does not mean merely the first application by the student to attend the university and its acceptance by the officers of the institution. As I understand the practice, students register for each quarter school year so that the original admission would be but for the first quarter and there would be a readmission every succeeding quarter, if the student

continued to prosecute studies at the university. Therefore, the question of whether any student had been a resident of Montana for at least one year prior to his admission would be determined at each date of quarterly registration.

In this case, Miss Lewis at the time of her original registration or admission had not been a resident of the state for one year next preceding that event and the same was true as to her subsequent registrations until one year of residence had elapsed prior to a subsequent registration. At any subsequent registration when she could show that she had been a resident of Montana for one year or more next preceding such subsequent registration she would no longer be required to pay tuition as a non-resident.

I am informed that some contention has been made that Miss Lewis could not gain a residence in Montana while she was attending the university as a student because of the provisions of section 3 of article IX of the constitution of the state of Montana which provides that for the purpose of voting no person shall be deemed to have gained or lost a residence by reason of his presence or absence while a student at any institution of learning, etc.

This constitutional provision is only applicable with reference to the right of suffrage but even if it had any bearing upon the question under consideration it would not prevent Miss Lewis from becoming a resident of the state in the manner in which she did. New York and Michigan have similar constitutional provisions and it has been held by the supreme courts of those states that this restriction only applies when the only claim to residence is by virtue of the fact that the person was attending the university, and that it did not prevent a student from becoming a resident of the state where that residence was founded upon some act or fact other than mere presence at the institution for the purpose of securing the benefits thereof.

From Miss Lewis' application it appears that her original intention in coming to Montana was to engage in the pursuit of her calling and not to attend the university and that her intention has been, and now is, to remain at Missoula as a resident of the state, engaged in a lawful occupation in addition to attending the university. Under these facts it is my opinion that she could lawfully acquire a residence in Montana even for voting purposes as it is clear that she bases her claim of residence not upon the mere fact that she is attending the school but for the reason that she makes her livelihood in the pursuit of her profession and for that reason claims Missoula as her home and has no present intention of departing therefrom when she discontinues her studies at the school.

People vs. Osborne (Mich.) 135 N. W. 921;

Matter of Goodman (N. Y.) 40 N. E. 769;

In re Blankford (N. Y.) 140 N. E. 415.

Section 574, R.C.M. 1921, is practically a copy of the above constitutional provision except that it does not restrict gain or loss of residence to voting purposes. This section was under consideration by our own court in the case of State ex rel. Johnson vs. Kassing, 238 Pac. 582,

but there is nothing in the opinion which would militate against the conclusion above stated. The court merely held that a girl committed to the state vocational school at Helena did not lose her residence in the county in which her parents reside nor gain a residence in Lewis and Clark county "by reason of commitment to this school."

Very truly yours,

L. A. FOOT,

Attorney General.