

**VOLUME NO. 35**

**Opinion No. 17**

**UNIVERSITY SYSTEM — Residency determination statutes not unconstitutional; CONSTITUTIONAL LAW — Statutes regulating residency determination for tuition and fees in Montana university system not unconstitutional. Fourteenth Amendment, United States Constitution; sections 75-8701 through 75-8704, R.C.M. 1947.**

**HELD:** The holding of the Supreme Court of the United States in **Vlandis v. Kline**, \_\_\_\_\_ U.S. \_\_\_\_\_, does not render sections 75-8701 through 75-8704, R.C.M. 1947, violative of the Fourteenth Amendment to the United States Constitution.

July 18, 1973

Mr. Lawrence K. Pettit  
Commissioner of Higher Education  
Montana University System  
1231 Eleventh Avenue  
Helena, Montana 59601

Dear Mr. Pettit:

Your office has requested my opinion on the following question:

What is the effect of the recent United State Supreme Court decision in **Vlandis v. Kline** in relation to Montana's residency law for payment of fees at units of the Montana university system?

The Supreme Court of the United States in **Vlandis v. Kline**, et al., \_\_\_\_\_ U.S. \_\_\_\_\_, decided June 11, 1973, held as follows:

We hold only that a permanent irrebuttable presumption of nonresidence — the means adopted by Connecticut to preserve that legitimate interest — is violative of the Due Process Clause, because it provides no opportunity for students who applied from out of State to demonstrate that they have become bona fide Connecticut residents. The State can establish such reasonable criteria for in-state status as to make virtually certain that students who are not, in fact, bona fide residents of the State, but who have come there solely for educational purposes, cannot take advantage of the in-state rates.

The Connecticut law struck down by the court provided:

The status of a student, as established at the time of his application for admission at a constituent unit of the state system of higher education under the provisions of this section, shall be his status for the entire period of his attendance at such constituent unit.

The sole question entertained by the court in **Vlandis** was the constitutional right of students to controvert the above-quoted presumption of nonresidence by presenting evidence that they are bona fide residents of Connecticut.

Montana law provides, in pertinent part at section 75-8702 (5), Revised Codes of Montana, 1947:

“Resident student” means:

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(a) A student who has been domiciled in Montana for one (1) year immediately preceding registration at any unit for any term or session for which resident classification is claimed. Attendance as a full-time student at any college, university, or other institution of higher education shall **not alone** be sufficient to qualify for residence in Montana. (Emphasis supplied)

Montana law further provides, at section 75-8704, R.C.M. 1947:

(1) To determine the domicile of a person, the units of the system shall apply the following rules:

(a) Nonpayment of Montana income tax by a person whose income is sufficient to be taxed is highly persuasive evidence of nonMontana domicile.

(b) A person must intend to establish a domicile in Montana.

(2) After registration, a student's classification for tuition and fee purposes remains unchanged in the absence of evidence to the contrary:

(a) A written statement of the evidence shall be filed with the registering authority of the unit.

(b) Changes in classification shall be in writing signed by the registering authority, and shall take effect at the student's next registration.

(3) A minor shall qualify for a change in status only if his parents or legal guardian or person having legal custody completes the requirements for establishing domicile heretofore set forth.

(4) It is presumed a minor or adult registered as a full-time student at any unit is not qualified for a change in his or his dependents classification for tuition and fee purposes unless he completes twelve (12) continuous months of residence while not attending a unit of the system or other institution of higher learning or while serving in the armed forces.

(5) Any student whose request for classification as a resident student is denied has the right of appeal to the executive secretary of the Montana university system:

(a) Immediately upon rejection and at the request of the student, the registering authority shall forward a copy of his decision and a complete file on the student to the executive secretary.

(i) The executive secretary may accept other evidence of residence from either the student, the registering authority, or other interested persons.

(b) Within thirty (30) days of the receipt of the decision of the registering authority, the executive secretary shall determine the resident status of the student and shall notify the student and the registering authority of his decision.

(c) The executive secretary's decision may be appealed to the regents if the regents agree to entertain such an appeal.

It is clear from the above-quoted sections of Montana law that a student who is registered initially as a nonresident student may change his classification upon the presentation of evidence to the registering authority that he is in fact a Montana resident. The fact that a full-time student at any unit of the Montana university system may change his classification from nonresident to resident for fee purposes removes the Montana statutes from the unconstitutional taint found in the Connecticut law in **Vlandis v. Kline**, *supra*.

Particular attention should be drawn, however, to subsection (4) of section 75-8704, *supra*. A recent Colorado case dealt with a somewhat similar provision in Colorado law. In **Covell v. Douglas**, 501 P.2d 1047, the court considered the constitutionality of section 124-18-3 (3), C.R.S. 1963, which reads:

“... An emancipated minor or adult student who has registered [as a full-time student] for more than [eight] hours per term shall not qualify for a change in his classification for tuition purposes unless he shall have completed twelve continuous months of residence while not attending an institution of higher learning [public or private] in the state ...”

The Colorado court held that the relevant portion of section 124-18-3 (3), *supra*, imposed an invidious discrimination violative of the Fourteenth Amendment of the United States Constitution. A petition to the Supreme Court of the United States to hear the **Covell** case was subsequently denied. See: **University of Colorado Regents v. Covell**, \_\_\_\_\_ U.S. \_\_\_\_\_. The distinguishing characteristic between the Colorado statute challenged in **Covell** and section 75-8704 (4), *supra*, is that the Colorado statute provided an irrebuttable presumption and the Montana statute provides a rebuttable presumption to a change in residency classification while a student is registered as a full-time student at any unit of the university system.

The evidentiary weight of a presumption is set forth in section 93-1301-5, R.C.M. 1947, which provides:

A presumption (unless declared by law to be conclusive) may be controverted by other evidence, direct or indirect; but unless so controverted, the jury are bound to find according to the presumption.

Thus, the presumption that a student registered as a full-time student at any unit of the Montana university system cannot change his classification for tuition and fee purposes unless he completes twelve continuous months of residency while not attending a unit of the system may be controverted by other evidence presented by the student. The presumption contained in section 75-8704 (4) is to be given weight as indirect evidence and considered along with other evidence which the student presents in determining the status of students who request classification as resident students. It is thus apparent that, unlike the students who challenged residency laws in **Vlandis** and **Covell**, *supra*, students attending any unit of the Montana university system may, even while

full-time students, present evidence sufficient to warrant a change in their classification from nonresident student to resident student for tuition and fee purposes.

**THEREFORE, IT IS MY OPINION:**

The holding of the Supreme Court of the United States in **Vlandis v. Kline**, \_\_\_\_\_ U.S. \_\_\_\_\_, has no effect on Montana's residency law, dealing with the payment of fees at the units of the Montana university system, which is contained in sections 75-8701 through 75-8704, R.C.M. 1947.

Very truly yours,

**ROBERT L. WOODAHL**  
Attorney General