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#93099

NO.
STATE OF NEBRASKA
OFFICIAL
DEC 9 1993
DEPT. OF JUSTICE

DATE: December 6, 1993

SUBJECT: Nebraska Statutes Pertaining to the Residency of Military Personnel Stationed Outside the State of Nebraska

REQUESTED BY: Senator Mike Avery
Nebraska State Legislature

WRITTEN BY: Don Stenberg, Attorney General
Dale A. Comer, Assistant Attorney General

You have apparently been contacted by counsel for two married constituents who are in the United States Air Force and stationed in Germany. From your correspondence, we understand that those individuals are declared residents of Nebraska, and that they pay taxes in Nebraska, vote in Nebraska and have their driver's licenses issued by the State of Nebraska. Those individuals now wish to adopt a child born in June of 1993 to another member of the United States Air Force. They apparently have the necessary consents and other papers. However, a Sarpy County Judge will not allow the potential adoptive parents to file a Petition for Adoption in Sarpy County or to set a hearing date on the adoption because, in part, he questions the adoptive parents' residency in Nebraska. You state that you are concerned about the situation involving these individuals and other military personnel who may be Nebraska residents and who may have similar difficulties. Consequently, you requested our opinion on the following question: "[i]s it necessary to amend the current Nebraska statutes to define `residency' for military personnel or do the statutes already address the residency status of military personnel while stationed outside the state of Nebraska?"

In your opinion request letter, you did not cite us to any particular portions of the Nebraska Statutes. As a result, we reviewed the statutes in general, and we found no Nebraska Statutes

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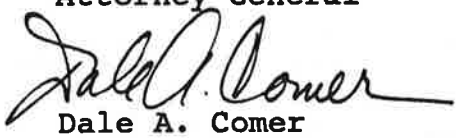
which directly address the matter referenced in your opinion request. There are some statutes which deal with the residency of military personnel in other contexts. For example, ***Neb. Rev. Stat.*** **§** 43-102.01 (1988) provides that, for purposes of adoption, persons serving in the armed forces of the United States who have been continuously stationed at a military installation ***in Nebraska*** for a period of one year prior to filing a petition for adoption shall be considered residents of Nebraska and the county where the installation is located. In addition, ***Neb. Rev. Stat.*** **§** 32-1049 (1988), a part of the election statutes, provides that military personnel stationed in Nebraska shall not be deemed residents of Nebraska in consequence of being stationed here (presumably with respect to elections). However, we were able to find no statutes which specifically address the residency of military personnel while stationed outside of Nebraska, in the context of adoption or otherwise. Therefore, if you wish to remedy this situation by statute, we suggest that you consider introducing appropriate legislation.

For your further information, we would also note the following language in ***Willie v. Willie***, 167 Neb. 449, 460, 93 N.W.2d 501, 508 (1958),

> The residence of a person in the military service of his country is in no way affected by such service. He does not abandon or lose the residence he had when he entered such service by being required to live at certain army posts in other states or countries.

Sincerely yours,

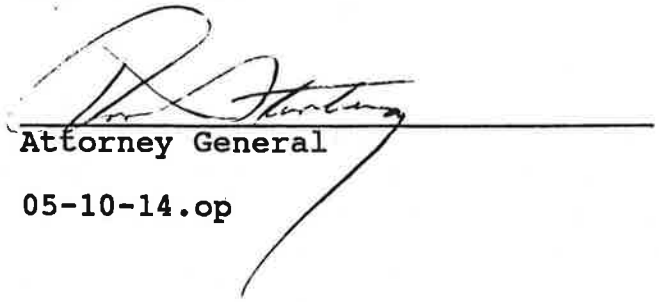
DON STENBERG
Attorney General



Dale A. Comer
Assistant Attorney General

cc: Patrick J. O'Donnell
Clerk of the Legislature

Approved by:



Attorney General

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