

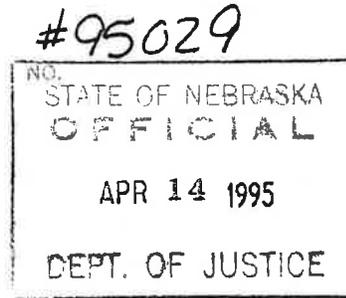


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DATE: April 10, 1995

SUBJECT: Whether State law requires that a peace officer have a Nebraska operator's license.

REQUESTED BY: Senator Michael T. Avery
 Nebraska State Legislature

WRITTEN BY: Don Stenberg, Attorney General
 Ronald D. Moravec, Assistant Attorney General

You have asked if State law requires that a peace officer possess a valid Nebraska operator's license to perform his or her duties. There are no specific laws addressing this issue. It is our opinion that a peace officer, like any citizen, must have a valid operator's license which has been issued by the State of his or her residence.

The Motor Vehicle Operator's License Act (License Act) Neb. Rev. Stat. §§ 60-462 to 60-4,188, is instructive in answering your question. Neb. Rev. Stat. § 60-484(1) (Cum. Supp. 1994) provides in part, ". . . [N]o resident of the State of Nebraska shall operate a motor vehicle upon the alleys or highways of the State of Nebraska until the person has obtained an operator's license for that purpose . . ." The License Act does not define the term resident, but Nebraska election laws and Supreme Court decisions generally define a residence as the place where a person has established a home, is habitually present at that location, and when they leave they intend to return to that location, see Neb. Rev. Stat. § 32-107 (1993): *Wray v. Wray*, 149 Neb. 376, 31 N.W.2d 228 (1948).

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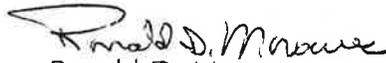
The License Act defines a non-resident as a person who is not a resident of the state, Neb. Rev. Stat. § 60-472 (1993), and provides the non-resident with the privilege of operating a motor vehicle in Nebraska, under the general motor vehicle laws, "but in no event shall such immunity extend beyond a period of thirty days continuous residence in the State of Nebraska." Neb. Rev. Stat. § 60-488(1) (1993). The State's grant of immunity to a non-resident is conditioned upon that person having a valid operator's license from the state of their residence. § 60-488(2)(a).

A peace officer seeking admission to the Nebraska Law Enforcement Training Center must, amongst other criterion, possess a valid motor vehicle operator's or chauffeur's license. Neb. Rev. Stat. § 81-1410(2)(d) (1994). That condition does not require the license to be one issued by the State of Nebraska. If the Legislature had required the peace officer to possess a valid Nebraska operator's license, that would have legislatively mandated that only Nebraska residents could be peace officers.

Nebraska law is silent as to state or local residency requirements of governmental employees, of the nature discussed herein. Courts have upheld state laws and municipal ordinances allowing for or requiring residency as a condition of employment. **McCarthy v. Philadelphia Civil Service Commission**, 424 U.S. 645, 96 S.Ct. 1154, 41 L.Ed.2d 366 (1976) (municipal residency requirements for maintaining employment are not irrational); **Salem Blue Collar Workers Ass'n v. City of Salem**, 33 F.3d 265 (3rd Cir. 1994) (Salem, New Jersey, ordinance requiring city employees reside within city served legitimate governmental purpose); **Clinton Police Dept. v. City of Clinton**, 464 N.W.2d 875 (Iowa 1991) (city ordinance, under authority of state law, setting distance employees could live from work places is constitutional).

Sincerely,

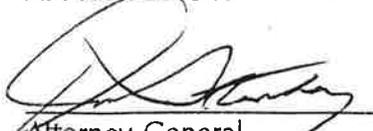
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19-020-10.1

cc Patrick J. O'Donnell
Clerk of the Legislature

APPROVED BY:


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