

and Millstone Rivers, that the rate of charge is for excess water diverted, under the statutory formula in R.S. 58:2-1 et seq. and that Elizabethtown Water Company is obligated to assume its apportioned share of the cost of any future storage of storm waters along the Raritan and Millstone Rivers or their tributaries for the purpose of supplying industrial or potable water to municipalities or water companies.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: DAVID D. FURMAN
Deputy Attorney General

DDF:gd

DECEMBER 17, 1957

OCEAN COUNTY BOARD OF TAXATION
Toms River, New Jersey
Attention: J. CHESTER HOLMAN, *Secretary*

MEMORANDUM OPINION—P-36

DEAR SIRs:

You have requested our opinion concerning an application of the so-called Veterans' Exemption Act, N.J.S.A. 54:4-3.12i et seq.

The facts are stated to be as follows. A taxpayer has made application in a certain municipality for a veteran's exemption commencing with the tax year 1958. The applicant has lived in Ocean County with his wife and two children since March 1957. In April 1957 he purchased a home, taking title and recording the deed in August 1957. The applicant is still in service and is presently stationed at the Naval Air Station, Lakehurst. Previously, he had been stationed at Seattle, Washington where he lived with his family before moving to Ocean County, New Jersey. The applicant possesses more than one honorable discharge.

You further inform us that the exemption is being denied by the municipality on the ground that the applicant "has not lived in the State of New Jersey a year in order to establish a residence in this State."

In effect, your inquiry is whether a person must establish the fact that he has lived in New Jersey one year in order that he may be considered a resident under the provisions of the Veterans' Exemption Act.

The answer is no.

The term "resident" is defined in the Act as follows (N.J.S.A. 54:4-3.12i):

"'Resident' means one legally domiciled within the State of New Jersey. Mere seasonal or temporary residence within the State, of whatever duration, shall not constitute domicile within the State for the purposes of this act. Absence from this State for a period of twelve months shall be prima facie evidence of abandonment of domicile in this State. The burden of establishing legal domicile within the State shall be upon the claimant."

Neither the statute as set forth above nor Article VIII, paragraph 3, of our New

Jersey Constitution, which the statute implements, places a prerequisite period upon residence such as is found in Article II, paragraph 3, of the Constitution concerning the residence qualifications for purposes of voting.

In the leading case of *Peff v. Peff*, 2, N.J. 513 (1949) at pages 521-22 the Court laid down the prerequisites for establishing legal domicile and residence as follows:

"A man has the right to choose his own domicile, and his motive in so doing is immaterial. [citing cases].

"A person may legitimately move to another state in order to avail himself of its laws, including its divorce laws, the only requirements being absolute good faith in the taking up of such residence and of the intention of remaining there—the *animus manendi*. The avowal that the object in moving to the other jurisdiction is for that purpose is only an element to be considered in determining the *bona fides* of residence—*Wallace v. Wallace*, supra.

". . . The *animus manendi*, i.e., the intention of remaining indefinitely in the new residence, and the intention not to return to the old, i.e., the *animus non revertendi*, are essential elements of domicile. [citing cases].

"In *Harral v. Harral*, supra, it was said: 'There must be a voluntary change of residence; the residence at the place chosen for the domicile must be actual; to the *factum* of residence must be added the *animus manendi*; and that place is the domicile of a person in which he has voluntarily fixed his habitation, not for a temporary or special purpose, but with the present intention of making it his home, unless or until something which is uncertain or unexpected shall happen to induce him to adopt some other permanent home.'"

As stated by Justice Heher in *Kurilla v. Roth*, 132 N.J.L. 213, 215 (Sup. Ct. 1944):

". . . 'Domicile' is the relation which the law creates between an individual and a particular locality or country. In a strict legal sense, the domicile of a person is the place where he has his true, fixed, permanent home and principal establishment, and to which, whenever he is absent, he has the intention of returning, and from which he has no present intention of moving. 17 *Am. Jur.* 588, 590; 28 *C.J.S.* 3. It is the place with which he has a settled connection for certain legal purposes, either because his home is there or because that place is assigned to him by the law."

In the instant case, the fact that the applicant is presently on active duty in New Jersey with the Armed Forces of the United States, in the opinion of this office, is not of itself controlling. In *Mangene v. Diamond*, 229 F. 2d 554 (C.C.A. 3, 1956) the Court dealt with considerations of military personnel and their respective rights in relation to residence and domicile. The Court in discussing this problem stated as follows (p. 555):

"We are not dealing with any confusion between domicile and residence. We start with the proposition that appellee, despite the fact that his home was in Pennsylvania and he was in California entirely because of service

orders, could have obtained such residency had he so intended."

In sum, a determination that the applicant is domiciled in New Jersey is a condition precedent to the granting of a veteran's exemption, but there is no requirement that the veteran shall have been domiciled here for a period of 12 months. The question of whether a domicile has been established is factual and depends upon a consideration of all the facts and circumstances in the particular case. *Cromwell v. Neeld*, 15 N.J. Super. 296, 301 (App. Div. 1951).

The sentence in N.J.S.A. 54:4-3.12i(f) which provides that "[a]bsence from this State for a period of twelve months shall be prima facie evidence of abandonment of domicile in this State" refers in our opinion to abandonment of domicile in this State after such New Jersey domicile had already existed, which is not the situation you present.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: THOMAS P. NOLAN
Deputy Attorney General

TPN :lc

JANUARY 24, 1957

GEORGE C. SKILLMAN
Director of Local Government
Department of the Treasury
Commonwealth Building
Trenton 25, New Jersey

FORMAL OPINION, 1957—No. 1

DEAR DIRECTOR:

You have requested our opinion regarding the jurisdiction of a Planning Board to inquire into the estimated cost and proposed financing of a school construction project submitted to the Planning Board for recommendation under Section 13 of the Municipal Planning Act of 1953 (N.J.S.A. 40:55-1.13).

In our opinion, the Planning Board does have such jurisdiction. Section 40:55-1.13 reads in part as follows:

"Whenever the planning board after public hearing shall have adopted any portion of the master plan, the governing body or other public agency having jurisdiction over the subject matter, before taking action necessitating the expenditure of any public funds, incidental to the location, character or extent of one or more projects thereof, shall refer action involving such specific project or projects to the planning board for review and recommendation, and shall not act thereon without such recommendation or until forty-five days after such reference have elapsed without such recommendation.

* * *

The planning board shall have full power and authority to make such