

Approved: March 26, 1992  
Date

## MINUTES OF THE HOUSE COMMITTEE ON EDUCATION.

The meeting was called to order by Chairperson Rick Bowden at 3:30 p.m. on March 25 1992 in Room 519-S of the Capitol.

All members were present except:

Representative Richard Lahti - Excused  
Representative Sherman Jones - Excused  
Representative Gary Blumenthal - Excused

Committee staff present:

Dale Dennis, Board of Education  
Ben Barrett, Legislative Research  
Avis Schwartzman, Revisor of Statutes Office  
Shirley Wilds, Secretary to the Committee

Conferees appearing before the committee:

Ted D. Ayres, General Counsel - KS Board of Regents

The meeting was called to order by Chairperson Rick Bowden.

**Ted D. Ayres.** Mr. Ayres presented an overview of existing policies regarding residency determinations for tuition purposes at the Regents institutions and residency law. He referred to an opinion written by the District Court of Riley County, Kansas, in response to a student's claim, ruling that rules and regulations of the Kansas Board of Regents were constitutional and legal. In addition, Mr. Ayres reported on regulations issued by the Board of Regents, citing the basic rule in Kansas. He emphasized that definition of a resident may vary with the issues when determining "non-resident for fee purposes," but it has been the policy of the Board of Regents when determining residency it necessitates a commitment by the applicant to establish permanent residence in Kansas.

Mr. Ayres said a basic concern frequently expressed is that residency determinations are "too mysterious and/or too subjective." In researching the law in this area, he is personally convinced that the system in Kansas is both legal and appropriate. He added that their campus personnel charged with the responsibility for these decisions strive to exercise that responsibility in a fair and just manner in compliance with the laws of Kansas.

Mr. Ayres also addressed the issue of Regents Center off campus fees, citing a statute excerpt: "the board of regents shall fix tuition, fees and charges to be collected by each state educational institution." He reported that pursuant to this authority, the Board has authorized a third category of tuition for "off-campus" courses, with no distinction made relative to resident or non-resident status with one basic charge being assessed on a credit-hour basis. When speaking of the "resident rate," he mentioned there is no question that some non-residents, i.e. residents of Missouri, are taking courses and paying tuition at a resident rate. In this regard, several committee members have requested that Mr. Ayres research the resident fee program in place in Missouri, particularly at the University of Missouri at Kansas City.

My Ayres will remain available to the committee for any verification of residency issues in the Board of Regents system. (See Attachment #1.)

The next scheduled meeting is March 25, 1992 in Room 519-S, 3:30 p.m. Statehouse.

Upon completion of its business, the meeting adjourned at 4:45 p.m.

The Testimony of

Ted D. Ayres  
General Counsel  
Kansas Board of Regents

before  
THE HOUSE COMMITTEE ON EDUCATION  
1992 Legislative Session

in re  
Determinations of Residency for  
Tuition Purposes/Regents Institutions

3:30 p.m.  
March 25, 1992  
Room 519-S  
Kansas Statehouse

*Education  
Attachment #1  
3/25/92*

My name is Ted D. Ayres and I am General Counsel to the Kansas Board of Regents. I appreciate this opportunity to again provide information to the House Education Committee.

We have been asked to comment on existing policies regarding residency determinations for tuition purposes at the Regents institutions. I would suggest that an appropriate way to begin my presentation would be to refer to the following language as taken from the June 28, 1990, Journal Entry of Judgment entered by the District Court of Riley County, Kansas:

"There has been ample authority cited by respondent [Kansas State University] and by Intervenor [Kansas Board of Regents] to convince the Court that there exists a rational basis for the State of Kansas to discriminate between resident and non-resident students for tuition purposes. Further, the procedures utilized by respondent, which procedures are outlined in regulations promulgated by Intervenor, provide sufficient due process for petitioner and others like him to state their case and to appeal adverse decisions." (bracketed material and emphasis added)

This opinion was written in response to a student's claim that the rules and regulations of the Kansas Board of Regents were unconstitutional, illegal, arbitrary and capricious. It was subsequently upheld by the Kansas Supreme Court in Peck v. University Residence Committee of Kansas State University, 807 P.2d 652 (Kan. 1991).

The Board of Regents has issued regulations [K.A.R. 88-2-1 et seq. and K.A.R. 88-3-1 et seq.] pursuant to authority granted by K.S.A. 76-730. K.S.A. 76-729(a) sets forth the basic rule in Kansas, i.e.

"Persons enrolling at the state educational institutions under the control and supervision of the state board of regents who, if such persons are adults, have not been or, if such persons are minors, whose parents have not been residents of the state of Kansas for at least 12 months prior to enrollment for any term or session in a state educational institution are non-residents for fee purposes." (underlining and emphasis added)

Attch #1-2

As you consider this language, and the remainder of my commentary, I would refer you again to the phrase "non-resident for fee purposes" and remind you that the definition of a resident may vary from issue to issue.

The Kansas Board of Regents has, to date, felt that, as a matter of state policy, careful consideration was necessary. As a whole, the current criteria for determining residency necessitates a commitment by the applicant to establish permanent residence in Kansas. Thus, for example, the purchase of a home and acceptance of permanent employment, while not irrevocable decisions, do place applicant in circumstances which may not be readily or conveniently altered after the expiration of the obligatory twelve-month period. In this regard, the basic philosophy of the Board of Regents' regulations is that individuals should seek to become Kansas residents because they want to live in Kansas. . .not because they want to pay resident tuition rates.

K.S.A. 76-729 was enacted in 1971. In 1975, K.S.A. 76-729(a) was amended to extend the durational waiting period from six months to twelve months. 1975 Session Laws, Ch. 469. In 1987, the language of 76-729(a) was amended to provide that the durational waiting period was "at least 12 months" (emphasis supplied), 1987 Session Laws, Ch. 264.

K.S.A. 76-729(b) provides the Board of Regents with discretionary authority to treat certain classes of individuals as **residents for fee-purposes**, even though said individuals are not otherwise qualified for such treatment under the basic rules. The Board of Regents has seen fit to affirmatively exercise its authority in each permitted category, i.e. K.A.R. 88-3-9 "Institutional personnel" [see K.S.A. 76-729(b) (1)]; K.A.R. 88-3-8 "Military personnel" [see K.S.A. 76-729(b) (2)]; K.A.R. 88-3-12 "Discharged or retired from active military duty in Kansas" [see K.S.A. 76-729(b) (3)]; K.A.R. 88-3-7 "Residence of married persons" [see K.S.A. 76-729(b) (4)]; K.A.R. 88-3-5 "Six-months extension privilege" [see K.S.A. 76-729(b) (5)];

K.A.R. 88-3-10 "Kansas high school graduates" [see K.S.A. 76-729(b) (6)]; and K.A.R. 88-3-11 "Recruited or transferred employees" [see K.S.A. 76-729(b) (7)].

K.S.A. 76-729(b)(6) was added by the Legislature in 1987 (L. 1987, Ch. 264, Section 3). The legislation provided that the Board of Regents may permit the following individuals to pay an amount equal to resident fees:

"(6) persons who have graduated from a high school accredited by the state board of education within 12 months of enrollment and who are entitled to admission pursuant to K.S.A. 72-116 and amendments thereto;"

As a result of some perceived abuses relating to this language, it was amended by the 1991 Legislature pursuant to a bill introduced by the Legislative Educational Planning Committee.

A basic concern that is frequently expressed is that residency determinations are "too mysterious" and/or too subjective. Individuals, both outside and inside our universities, have suggested that a convenient check-list approach be adopted in regard to residency determinations. I must confess that this does, at first glance, have some appeal. This is particularly so if, and as, the differential between resident and non-resident tuition rates increase. . .making resident status of greater financial importance and significance. However, as I researched the law in this area in preparation for the case I cited at the beginning of my presentation, I am personally convinced that the system in Kansas is both legal and appropriate.

It is clear that in addition to physical presence, there must be an **intent** to establish domicile. The regulations of the Kansas Board of Regents set forth "criteria or guidelines" [see K.S.A. 76-730(a)] which are to be used by the state educational institutions of Kansas in an effort to be "virtually certain" that students indeed have the requisite "intent" to entitle them to be considered as residents for tuition purposes. I would submit that such criteria

or guidelines are particularly necessary where the "issue . . . is as nebulous as a student's intent to be a resident of a state." Lister v. Hoover, 655 F.2d 123, 126 (7th Cir. 1981).

As the Supreme Court of Arizona has said, "[t]o permit a student to announce his intention of becoming a permanent resident of Arizona on the day of his arrival; to accept his biased and self-serving statement as the whole truth; and to permit him to reinforce his statement by registering his car in this state, and securing a driver's license in this state, would simply place a premium on deception." Arizona Board of Regents v. Harper, 495 P.2d 453 (Ariz. In Banc 1972). In approving requirements of the University of Hawaii, which were remarkably similar to those of the Kansas Board of Regents, i.e. 5 "primary indices" and 4 "secondary indices," the U.S. District Court for the District of Hawaii said:

"We also recognize that states have an especially difficult administrative problem in determining the residency of college students coming from out of state, for many (and sometimes all) of the local contacts they establish are fully as consistent with an intent to leave upon conclusion of the course of study as with an intent to remain indefinitely." Hasse v. Board of Regents of University of Hawaii, 363 F. Supp. 677, 679 (D. Hawaii 1973). See also Hauslohner v. Regents of U. of Michigan, 272 N.W.2d 154 (Mich. App. 1978) where the regulations approved contained factors measuring intent almost identical to those contained in the regulations of Intervenor, and Anno: "Validity, Under Federal Constitution, of State Residency Requirements Relevant to Charging Tuition and Other Fees by Colleges and Universities - Federal Cases," 37 L.Ed.3d 1056 (1974), §7[a].

I would also refer you to the following helpful discussion in Hooban v. Boling, 503 F.2d 648 (6th Cir. 1974) at page 652:

"Any determination of domicile seeks to use . . . objective criteria to aid in establishing a subjective concept, i.e. intent to remain in the state. The concept of domicile is subject to no formula, but rather depends on the facts of each case. For example, in Hayes v. Board of Regents, *supra*, 495 F.2d at 1328, we noted that voter registration within a state is but one of a number of relevant factors which may reasonably be considered in the determination of residency status for tuition purposes. The relative weight to be given each objective factor is to be capable of qualification. The questions to be answered in each case is whether the student came to the state solely to attend school or whether he intends to make the state his home."

A student's intent as to bona fide residency for student tuition purposes is incapable of purely objective definition and cannot be expressed in a few objective or succinct principles. Lister v. Hoover, 706 F.2d 796, 804 (7th Cir. 1983). As the Supreme Court of North Carolina noted in Glusman v. Trustees of Univ. of North Carolina, 190 S.E.2d 213 (N.C. 1972) at page 220:

"Domicile is solely a matter of physical presence plus the intent to make a home. All students enrolled in our institutions of higher education visibly meet the first requirement of domicile. The second requirement, however, is a concept in the mind of the particular student. It is true, as this Court emphasized in Hall v. Wake County Board of Elections, supra, that there are objective indicia by which a person's statement of intent may be tested. Even so, a statement of intent is usually difficult to disprove; and the determination of a student's domicile is especially difficult and subject to doubt. Ordinarily, whatever plans students may have with reference to where they will locate when they complete their attendance in an institution of higher education are in flux, frequently changed as unforeseeable circumstances and opportunities influence their future careers." (emphasis supplied)

See also the following discussion from Michelson v. Cox, 476 F. Supp. 1315, 1320 (S.D. Iowa 1979):

"The difficulty in a case of this nature is that the Review Committee is called upon to make a decision as to the student's subjective intent. As Professor Kurtz noted in his testimony, all of the evidence that plaintiff presented to the Review Committee could be presented by any out-of-state student who wanted to be classified as a resident but who had no intent to make Iowa his permanent home. To accept plaintiff's argument would require the University to reclassify as a resident every student who, after attending the university for a year, makes a self-serving declaration that he intends to reside in Iowa permanently and performs a series of 'objective' acts, some of which are required by law and all of which are certainly done by some nonresident students who do not intend to remain in Iowa after graduation. This would, in effect, create a presumption that any such student is a bona fide Iowa resident, thus seriously jeopardizing the University's nonresident tuition program and consequently its entire financial structure. It would remove the tuition decision from the hands of the University and place it in the students."

In the fall of 1991, approximately 20.5 percent of the students in the Regents system enrolled as non-residents. However, because of the approximate 3:1 ratio of non-resident

to resident tuition, non-resident students accounted for a little over 43.4 percent of the system's \$118 million in FY 1992 tuition revenue.

"Residency decisions" are some of the most troublesome which campus officials face. For students (and parents), they are certainly among the most important. Most cases are clear, but some situations do, in fact, require interpretation and judgment. However, it is my opinion that the fiscal import and impact of the issue makes it one for which "hard decisions" cannot be avoided.

Courts have recognized that it may not be possible to draft a regulation that would preserve an effective nonresident tuition scheme without inconvenience to some individuals. Rules that apply to ALL are rarely, if ever, without controversy. However, such classifications are justified and lawful as an effort by states to reasonably and appropriately attempt to insure, in good faith, that only bona fide domiciles will be given the preferential lower tuition rate. I would also suggest that our campus personnel charged with the responsibility for these decisions strive to exercise that responsibility in a fair and even-handed manner in compliance with the laws of Kansas.

### **Regents Center/Off Campus Fees**

I would first remind members of the Committee of the authority provided by K.S.A. 76-719 which provides, in part, that:

". . . the board of regents shall fix tuition, fees and charges to be collected by each state educational institution. . ."

Pursuant to this authority, the Board has authorized a third category of tuition and that is tuition for "off-campus" courses. No distinction is made relative to resident or non-resident status with one basic charge being assessed on a credit-hour basis.



Seemingly, this would have little relevance to a discussion about residency determinations. However, because of the location of the Johnson County Regents Center, there is no question that some non-residents, i.e. residents of Missouri, are taking courses and paying tuition at a "resident rate."

Several arguments could perhaps be offered in support and justification of the long-term practice, i.e. the Regents Center begins offering courses in 1975. However, I believe the following are the key rationale:

1. The uniqueness of the greater Kansas City Metropolitan area which really encompasses, geographically, intellectually, economically, demographically and psychologically, areas of two adjoining states;
2. The ever-increasing demand by the citizens of this area and their corporate employers for continuing education opportunities; and
3. The ever-increasing need to rely on private financial support from these citizens and corporate employers to share in the funding of public higher education in Kansas.

These are the key rationale relative to the situation which has developed in the Kansas City area. It is historical, it has worked well, Kansans have not been detrimentally affected with regard to class availability and it has allowed the Regents system to be a competitive player and a key participant in the growth and development of this region. However, should it be the direction of the Committee, I am fully prepared to deliver your message to the Board and the Regents institutions that the matter needs to be re-examined and re-evaluated. In this regard, I might also note that this single fee structure seems to fit well with the future of electronically delivered courses.

## CHAPTER 214

## Senate Bill No. 21

AN ACT concerning public institutions of postsecondary education; relating to residence duration requirements for student tuition and fee purposes; amending K.S.A. 76-729 and K.S.A. 1990 Supp. 71-302, and repealing the existing sections.

*Be it enacted by the Legislature of the State of Kansas:*

Section 1. K.S.A. 1990 Supp. 71-302 is hereby amended to read as follows: 71-302. (a) Subject to the other provisions of this section, tuition shall be charged to out-of-state and foreign students at rates which shall be set by the board of trustees in accordance with the provisions of subsection (a)(2) of K.S.A. 71-301, and amendments thereto.

(b) The following persons, or any class or classes thereof, and their spouses and dependents, may be admitted to a community college at the same rate of tuition as in-state students: (1) Persons who are in active military service of the United States; (2) persons who are domiciliary residents of the state, who were ~~present in the state~~ in active military service ~~immediately~~ prior to becoming domiciliary residents of the state, *who were present in the state for a period of not less than two years during their tenure in active military service*; whose domiciliary residence was established in the state ~~immediately upon~~ *within 30 days* of discharge or retirement from active military service under honorable conditions, but whose domiciliary residence was not timely enough established to meet the residence duration ~~requirements~~ *requirement* of K.S.A. 71-406, and amendments thereto; (3) persons who are employees of a community college; (4) persons having special domestic ~~relation~~ *relations* circumstances; (5) persons who have lost their resident status within six months of enrollment; (6) persons *who are not domiciliary residents of the state*, who have graduated from a high school accredited by the state board of education within ~~12~~ *six* months of enrollment at a community college, *who were domiciliary residents of the state at the time of graduation from high school or within 12 months prior to graduation from high school*, and who are entitled to admission at a state ~~university~~ *educational institution* pursuant to K.S.A. 72-116, and amendments thereto; and (7) persons who are domiciliary residents of the state, whose domiciliary residence was established in the state for the purpose of accepting, upon recruitment by an employer, or retaining, upon transfer required by an employer, a position of full-time employment at a place of employment in Kansas, but the domiciliary residence of whom was not timely enough established to meet the residence duration ~~requirements~~ *requirement* of K.S.A. 71-406, and amendments thereto, and

attach #1-9

who are not otherwise eligible under this subsection for admission at in-state student tuition rates.

(c) As used in this section:

(1) "Domiciliary resident" means a person who has present and fixed residence in Kansas where the person intends to remain for an indefinite period and to which the person intends to return following absence.

(2) "Full-time employment" means employment requiring at least 1,500 hours of work per year.

(d) The state board of education shall adopt rules and regulations for administration of the provisions of this section. Such rules and regulations shall prescribe criteria and guidelines for determination by a board of trustees of the eligibility of persons specified in subsection (b) for admission at in-state student tuition rates and shall specify the evidence necessary to be submitted by such persons to a board of trustees as proof of eligibility. Evidence submitted by a person as proof of eligibility claimed under subsection (b)(7) must include, but not by way of limitation, certification of the claim by the employer of the person.

Sec. 2. K.S.A. 76-729 is hereby amended to read as follows: 76-729. (a) Persons enrolling at the state educational institutions under the control and supervision of the state board of regents who, if such persons are adults, have not been or, if such persons are minors, whose parents have not been residents of the state of Kansas for at least 12 months prior to enrollment for any term or session ~~in~~ at a state educational institution are nonresidents for fee purposes.

(b) The state board of regents may authorize the following persons, or any class or classes thereof, and their spouses and dependents to pay an amount equal to resident fees:

- (1) Persons who are employees of a state educational institution;
- (2) persons who are in military service;
- (3) persons who are domiciliary residents of the state, who were ~~present in the state~~ in active military service ~~immediately~~ prior to becoming domiciliary residents of the state, *who were present in the state for a period of not less than two years during their tenure in active military service*, whose domiciliary residence was established in the state ~~immediately upon~~ *within 30 days of discharge or retirement from active military service under honorable conditions*, but whose domiciliary residence was not timely enough established to meet the residence duration ~~requirements~~ *requirement* of subsection (a);
- (4) persons having special domestic ~~relation~~ *relations* circumstances;

(5) persons who have lost their resident status within six months of ~~their~~ enrollment;

(6) persons *who are not domiciliary residents of the state*, who have graduated from a high school accredited by the state board of education within ~~12~~ six months of enrollment, *who were domiciliary residents of the state at the time of graduation from high school or within 12 months prior to graduation from high school*, and who are entitled to admission at a state educational institution pursuant to K.S.A. 72-116, and amendments thereto; and

(7) persons who are domiciliary residents of the state, whose domiciliary residence was established in the state for the purpose of accepting, upon recruitment by an employer, or retaining, upon transfer required by an employer, a position of full-time employment at a place of employment in Kansas, but the domiciliary residence of whom was not timely enough established to meet the residence duration ~~requirements~~ *requirement* of subsection (a), and who are not otherwise eligible for authorization to pay an amount equal to resident fees under this subsection.

(c) As used in this section:

- (1) "Parents" means and includes natural parents, adoptive parents, stepparents, guardians and custodians.
- (2) "Guardian" has the meaning ascribed thereto by K.S.A. 59-3002, and amendments thereto.

(3) "Custodian" means a person, agency or association granted legal custody of a minor under the Kansas code for care of children.

(4) "Domiciliary resident" means a person who has present and fixed residence in Kansas where the person intends to remain for an indefinite period and to which the person intends to return following absence.

(5) "Full-time employment" means employment requiring at least 1,500 hours of work per year.

Sec. 3. K.S.A. 76-729 and K.S.A. 1990 Supp. 71-302 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

Approved May 8, 1991.

Attch #1-10