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The State of South Carolina



Office of the Attorney General

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March 28, 1989

The Honorable David W. Coker
Magistrate
Post Office Box 10142
Charleston, South Carolina 29411

Dear Magistrate Coker:

In a letter to this Office you requested an interpretation of Sections 56-1-30(3) and 56-1-35 of the Code which deal with driver's license requirements of military personnel. You stated that you have construed such provisions to indicate that active duty military and their dependants are exempt from driver's license requirements of this State if they have a valid license from their home state unless they become permanent residents of this State.

Section 56-1-30(3) exempts from the South Carolina driver's license requirement

. . . a nonresident on active duty in the Armed Services of the United States who has a valid license issued by his home state and the nonresident's spouse or dependent who have a valid license issued by his home state. . . .

Section 56-1-35 states

(a) member of the Armed Services of the United States and his dependents, who become permanent residents of this State, have ninety days to apply for a South Carolina driver's license,

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Referencing such provisions, I am in agreement with your construction that active duty military and their dependents do not have to obtain a South Carolina driver's license unless they become permanent residents of this State. However, as provided by Section 56-1-35, if these individuals become permanent residents of this State, they must apply for a license within ninety days.

You also asked at what point a member of the Armed Forces becomes a permanent resident of this State. As stated in a prior opinion from this Office dated November 2, 1983, the determination of the residence of an individual is a mixed question of law and fact. See: Clark v. McCown, 107 S.C. 209, 92 S.C.2d 479 (1917). Therefore, a definitive answer for all circumstances is not possible. However, in evaluating such status, as stated in the referenced prior opinion,

(o)ne primary question is the intent of the individual . . . Factual evidence of the individual's intent to change his residence may be found in such manifestations as where the individual pays income and property taxes, where he remains registered to vote, or what permanent address he utilizes in filling out various forms and applications . . . (A) determination must be made whether or not the individual, for all other intents and purposes, has manifested a desire to move his residence into South Carolina. This will largely turn on the intent of the individual concerned, as manifested by his behavior.

If there is anything further, please advise.

Sincerely,



Charles H. Richardson
Assistant Attorney General

CHR:gmb

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Reviewed and Approved by:



Robert D. Cook
Executive Assistant for Opinions