

sity, promptly provide medical and surgical attendance for all of the poor in his township who are not provided for in public institutions; and shall also see that such medicines and/or medical supplies and/or special diets and/or nursing as are prescribed by the physician or surgeon in attendance upon the poor are properly furnished.

“He may, in cases of necessity, authorize the payment from township poor relief funds for water, gas and electric services, including the payment of delinquent bills for such services, when necessary to prevent their termination or to restore terminated service.”

It is therefore my opinion that:

1. Normal pregnancy and childbirth cannot be classified as “illness” within the meaning of Burns’ (1961 Supp.), Section 52-148a.
2. A condition of illness may arise out of or in conjunction with pregnancy or childbirth, but the existence of such a condition to come within the recognized definition of the term must be diagnosed, as such, by a person duly licensed to practice medicine in the State of Indiana.
3. Assistance to pregnant poor persons is available from the several township trustees as overseers of the poor.

OFFICIAL OPINION NO. 56

October 6, 1961

Mr. James H. Berg, Commissioner
Bureau of Motor Vehicles
4th Floor State Office Building
Indianapolis, Indiana

Dear Mr. Berg:

I have received your request of September 6, 1961, for an Official Opinion on the following questions:

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(1) "May a non-resident who is at sixteen (16) years and one (1) month of age and has in his immediate possession a valid operator's license, issued to him in his home state or country, operate a motor vehicle upon the highways of the State of Indiana without first obtaining an operator's license from the State of Indiana?"

(2) "If the above question is answered in the affirmative, is there any limit as to the length of time such non-resident may operate in Indiana, and if so, how long?"

(3) "Do the same rules apply to chauffeurs and public passenger chauffeurs' licenses as apply to operators and if not, what rules do apply?"

(4) "Would any of the answers to the foregoing questions be affected by the fact that the non-resident in question was operating a motor vehicle, bearing Indiana registration and plates?"

The provisions of the Acts of 1945, Ch. 304, Sec. 49(a), as amended, and as found in Burns' (1961 Supp.), Section 47-2701(a), provide as follows:

"(a) No person, except those hereinafter exempted, shall drive any motor vehicle upon a highway in this state unless such person has a valid license as an operator or chauffeur under the provisions of this act. No person shall receive an operator's license unless and until he surrenders to the department all valid operator's licenses in his possession issued to him by this state or any other jurisdiction. All surrendered licenses shall be returned by the department to the issuing department together with information that the licensee is now licensed in new jurisdiction. No person shall be permitted to have more than one [1] valid operator's license at any time."

The Acts of 1945, Ch. 304, Sec. 50, as amended, and as found in Burns' (1961 Supp.), Section 47-2702, reads in part:

“The following persons are exempt from license hereunder:

* * *

“3. A nonresident who is at least sixteen [16] years and one [1] month of age, and has in his immediate possession a valid operator’s license, issued to him in his home state or country, while operating a motor vehicle in this state only as an operator.

“4. A nonresident, at least eighteen [18] years of age and having in his immediate possession a valid chauffeur’s license, issued to him in his home state or country, while operating a motor vehicle upon any public highway, either as an operator or chauffeur.

“5. A nonresident, at least twenty-one [21] years of age and having in his immediate possession a valid license, issued by his home state, for the operation of any motor vehicle upon a public highway, when in use as a public passenger carrying vehicle, while operating any motor vehicle upon the public highways.

“6. Any nonresident, whose home state or country does not require the licensing of operators or chauffeurs, and who has not been licensed as an operator or a chauffeur in his home state or country, may operate any motor vehicle upon any public highway as an operator, if over sixteen [16] years and one [1] month of age and less than eighteen [18] years of age, or as a chauffeur if more than eighteen [18] years of age, without first obtaining a license as an operator or chauffeur as required under this act, for a period of not more than sixty [60] days in any one [1] year, provided that such unlicensed nonresident is the owner of such motor vehicle or the authorized driver thereof, and which vehicle has been duly registered for current calendar year in the state or country of which the owner is a resident: Provided further, That the motor vehicle shall at all times display registration plate, or plates, issued therefor in the home state or country of the owner, and that the nonresident owner or driver has in his immediate possession a registration card evidencing such ownership and registration in his

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home state or country, or is able at any time or place required to prove lawful possession or the right to operate such motor vehicle and establish his proper identity.

“7. Any person who is legally licensed to operate a motor vehicle in the state of his residence and who is employed in this state, subject to the limitations and restrictions imposed by the state of his residence.”

It should be noted that sub-paragraph numbered 7, was added to Burns' 47-2702, *supra*, by the 1955 Legislature.

Sections 24 through 48 of the Acts of 1945, Ch. 304, as amended, and as added to by the Acts of 1957, Ch. 33, and all as found in Burns' (1952 Repl., 1961 Supp.), Ch. 26, the same being Section 47-2601 *et seq.*, concern themselves with the *registration* of motor vehicles, and Burns' 47-2620, *supra*, reads in part:

“(a) A nonresident, *within the meaning of this section*, shall be held and defined to mean a person residing in another state, district or country and temporarily residing or sojourning within this state for a period of sixty [60] days, or less, in any one [1] year.”
(Our emphasis)

Sub-paragraphs (b), (c), and (d), like sub-paragraph (a) above, *supra*, are literally concerned solely with the privilege of the registration of motor vehicles.

In 1948, a question on a particular factual situation similar to the questions which you have asked was presented to the Attorney General and his Official Opinion in response may be found in 1948 O. A. G., page 273, No. 48. The questions there presented read:

“* * * Many employees of the Quartermaster Depot at Jeffersonville maintain their home residence in Louisville; however, five days of each week they reside in Indiana where they have sleeping quarters. Is it necessary that they have Indiana license plates and Indiana drivers' licenses?”

Insofar as the portion of the question relative to drivers' licenses was concerned, the Opinion concluded, at page 276, that:

“* * * Sub-section (a) of Section 47-2620 of Burns, *supra*, is a definition which controls not only the matter of motor vehicle licensing and registration, but also which controls the matter of operators' license requirements. Therefore, in answer to the question concerning operators' licenses, the same rules apply as in the registration and license plate requirements for motor vehicles.”

Subsequently, in 1955, however, as noted above, the General Assembly legislated specifically in relation to that factual situation by adding sub-paragraph 7 to the list of exemptees, under Burns' 47-2702, *supra*, thus nullifying that portion of 1948 O. A. G., No. 48, *supra*, which dealt with operators' licenses for nonresidents employed in Indiana.

Since 1955, then, we have had a statutory definition of a “nonresident” only as applied to consideration of the registration of motor vehicles, and no statutory definition or indication of “resident” or “nonresident” as the same relates to drivers' licenses.

That which was said by the Attorney General in his 1948 O. A. G., pages 274, 275, No. 48, *supra*, generally with reference to the rules of interpretation on the question of residence is well taken, and recently our Supreme Court has reiterated the same concepts in the light of the statutory use of “residence” in relation to the issuance of a type of medical license. That case was *Board of Medical Registration & Exam. v. Turner* (1960), — Ind. —, 168 N. E. (2d) 193, 196, the Court said in part:

“It is the general rule in construing a statute which prescribes residence as a qualification for the enjoyment of a privilege, or the exercise of a franchise, that domicile and residence are deemed to be equivalent or synonymous, i.e., that the word residence is deemed to mean domicile. 28 C. J. S., Domicile, § 2(b), pp. 5 and 7, notes 14 and 26; 19 C. J., Domicile, §§ 2 and 3, pp. 395-397; *Evans v. Evans*, 1940, 141 Fla. 860, 194 So.

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215; *Minick v. Minick*, 1933, 111 Fla. 469, 149 So. 483. As nothing appears to indicate a contrary meaning was intended by the legislature, it is our opinion that 'resident' was used in the instant statute in the sense of 'domiciliary.'

"The term domicile in a strict legal sense has been defined as the place where a person has his true, fixed, permanent home and principal establishment, and to which place he has, whenever he is absent, the intention of returning. *Ballentine Law Dictionary*, p. 400. To acquire a domicile of choice, there must be an actual residence in a particular place together with an intention to remain there. A place cannot serve as a domicile merely by force of bodily presence there when it is unaccompanied by an intention to live there permanently, or at least indefinitely. 11 I. L. E., *Domicile*, § 2, p. 3. As distinguished from domicile, residence may be any place of abode or dwelling regardless of how temporary. See: *Cases cited in 28 C. J. S., Domicile*, § 2, footnote 14, p. 5."

I am of the opinion that the legislative use of the term "non-resident" as contained in Burns' § 47-2702, *supra*, was used in the "domiciliary" sense, and this position is supported by the action of the 1955 General Assembly in setting forth the requirements in the second, third and fourth sentences of Burns' § 47-2701(a), *supra*, requiring that no person shall be permitted to have more than one valid operator's license at any time.

Therefore, in consideration of the foregoing, the answers to your questions are:

1. A nonresident who is sixteen [16] years and one [1] month of age and who has in his possession a valid operator's license issued by his home state or territory may operate a motor vehicle on the highways of the State of Indiana as an operator without first obtaining an operator's license from the State of Indiana pursuant to sub-paragraph 3, Burns' 47-2702, *supra*.

2. As long as such person considered in number 1 above, is legitimately a nonresident and as long as he has in his imme-

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diate possession a valid operator's license from his home state or country, there is no limitation as to the length of time that such nonresident may operate in the State of Indiana.

3. The same rules apply to chauffeurs and public passenger's chauffeur's licenses, pursuant to the provisions of subparagraphs 4 and 5 of Burns' 47-2702, *supra*.

4. The answers to the foregoing questions would not be affected by the fact that the nonresident in question was operating a motor vehicle bearing Indiana registration and plates. This is true because there is no relationship between the issuance of drivers' licenses and motor vehicle registration in any particular case.

OFFICIAL OPINION NO. 57

October 27, 1961

Mr. Earl M. Utterback, Executive Secretary
Indiana State Teachers' Retirement Fund
506 State Office Building
Indianapolis, Indiana

Dear Mr. Utterback:

This is in reply to your request for an Official Opinion which reads as follows:

"Mr. Robert S. Hinshaw died on June 3, 1961 with Indiana State Teacher Retirement Fund membership on active status. As of June 8, 1961 he would have been married to Janet D. Hinshaw for three years.

"Mr. Hinshaw had filed a designation to accept his retirement benefit from the fund under a co-survivor provision and named Janet D. Hinshaw as the co-survivor. He did not designate a specific beneficiary for his account.

"We will appreciate your official opinion as to whether or not Mr. Hinshaw's account is bound by the provisions of Chapter 329, Section 17 (d) of the Acts of 1955, as amended in 1959 since his membership in