

ADMINISTRATIVE MEMORANDUM

SUBJECT Residence status determination for
tuition purposes of minors under
new G. S. 116-143.1(j)

NUMBER 117

DATE May 2, 1979

On April 20, 1979, the General Assembly enacted a law, effective that date, that operates to assist certain minor persons to qualify for resident tuition status in the face of other statutes, the common law, and judicial custody awards that otherwise could cause the minors to be classified nonresident for tuition purposes.

The law is Chapter 435, 1979 Session Laws, introduced as Senate Bill 131 and now codified as G. S. 116-143.1(j); the ratified bill is attached to this Administrative Memorandum. The law speaks to only one class of minors: those minors whose parents live apart, with at least one parent being domiciled in North Carolina and that parent both qualifying to claim and claiming the minor as a dependent for purposes of determining that parent's North Carolina individual income tax obligation.

A "minor" in North Carolina is a person of less than 18 years of age; and a "dependent" for purposes of the new act is a son, daughter, stepson, or stepdaughter "over half of whose support, for the calendar year in which the taxable year of the [parent] taxpayer begins, was received from the [parent] taxpayer." Because it is the person's relationship to North Carolina that causes application of new subsection (j), all cases should be assessed relative to an 18-year-old age of majority, even if the minor is in the legal custody of a parent residing in a state having a 21-year-old age majority. Further, because the North Carolina Revenue Act references the dependence test to support over an entire calendar year, a student may be credited under the act an entire year of North Carolina legal residence irrespective of when in that year the support to the minor actually began unless it appears that for part of the calendar year at issue the parent was not a North Carolina legal resident. The latter case would, of course, necessitate prorating the part of the calendar year creditable as North Carolina residence.

Aided by new G. S. 116-143.1(j), a person might accrue the 12 month period of North Carolina domicile necessary for resident tuition status in several ways, because periods of dependency on one or another resident parent, emancipated residence in North Carolina, and resident adulthood in North Carolina all may be pieced together to derive those 12 months. Some of the more likely applications of G. S. 116-143.1(j) are as follows:

1. Qualification of the minor and claiming of the minor as a dependent on the individual income tax return of the minor's North Carolina resident parent filed for the last full calendar year prior to the academic term for which resident tuition status is sought plus apparent qualification of the minor and parental intent to claim the minor as such a dependent for the calendar year commencing between the completed calendar year and the academic term for which resident tuition status is sought.

2. Qualification of the minor and claiming of the minor as a dependent of one North Carolina resident parent for the last full calendar year prior to the pertinent academic term plus apparent qualification of the minor and parental intent to claim the minor as a dependent by the other parent if such other parent is a North Carolina resident for the next calendar year, commencing between the completed calendar year and the pertinent academic term.

3. Qualification of the minor and claiming of the minor as a dependent of one North Carolina resident parent for the last full calendar year prior to the pertinent academic term plus continued dependence of the minor on a resident parent during the calendar year commencing between the completed calendar year and the pertinent academic term, until the minor achieves and maintains in North Carolina (a) emancipation as described in the residence Manual at section IVB5b, and/or (b) majority, if such emancipation and/or majority were accompanied by acts of the person that would support a finding of North Carolina residentiary intent.

New G. S. 116-143.1(j) was made effective upon its ratification, which was accomplished April 20, 1979. The act is understood, therefore, to operate prospectively only; that is, no one could acquire in-State tuition status under subsection (j) before first summer session 1979. However, circumstances that may be deemed to permit application of subsection (j) could have arisen before April 20, 1979, if those circumstances (some of which are hypothesized hereinabove) were to continue, or at least were not annulled by any subsequent circumstance.

Most of the information needed to effect the new act will be available from responses to the current residence status application (Appendix B of the residence Manual), especially items 13, 14, 15, 20, 23, 25, 26, and 29. Institutional classification officers, though, may need to use item 34 (general remarks section) to have recorded such information as present intent of a parent to claim the applicant minor as a dependent on a tax return not yet due.

New subsection (j) will, of course, be incorporated into the residence Manual upon its revision this summer. As a matter of fair notice to applicants for residence status determination, you are urged in the interim to insert this Administrative Memorandum into all your copies of the residence Manual of July 1977 and otherwise to give wide

distribution of this memorandum to your staff concerned with residence status determinations.

Questions from University staff concerning this Administrative Memorandum may be addressed to Mr. David Edwards, Special Assistant to the President.



William Friday

Attachment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1979
RATIFIED BILL

CHAPTER 435

SENATE BILL 131

AN ACT TO MAKE NORTH CAROLINA THE LEGAL RESIDENCE, FOR TUITION PURPOSES, OF A MINOR WHOSE PARENTS ARE LIVING APART, FOR THAT PERIOD DURING WHICH EITHER PARENT CLAIMS THE MINOR AS A DEPENDENT PURSUANT TO THE INDIVIDUAL INCOME TAX PROVISIONS OF G.S. 105-149(a) (5).

The General Assembly of North Carolina enacts:

Section 1. G.S. 116-143.1 is amended by adding a new subsection to read as follows:

"(j) Notwithstanding the prima facie evidence of legal residence of an individual derived pursuant to subsection (e), notwithstanding the presumptions of the legal residence of a minor established by common law, and notwithstanding the authority of a judicially determined custody award of a minor, for purposes of this section, the legal residence of a minor whose parents are divorced, separated, or otherwise living apart shall be deemed to be North Carolina for the time period relative to which either parent is entitled to claim and does in fact claim the minor as a dependent pursuant to the North Carolina individual income tax provisions of G.S. 105-149(a) (5). The provisions of this subsection shall pertain only to a minor who is claimed as a dependent by a North Carolina legal resident."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified,
this the 20th day of April, 1979.

JAMES C. GREEN

James C. Green

President of the Senate

CARL J. STEWART, JR.

Carl J. Stewart, Jr.

Speaker of the House of Representatives