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1. "NONRESIDENTS" REFERS TO PERSONS NOT RESIDENTS OF OHIO—SUCH TERM INCLUDES PERSONS FROM ANOTHER STATE WHO RESIDE HERE TEMPORARILY AND INTEND TO RETURN TO THEIR HOME STATE.

2. A MARRIED STUDENT ATTENDING A UNIVERSITY IN OHIO WHO INTENDS TO RETURN TO HIS HOME STATE IS A "NONRESIDENT"—SUCH PERSON MAY OPERATE A MOTOR VEHICLE IN OHIO IF HE HAS A PERMIT—§4507.04, R.C.

SYLLABUS:

1. The term "nonresidents" as used in Section 4507.04, Revised Code, refers to persons who are not residents of Ohio; and such term includes persons who enter and stay in this state for a period of time providing such persons intend to return to their home states and have no intention to remain here permanently.

2. A married student from another state who attends a university and rents housing in this state, but who intends to return to his home state at the end of the school term, is a "nonresident" within the purview of Section 4507.04, Revised Code, and may operate a motor vehicle on the highways of this state providing he has a permit to drive upon the highways of his home state.

Columbus, Ohio, June 19, 1961

Hon. George E. Martin, Prosecuting Attorney  
Portage County, Ravenna, Ohio

Dear Sir:

I have before me your request for my opinion which reads as follows:

"Occasionally a question arises in our county concerning the driver's license law. Attending Kent State University are students from outside the state of Ohio who have valid driver's licenses from the state of their residence but are residing here temporarily while attending school. We have been asked to determine if it is necessary for them to secure an Ohio driver's license.

"In order to help you, we will relate the actual fact situation of a case which came before our Municipal Court.

The defendant is a resident of the state of Connecticut, has a valid driver's license issued in the state of Connecticut, is married and living with his wife in an apartment in Alliance, Ohio, and has been attending Kent State University, but intends to return to Connecticut at the end of the school year.

He was picked up operating his father-in-law's car, with permission, and the car was bearing an Ohio license plate.

"We are wondering if he comes under the "non resident" exemption, stated in Section 4507.04 of the Revised Code and what the definition of a 'non resident' is as the term is used in this section. Specifically we would like the answers to the following questions?

1. Can this defendant operate an automobile on the highways of the state of Ohio on a Connecticut driver's license?
2. What definition should be applied to the term 'non resident' as used in Section 4507.04 of the Revised Code."

Section 4507.04., Revised Code, provides :

*"Nonresidents, permitted to drive upon the highways of their own states, may operate any motor vehicle upon any highway in this state without examination or license under sections 4507.01 to 4507.39, inclusive, of the Revised Code, upon condition that such non-residents may be required at any time or place to prove lawful possession, or their right to operate, such motor vehicle, and to establish proper identity."* (Emphasis added)

The answer to your first question is dependent upon the answer to the second question ; therefore, I shall answer the second question first.

The word, "nonresidents" obviously refers to persons who are not residents of the state of Ohio. The meaning of the word "resident" would therefore appear to be pertinent in this question. Defining this word, however, is not a simple task as the word seems to defy a stable and adequate definition. As stated in 18 Ohio Jurisprudence, 2d, 162, Domicil, Section 4 :

" 'Residence' is the favorite term employed by the American legislator to express the connection between person and place, its exact meaning being left to construction, to be determined from the context and the apparent object to be attained by the enactment. Questions as to the correspondence or difference in the meaning between the terms 'residence' and 'domicil' are referable generally to the wording and purpose of the statutes in which they are used, in some of which, and for certain purposes, the words are distinguished, while in others they are regarded

as synonymous. Although the terms "domicil" and 'residence', when used in a technical, legal sense, are not convertible, when used in a loose, general way they may be construed as synonymous. It has been said that 'legal residence', 'domicil', and 'permanent home' are terms that are used interchangeably and that mean one and the same thing."

Webster's New International Dictionary, 2nd Edition, defines "resident" as follows:

"One who resides in a place; one who dwells in a place for a period of more or less duration. Resident usually implies more or less permanence of abode, but is often distinguished from inhabitant as not implying a great fixity or permanency of abode."

The Supreme Court of Ohio, in the case of *Fore v. Toth*, 168 Ohio St., 363, in considering the meaning of "resident" as used in Section 2111.02, Revised Code, dealing with appointment of a guardian in probate court, stated:

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"It is urged by the petitioner that the word, 'resident', should be interpreted as synonymous with 'domicil', and that in Ohio the Probate Court can not appoint a guardian for a person not domiciled in Ohio unless he has a 'legal settlement' in Ohio.

"We do not ascribe this meaning to the word 'resident', as it is used in this section. Rather, we believe it is to be given its ordinary meaning, that of indicating simply a place of dwelling within the state. We recognize that 'residence' is often interpreted as the equivalent of 'domicil'. See Reese and Green, *That Elusive Word, 'Residence,'* 6 *Vanderbilt Law Review*, 561. Such an interpretation here, however, would unnecessarily restrict the power of our Probate Court to deal with minor children. It would result in some instances in depriving the court of the power to determine custody of a child who has no family in another state and who has only settled connection in Ohio—deprive it of the power simply because the surviving parent died domiciled some place other than Ohio. We do not believe that the General Assembly had any such intention when it enacted Section 2111.02.

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The word "resident" however, as used in Section 3105.03, Revised Code, pertaining to jurisdiction in divorce actions, has been construed as being synonymous with "domicil". *Saafeld v. Saafeld*, 86 Ohio App., 225; *Draper v. Draper*, 107 Ohio App., 32. It is also interesting to note that as early as 1901, the Cincinnati Superior Court in considering the problem

of residence requirements for entrance to the University of Cincinnati found the terms "residence" and "domicil" to be synonymous. (*Kaplan v. Kuhn*, 8 N.P., 197.) Also of interest in this respect is the language of the Court of Appeals of Montgomery County, Ohio, in *Board of Education of City of Oakwood v. Dille*, 109 Ohio App. 349, reading:

"Perhaps one of the reasons for the variety of definitions of residence is that the term is applied for many different purposes.

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The purpose of Section 4507.04, *supra*, is evidently to permit the free flow of traffic across the state of Ohio by recognizing operators' licenses issued by other states. Without such a law, motorists from other states would be required to obtain an Ohio license before traveling through Ohio. Requiring a license in each state could cause tremendous confusion and harassment to motorists and has been avoided in most of the states by laws similar to the Ohio law.

While the statute may have been intended to apply mainly to those persons who are in Ohio for a limited time, it does not so state but covers *all* nonresidents regardless of the period of time which is spent in this state. Thus, there is no single standard as to time spent in the state which could help in resolving the instant question.

In view of the foregoing, therefore, I am constrained to conclude that the word "nonresident" as used in Section 4507.04, *supra*, includes persons who may live in this state for a period of time but who have no intention of making Ohio their home and who do intend to return to the states from which they came.

Referring to your first question, if the student is a resident of Connecticut he is not a resident of Ohio and is, therefore, a "nonresident" within the purview of Section 4507.04, *supra*. Under the facts, the student is in Ohio on a temporary basis as he intends to return to Connecticut at the end of the school year. As to the residence of a student, it is stated in 18 Ohio Jurisprudence 2d, Section 22, page 174:

"The same rules that determine the residence of other persons apply in determining the residence of students. The rule is well settled that a student who goes to a college town with the intention of remaining there simply as a student, and only until his education is completed, and who does not change his intention, does not acquire a residence there, but retains the domicil he had prior to going to college. But when the intention is formed at any time

to make such town his domicile in good faith, and to the exclusion of all other places, he then becomes a resident and a citizen, and, being otherwise qualified, is entitled to vote there, although he intends to make such town his home only for an indefinite period after the completion or independently of his term as a student.”

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While the above reference deals with voting rights, the reasoning is in line with the general conclusion reached earlier in this opinion on the subject of residents and nonresidents. Thus, I conclude that under the fact situation here presented the student in question is a “nonresident” under the section and may operate a motor vehicle in this state under authority of his Connecticut driver’s license.

Accordingly, it is my opinion and you are advised:

1. The term “nonresidents” as used in Section 4507.04, Revised Code, refers to persons who are not residents of Ohio; and such term includes persons who enter and stay in this state for a period of time providing such persons intend to return to their home states and have no intention to remain here permanently.

2. A married student from another state who attends a university and rents housing in this state, but who intends to return to his home state at the end of the school term, is a “nonresident” within the purview of Section 4507.04, Revised Code, and may operate a motor vehicle on the highways of this state providing he has a permit to drive upon the highways of his home state.

Respectfully,  
MARK McELROY  
Attorney General