

October 22, 2004

South Dakota Game Fish & Parks
Secretary - John Cooper
523 East Capitol Avenue
Pierre, SD 57501

Re: The effect on my in-state hunting license of becoming a resident of another state.

Dear Mr. Cooper:

I am writing to request your opinion on an important issue. Importantly, the resolution of this issue will affect not only my rights, but many other South Dakotans as well.

I am a 22-year-old college student from Rapid City, South Dakota. I am a registered voter in South Dakota, and hold an in-state hunting license. Over the past few years, I have attended college at Colorado Christian University in Lakewood, Colorado. Whenever class is not in session, however, I am in South Dakota. Although I could have paid less in tuition by simply declaring myself a resident of Colorado, I did not do so. In my mind, to be completely honest, I had to continue to identify South Dakota as my residence since I regarded South Dakota as my "home" and I was only in Colorado to attend college.

I am considering pursuing an master's degree at the University of Colorado. This decision, of course, raises the question of whether I should declare myself a resident of Colorado in order to save thousand of dollars by paying in-state tuition and forego my ability to have an in-state hunting license.

In the past, this has been an easy decision for me since, as just explained, I have always believed that, to be completely honest, I had to continue to identify myself as a citizen of South Dakota. Unfortunately, due to certain conduct on the part of Senator Daschle that has come to light, that is no longer the case. What is permissible under the law now seems far less clear. Specifically, I wonder whether I may in fact retain my in-state hunting license while at the same time declare myself a citizen of Colorado and pay less in tuition. It is for this reason that I am writing.

The conduct on the part of Senator Daschle to which I am referring concerns the "Homestead Deduction" that Senator Daschle applied for and is presently receiving on his house in Washington, D.C. while simultaneously hunting in South Dakota, voting in South Dakota, and running for United States Senator for the State of South Dakota.

The Homestead Deduction is a residential property tax relief mechanism that deducts \$38,000 from the estimated market value of real property "which qualifies as a homestead." D.C. Code Ann. § 47-850. "In the case of real property improved by a house or a condominium," "[h]omestead" means "an individual's residence that (i) comprises a dwelling unit; (ii) is a Class 1 property, as defined in § 47-813, that contains not more than 5 dwelling units therein; and (iii) is owned in whole or in part by the individual." D.C. Code Ann. § 47-849. "Residence," "means the principal place of residence within the District of an individual, shareholder, or member, who is domiciled in the District." D.C. Code Ann. § 47-849.

As is readily apparent, the Homestead Deduction is only available to individuals that are "domiciled" in the District of Columbia. While the District of Columbia did not define "domicile" for purposes of the Homestead Deduction, the District of Columbia's highest court has. According to the District of Columbia Court of Appeals, "[t]he two requisites for establishing a change of domicile are (1) physical presence, and (2) an intent to abandon the former domicile and remain [in the new one] for an indefinite period of time." *District of Columbia v. Woods*, 465 A.2d 385, 387 (D.C. 1983). Similarly, the United States Supreme Court has held that "persons are domiciled here who live here and have no fixed and definite intent to return and make their homes where they were formerly domiciled." *District of Columbia v. Murphy*, 314 U.S. 441, 454-55, 62 S.Ct. 303, 86 L.Ed. 329 (1941). According to the South Dakota Supreme Court, "[a] residence is established by personal presence in a fixed and permanent abode, with the intent of remaining there." *Appeal of Lawrence County (In re Forman)*, 21 N.W.2d 57, 58 (S.D. 1945).

Given the preceding, one can only conclude that Senator Daschle has "an intent to abandon [his] former domicile and remain [in the new one] for an indefinite period of time." While Senator Daschle is free to become a citizen of the District of Columbia and receive its benefits, in all fairness, it would seem that he cannot, at the same time, receive the benefits of being a citizen of South Dakota. However, that is exactly what Senator Daschle appears to be doing. Beyond exercising such rights as hunting and voting in South Dakota, Senator Daschle is running for the position of United States Senator for the State of South Dakota. To me, it appears that Senator Daschle is attempting to be a resident of, or domiciled in, two different states so that he can reap the benefits of both.

My question is simple. Will the Department of Game Fish & Parks revoke my in-state license if I become a resident of Colorado to simply reduce my college tuition? Naturally, if the Department of Game Fish & Parks will revoke my in-state hunting privileges, it would seem that I am being treated unfairly. It is well known that Senator Daschle is reaping the benefits of being domiciled in two different states, yet no action is being taken as to him.

Thank you for looking into this issue for me. I look forward to receiving your opinion.

Sincerely,

Ben Folsland