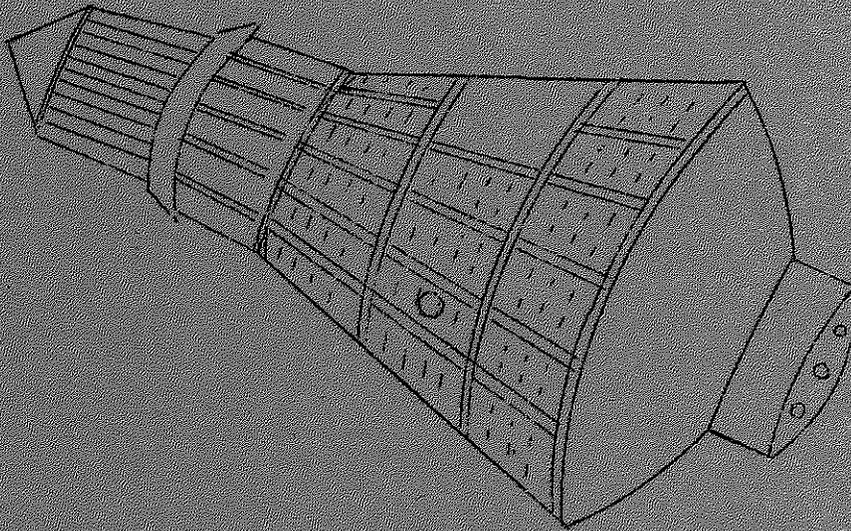


# WISCONSIN LEGISLATIVE REFERENCE LIBRARY REPORT



THE VARIATIONS IN THE LEGAL RESIDENCE REQUIREMENTS  
FOR VARIOUS PURPOSES IN WISCONSIN

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THE VARIATIONS IN THE LEGAL RESIDENCE REQUIREMENTS  
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THE VARIATIONS IN THE LEGAL RESIDENCE REQUIREMENTS  
FOR VARIOUS PURPOSES IN WISCONSIN\*

INTRODUCTION

People frequently ask: "how long must I live in Wisconsin before I can establish legal residence." This is a brief survey of some of the laws in Wisconsin having residence requirements. It should not be used for legal guidance for a specific case.

The establishment of legal residence cannot be considered apart from the purpose for which legal residence is sought. That is, legal residence is not achieved simply by living in a state for a year. Wisconsin like other states has established different time intervals for residence depending on the purpose. Thus the time one must live in Wisconsin before one is eligible to procure a driver's license differs from the time one must live in Wisconsin to exercise the privilege of voting or the period of time one must live here to be eligible for certain veterans' benefits. The time required for legal residence is a matter of public policy determined by the Legislature after consideration of circumstances involved. There is no uniform time period for establishment of legal residence for all purposes because the objects to be attained through these laws may differ.

Another aspect of legal residence laws is that the local unit of government may also require a lapse of time before residence for local purposes can be established. To be eligible to vote in a local election, for example, a person needs to claim residence in a city, village or town.

The conditions for establishing legal residence for a particular purpose are not always based on the single requirement of spending time in a place. A minor child, for example, usually acquires the residence of his father, or of the mother if the father is deceased. A wife usually has the residence of her husband. Persons who are incarcerated in institutions such as prisons and reformatories do not acquire legal residence by reason of their physical presence in the area. These are factors relating to the legal status of a person and they may be grounds for preventing the establishment of legal residence for a particular purpose.

DEFINITIONS

Webster's International Dictionary defines legal residence as "...any residence recognized for legal purposes,..." and a resident as "...having an abode, for a continued length of time;...".

The terms legal residence and legal settlement are often mistakenly used interchangeably. A person may have a legal residence for certain purposes anywhere in the state without gaining legal settlement but he has a legal settlement only in a local unit of government. The designation of a settlement for a person provides a method for determining which county or municipality is legally

responsible for his care. The term legal settlement came into general usage in England when the local unit of government became responsible for providing relief to its resident paupers. The concept of settlement is usually used in connection with a public welfare program.

WHY HAVE RESIDENCE REQUIREMENTS?

A chief concern in establishing residence requirements is to protect what is believed to be the interests of the citizens of a state, or in the case of local residence requirements, to allocate responsibility to the proper unit of government. At one time legal residence applied primarily to voting privileges and relief benefits, but it has been expanded to cover many other benefits of government, and obligations of citizens. Laws reserving certain benefits to persons having spent some time in the state are in part a result of our federal system where each state has a primary responsibility to its own constituency.

METHODS OF SOLUTION

With the great mobility of the present day population, the restriction of benefits solely on the basis of having lived in the state for a period of time may cause undue hardship in individual cases. In recent times considerable attention has been given to the problems caused by residence requirements. An example of some action that has been taken to remedy certain "hardships" is in the extension of voting privileges. Recently some of the states have enacted legislation to allow migrants from other states to vote in presidential elections prior to meeting residence requirements, on the theory that state residence ought not to affect the privilege of voting in a presidential election. Wisconsin enacted such legislation in 1953 by Chapter 76. The out-of-state voter fills out an application to vote. Then the election clerk in the Wisconsin municipality asks the election clerk in the applicant's former residence to verify that the applicant was a qualified voter before his removal to Wisconsin. The application to vote in presidential elections by out-of-state voters contained in Sec. 9.046, Wis. Stats. 1959, is as follows:

State of Wisconsin )  
County of . . . . . ) ss.

I, . . . . ., do solemnly swear that I am a citizen of the United States; that prior to establishing Wisconsin residence, my legal residence was in the . . . . . precinct of the . . . . . ward of the (town) (village) (city) of . . . county of . . ., state of . . ., and residing at . . . . . street; that on the day of the next presidential election, I shall be at least 21 years of age and that I have been a legal resident of the state of Wisconsin since . . . . ., 19. . ., residing at . . . . . street, in the . . . precinct of the . . . ward of the (town) (village) (city) of . . . . ., county of . . . . .; that I have resided in said precinct

less than one year, and pursuant to section 9.045 of the Wisconsin statutes, that I am qualified to vote for president and vice president at the election to be held November . . . ., 19. .; and that I hereby make application for an official presidential ballot, subject to complying with section 9.046 (1) (b) of the Wisconsin statutes.

Signed: . . . . .

P.O. Address: . . . . .

Subscribed and sworn to before me

this . . . . day of . . . . ., A.D. 19 . . .

. . . . County, town, village or city clerk

The 1961 Wisconsin Legislature passed a law to extend the privilege of voting in presidential elections to former Wisconsin residents who have moved out of the state within the last 24 months. Such eligible electors may apply for an absentee ballot according to Chapter 512, Laws of 1961. Before this measure becomes effective, however, it must be approved by a general referendum to be held November 1962. The section of the statutes to be created by Chapter 512 follows:

"9.047 PRESIDENTIAL ELECTION PRIVILEGE RETAINED. Any qualified elector in this state who moves to another state may vote absentee for presidential electors in the voting precinct from which he moved for a period of 24 months after such removal unless he has become eligible to qualify as a voter in the state to which he moved before that time. When requesting an absentee ballot, such person shall indicate his eligibility for a ballot for presidential electors only."

Another approach to the problems of nonresidents is by co-operative action between the states. One example of co-operative action is the adoption of reciprocal agreements when one state will extend a benefit to a nonresident if the nonresident's state will do likewise in favor of its nonresidents. The Wisconsin inheritance tax law extends an exemption in certain cases involving the property of nonresident decedents. The reciprocity clause is contained in Section 72.01 (9), Wis. Stats., 1959 as follows in part:

"RECIPROCITY AS TO NONRESIDENT DECEDENTS. Personal property of a nonresident decedent made taxable under this chapter, except tangible personal property having an actual situs in this state, shall not be subject to the tax so imposed if a like exemption was allowed at the time of death of such decedent by the laws of the state, territory or district of the decedent's residence in favor of residents of this state . . . "

Another example of co-operative action is the development of interstate compacts. This solution was suggested by the Governor's Conference Special Committee on Residence Requirements for Public Assistance to prevent the deprivation of public assistance to people

who do not qualify as a resident in any state. It is possible for individuals to become "stateless" because of the wide variation among the states in the definition of resident for public assistance purposes. The time interval ranges from "none" to "5 years residence out of the last 9 years."<sup>1</sup>

#### WHAT ARE SOME OF THE LAWS IN WISCONSIN WITH RESIDENCE REQUIREMENTS?

When a newcomer to Wisconsin is recognized as a legal resident ranges from "immediately" to 4 years or more, depending on the circumstances. In the case of registration of an automobile, a newcomer unless specifically exempted by statute is considered a resident immediately. To secure a divorce, one of the parties must be a resident at least 2 years but a marriage license requires only 5 days. An out-of-state college student is not eligible for remission of nonresident tuition fees during the first 4 years of attendance at the University of Wisconsin or the State Colleges unless residence was established one year prior to admission.

#### TIME INTERVAL FOR ESTABLISHING LEGAL RESIDENCE IN WISCONSIN FOR SOME SPECIFIED PURPOSES

(All references to sections of the statutes are from the 1959 Wisconsin Statutes unless otherwise noted)

Purpose	Residence	Constitutional or Statutory Authority
Voting	1 year in state 10 days in election district	Art. III, S.1 and Sec. 6.01 (1)
Qualification for elective office		
Governor, Lt. Gov.	Qualified elector	Art. V, S. 2
Judges	Qualified elector	Art. VII, S. 9
Legislators	Qualified elector in dis- tricts which he may be chosen to represent	Art. IV, S. 6
Qualification for state civil service	1 year	Sec. 16.11 (2), as amended by Ch. 645, Laws of 1961
Marriage license	5 days	Sec. 245.08
Divorce actions	2 years in state next pre- ceding commencement of action 30 days in county	Sec. 247.05, addendum
Drivers License	Immediately (unless exempted by statute)	Sec. 343.05

<sup>1</sup>Council of State Governments, Report of the Governor's Conference Special Committee on Residence Requirements for Public Assistance, August 1959

TIME INTERVAL FOR ESTABLISHING LEGAL RESIDENCE IN WISCONSIN (Continued)

Purpose	Residence	Constitutional or Statutory Authority
Motor vehicle registration	Immediately (unless exempted by statute)	Sec. 341.40 (2)
Resident fish and game license	1 year <sup>1</sup>	Sec. 29.01 (8)
Settlers' fish and game license	60 days next preceding application	Sec. 29.09 (1)
Income tax	Immediately <sup>2</sup>	Sec. 71.01 (1), as amended by Ch. 348, Laws of 1961
Resident tuition fees		
State Colleges	1 year next preceding first admission	Sec. 36.16
Univ. of Wisconsin	1 year next preceding first admission	Sec. 37.11 (8)
Public Welfare		
Institutional care	No residence or legal settlement but cost of care and maintenance charged to county of legal settlement	Secs. 51.08; 51.24; 51.27; 46.106 and 48.55
General relief	1 year	Sec. 49.01 (7)
Aid to the blind	1 year	Sec. 49.18 (2) (a)
Aid to dependent children	1 year	Sec. 49.19 (4) (b)
Aid to totally and permanently disabled	1 year	Sec. 49.61 (2)(b), as amended by Ch. 565, Laws of 1961
Old-age assistance	1 year	Sec. 49.22 (1)(c), as amended by Ch. 22, Laws of 1961
Veterans benefits	Resident continuously for 10 years next preceding his application for benefit or was a resident at the time of enlistment or induction and continues his residence in state during period of rehabilitation	Sec. 45.35 (5a)

<sup>1</sup>There are exceptions for special cases.

<sup>2</sup>Nonresidents are also taxed if income is derived on property located or business transacted within the state and also upon income derived from the performance of personal services within the state.

EXCERPTS FROM SOME RESIDENCE LAWS

Voting

The Wisconsin Constitution provides that a voter must have resided in the state for one year next preceding an election. However, the Constitution provides that the Legislature may extend the right of suffrage to persons not specifically enumerated in the Constitution provided that the measure is approved by the people at a general referendum; Pertinent sections from the Wisconsin Constitution are set forth below:

Wisconsin Constitution, Article III, Suffrage

"ELECTORS. Section 1. Every person, of the age of twenty-one years or upwards, belonging to either of the following classes, who shall have resided in the state for one year next preceding any election, and in the election district where he offers to vote such time as may be prescribed by the legislature, not exceeding thirty days, shall be deemed a qualified elector at such election:

(1) Citizens of the United States.

(2) Persons of Indian blood, who have once been declared by law of congress to be citizens of the United States, any subsequent law of congress to the contrary notwithstanding.

(3) The legislature may at any time extend, by law, the right of suffrage to persons not herein enumerated; but no such law shall be in force until the same shall have been submitted to a vote of the people at a general election, and approved by a majority of all the votes cast on that question at such election, ...

\* \* \*

RESIDENCE SAVED. Section 4. No person shall be deemed to have lost his residence in this state by reason of his absence on business of the United States or of this state.

MILITARY STATIONING DOES NOT CONFER RESIDENCE. Section 5. No soldier, seaman or marine in the army or navy of the United States shall be deemed a resident of this state in consequence of being stationed within the same."

Section 6.01 (1) Wis. Statutes specifically provides that an elector may vote if he has resided in the state one year next preceding any election and has resided in the election district 10 days prior to any election. Section 6.01 (1) as amended by Chapter 145, Laws of 1961 provides:

"6.01 (1) Every citizen of the United States of the age of 21 years or upwards, who has resided in the state one year next preceding any election, and has resided in the election district, or precinct where he offers to vote, 10 days prior to any election, shall be deemed an eligible elector. Any citizen of the United States of the age of 21 years or upward, who has resided in the state one year

or more and who has resided in an election district or precinct less than 10 days next preceding any election shall be entitled to vote at such election in the election district or precinct in this state where he was last a qualified elector."

The rules for determining the residence of an elector are numerous because there are so many special cases which arise. These rules may be found in Section 6.51, Wisconsin Statutes, 1959:

"6.51 RULES FOR DETERMINING RESIDENCE OF ELECTOR. In determining the question of residence as a qualification to vote, the following rules, so far as applicable, shall govern, and if a person offering to vote be challenged as unqualified on the ground of residence, the inspectors shall admonish him of such rules, and put to him such further questions as shall be proper to elicit the facts in respect thereto, namely:

- (1) As prescribed in the constitution, no person shall be deemed to have lost his residence in this state by reason of his absence on business of the United States or this state; and no soldier, seaman or marine in the army or navy of the United States shall be deemed a resident of this state in consequence of being stationed within the same.
- (2) That place shall be considered and held to be the residence of a person in which his habitation is fixed, without any present intention of removing therefrom, and to which, whenever he is absent, he has the intention of returning.
- (3) A person shall not be considered or held to have lost his residence who shall leave his home and go into another state or county, town or ward of this state for temporary purposes merely, with an intention of returning.
- (4) A person shall not be considered to have gained a residence in any town, ward or village of this state into which he shall have come for temporary purposes merely.
- (5) If a person remove to another state with an intention to make it his permanent residence, he shall be considered and held to have lost his residence in this state.
- (6) If a person remove to another state with the intention of remaining there for an indefinite time and as a place of present residence, he shall be considered and held to have lost his residence in this state, notwithstanding he may entertain an intention to return at some future period.
- (7) The place where a married man's family resides shall generally be considered and held to be his residence; but if it is a place of temporary establishment for his family, or for transient objects, it shall be otherwise.
- (8) If a married man has his family fixed in one place and does his business in another, the former shall be considered and held to be his residence.

(9) The mere intention to acquire a new residence, without removal, shall avail nothing; neither shall removal without intention.

(10) If a person shall go into another state and while there exercise the right of a citizen by voting, he shall be considered and held to have lost his residence in this state.

(11) No person shall be deemed to have gained a voting residence in any town, city or village in this state by remaining therein as an inmate of any county home or other charitable institution; provided that his right as a qualified elector to vote in the town, city or village of his fixed place of residence, prior to his becoming an inmate of such institution, shall not be abridged. Nor shall any other eligible elector, receiving poor or unemployment relief, be denied his right to vote in any town, ward or village in which he has gained a voting residence, notwithstanding his legal settlement for poor relief may be elsewhere.

(12) If an unmarried person sleeps in one ward and boards in another, the place where he sleeps shall be considered his residence. Any registered voter who shall remove from one precinct to another in the same ward or town between the last registration day and election day shall, upon presentation of affidavits from the inspectors of the precinct from which he removes, showing registration in such precinct, be considered a resident of the precinct to which he has moved and shall be entitled to vote therein.

(13) If an unmarried person be employed on a railroad, boat or stage line or is a student or teacher and boards at different places for part of the week, month or year, if one of those places be with his parents, that place shall be considered his residence unless he has, by registering to vote elsewhere or by the performance of some other kindred act, elected some other place as his residence. If he has no parents and has not registered at any other place, he shall be asked: Do you consider this your place of residence, and have you so considered it for the past ten days in preference to any other place? If he answers in the affirmative he shall be entitled to all the privileges and be subject to all of the duties of other citizens in such place in the matter of voting, jury service, poll taxes and assessments for taxes.

(14) Each guest of any national or state home for soldiers in this state, or of any old peoples' home supported as a benevolence, shall be deemed to reside in the town, city or village, in which said home shall be located, and in the election district in which he shall sleep, unless such guest shall elect to treat his fixed place of residence, prior to his becoming a guest of such home, as his place of voting residence."

#### Qualification for Election to Office

Most of the laws setting forth qualification for elective office simply state that the candidate must be a qualified elector. The Wisconsin Constitution specially provides that candidates for the office of Governor, Lieutenant Governor and Judge be electors.

A candidate for the Legislature must be a qualified elector "in the district which he may be chosen to represent." According to Section 39.01, Wis. Stats., 1959, the "State superintendent of public instruction shall have taught or supervised teaching in this state for a period not less than 5 years."

Appointment to the Wisconsin State Classified Civil Service

A one year residence is required for applicants taking a qualifying examination for the classified service in state government. The residence requirement may be waived for certain positions when a critical need for professional employes exists in state government. Section 16.11 (2), Wis. Stats., 1959, as amended by Chapter 645, Laws of 1961 provides:

"16.11 (2) The competitive examinations shall be free and open to all applicants who are citizens of the United States and who have been residents of this state for one year prior to their application and who have fulfilled the preliminary requirements stated in s. 16.12, and shall be held at such times and places as, in the judgment of the director, most nearly meet the convenience of applicants and needs of the service. To insure competitive equality between the blind and persons not so handicapped in connection with the taking of civil service examinations, the applicant may request from the department of administration the furnishing of an amanuensis or a reader when necessary, and the furnishing of a place to take such examination, or such other similar prerequisites to insure equality in such examination. Upon certification of the appointing authority of any state department that a critical need for employes in a specific classification exists the director may open competitive examinations to residents of other states who have fulfilled the preliminary requirements stated in s. 16.12. In a like manner the director may open examinations to qualified professional and technical applicants without regard to citizenship."

Application for Marriage License

Section 245.08, Wis. Stats., 1959 provides in part that:

"Application for a marriage license shall be made at least 5 days before a license shall be issued except as otherwise provided in this section." For certain reasons such as pregnancy, or grave illness of one of the parties, military service, etc. the judge may dispense with the 5-day requirement. But the person applying for such dispensation shall have been a resident of this state for at least 30 days prior to making the application.

Commencement of a Divorce Action

Section 247.05, (Addendum) Wis. Stats., 1959 provides that a court in the state having jurisdiction over marriage and divorce actions may determine questions of status relating to marriage and divorce for specified circumstances. One of the requirements for an action for divorce is for one of the parties to have 2 years residence in the state as provided in Section 247.05 (3):

"(3) Actions by or against residents for divorce. Regardless of where the cause of action arose, an action for divorce by or against a person who has been a bona fide resident of this state for at least 2 years next preceding the commencement of the action shall be commenced in the county of this state in which at least one of the parties has been a bona fide resident for not less than 30 days next preceding the commencement of the action."

#### Driver's License

Wisconsin law does not provide any grace period for a person who has moved into the state to secure a drivers license. Under Section 343.05, Wisconsin Statutes, 1959 a person who comes to Wisconsin with the intention of making his residence here is considered a resident immediately for licensing purposes:

"343.05 OPERATORS TO BE LICENSED; EXCEPTIONS. (1) Except as provided in sub. (2), no person shall operate a motor vehicle upon a highway in this state unless such person has a license issued to him by the department, which license is not revoked, suspended, canceled or expired. A valid chauffeur's license satisfies the requirements of this section only when the licensee is operating a vehicle in the performance of his duties as chauffeur.

(2) The following are exempt from the licensing requirements of ch. 343:

(a) Any person in the armed services while operating a motor vehicle owned by or leased to the United States government.

(b) Any person while operating any farm tractor or implement of husbandry temporarily operated or moved on a highway.

(c) Any nonresident who is at least 16 years of age and who has in his immediate possession a valid license issued to him in his home jurisdiction.

(3) Any person violating sub. (1) may be fined not more than \$100 or imprisoned not more than 6 months or both."

#### Registration of a Motor Vehicle

All motor vehicles unless specifically exempted are required to be registered in Wisconsin. If an owner of an automobile moves to Wisconsin, he is required to register his vehicle immediately. Section 341.40, Wis. Stats., 1959 states:

"341.40 EXEMPTION OF NONRESIDENTS AND FOREIGN-REGISTERED VEHICLES. (1) Except as to foreign-owned vehicles required by s. 341.07 to be registered in this state, any vehicle having a gross weight of 8,000 pounds or less which is registered in another jurisdiction is exempt from the laws of this state providing for the registration of such vehicles if:

(a) The vehicle carries a registration plate indicating the registration in such other jurisdiction; and

(b) The vehicle is owned by a nonresident; and

(c) The jurisdiction in which the vehicle is registered allows such vehicles when registered in Wisconsin to be operated tax free upon its highways under conditions substantially as favorable to residents of Wisconsin as to its own residents.

(2) If the owner of any such vehicle moves to Wisconsin or if the vehicle is purchased by a Wisconsin resident, the vehicle immediately becomes subject to the laws of this state providing for the registration of vehicles."

The Commissioner of the Motor Vehicle Department is authorized to enter into reciprocity agreements with other states to provide for the registration of motor vehicles operating in interstate commerce. The provisions of the reciprocity agreement are set forth in Section 341.41, Wis. Stats., 1959:

"341.41 RECIPROCITY AGREEMENTS AUTHORIZED. (1) The commissioner with the approval of the governor is authorized to enter into reciprocal agreements with the responsible officers of other jurisdictions as to licenses, permit fees, mileage and flat taxes under which motor vehicles, trailers, or semitrailers properly licensed or registered in other jurisdictions may be operated in interstate commerce in this state without a Wisconsin registration or the payment of permit fees or mileage or flat taxes, provided like privileges are accorded to vehicles owned by Wisconsin residents when operated in such other jurisdictions. Such agreement may include such restrictions, conditions and privileges, including any proportional registration, taxes or fees, as are deemed advisable. Such agreement shall provide that a resident of this state when using the highways of such other jurisdiction shall receive exemptions of a similar kind to a like degree.

(2) A nonresident operating a vehicle in this state is not exempt by virtue of any reciprocity agreement entered into pursuant to sub. (1) unless:

(a) The vehicle is properly registered in the jurisdiction of the residence of its owner, its domicile, or the principal place of business of its owner or is registered on a proportional registration basis pursuant to an interstate compact; and

(b) The vehicle has conspicuously displayed upon it a valid registration plate; and

(c) The operator of the vehicle has in his possession a valid registration certificate or other evidence that the vehicle is properly registered; and

(d) If the vehicle is subject to s. 341.42, the vehicle has displayed upon it an identification plate or decal indicating that a reciprocity permit has been issued.

(3) If the laws of another jurisdiction impose upon the vehicles of residents of this state any taxes, fees, charges, penalties, obligations, restrictions, prohibitions or limitations of any kind

additional to those imposed by this state upon the vehicles of residents of such other jurisdiction the commissioner with the approval of the governor is authorized to impose and collect fees or charges in like amount and to provide for similar obligations, prohibitions or limitations upon the owner or operator of a vehicle registered in such other jurisdiction so long as the laws of such other jurisdiction requiring such imposition remain in effect.

(4) Trailers and semitrailers owned by residents of a jurisdiction with which a reciprocal agreement is in effect pursuant to this section may be operated in commerce by a Wisconsin resident in Wisconsin without the payment of fees or ton mile on flat taxes when such trailers or semitrailers are operated in exchange for trailers or semitrailers or are operated in accordance with rules adopted by the commissioner respecting the interchange of equipment. When used in railroad trailer-on-flat-car service, foreign licensed trailers or semitrailers may be operated in commerce in Wisconsin without the payment of permit or registration fees.

(5) In this section, "proportional registration, taxes or fees" means the registration of a portion of the vehicles or the payment of a portion of the taxes or fees in Wisconsin and a portion in the reciprocating jurisdiction in a general ratio or proportion based on the total number of miles traveled by the owner or operator in the reciprocating jurisdictions.

(6) The commissioner is authorized to accept proportional registration of a fleet of 3 or more vehicles of any duly authorized common carrier of passengers as defined in s. 194.01 (5), operating such fleet in interstate commerce or jointly in interstate and intrastate commerce in this state, if he is satisfied prior to the approval of such proportional registration that this state will obtain a fair and equitable share of license registrations of the vehicles comprising such fleet. Such proportional registration shall be accomplished either by payment, to the motor vehicle department, of registration fees in an amount equal to that obtained by applying the proportion of in-state fleet miles divided by the total fleet miles to the total fees which would otherwise be required for the registration of each and all such vehicles in this state, or by registration of a portion of such vehicles as above determined."

#### Fish and Game Licenses for Residents and Nonresidents

In general the fees for fish and game licenses issued to nonresidents of the state are higher than the fees for licenses issued to residents. The fee for a resident fishing license, for example, is \$3 and for a nonresident, it is \$6. Section 29.01 (8), Wis. Stats., 1959 gives a general definition for a resident for licensing purposes as follows:

"RESIDENT. 'Resident' means any person who has maintained his place of permanent abode in the state of Wisconsin for a period of one year immediately preceding his application for license."

No person shall hunt, trap or fish in any inland water of this state unless a license has been issued to him according to Section

29.09 (1), Wis. Stats., 1959. There are many exceptions to this general provision, however. A minor between the ages of 12 and 16 may hunt without a license when accompanied by parent or guardian according to Section 29.09 (1). Persons under 16 years of age may fish without a license (Section 29.14). Undergraduate students in colleges in the state and members of the armed forces stationed in Wisconsin may be issued a license at resident fees [Section 29.09 (12)] as amended by Chapter 389, Laws of 1961.

"29.09 (12) ARMED FORCES; STUDENTS. Fishing licenses and small game hunting licenses and deer hunting licenses shall be issued at resident fees by the commission and by the county clerks to any student or to any member of the armed forces of the United States applying therefor, who exhibits proof that he is in active service with such armed forces and that he is stationed in Wisconsin or that he is a registered full-time undergraduate student in residence of a college or university, public or private, located in this state and offering a bachelor's degree."

Totally blind persons may fish without a license and so may any physically or mentally handicapped individuals committed to Northern, Southern or Central Colony and Training Schools [Section 29.145 (1) as amended by Chapter 286, Laws of 1961]. Inmates of county and state mental hospitals may receive a fishing license without fee according to Section 29.145 (1b) as created by Chapter 558, Laws of 1961.

A special class of residents exists for the issuance of fishing, hunting and trapping licenses. A "settlers'" license is available to accommodate persons who have not lived in the state for a year but who have moved to and settled in Wisconsin for at least 60 days prior to application for license. This law as amended by the 1961 Legislature by Chapter 321 follows:

"29.11 Settlers' small game hunting licenses, settlers' fishing licenses, settlers' trapping licenses, and settlers' deer hunting licenses subject to s. 29.09 may be issued by the commission in its discretion, to actual settlers duly applying therefor who have resided in this state less than one year but not less than 60 days next preceding the application. A bona fide settler is a person who has either purchased or rented, or has negotiations in progress to purchase or rent farm or residence property in Wisconsin and who has moved to and settled in this state, or any member of his family of the age of 12 years or over. Such licenses shall be in substantially the same form, subject to the same conditions and restrictions, and entitle the holder to the same rights, privileges and immunities as a resident small game hunting license, resident fishing license, resident trapping license, and resident deer hunting license, as the case may be. No nonresident hunting, fishing or trapping license shall be issued in the same year to any person to whom a settlers' small game hunting license, settlers' fishing license, settlers' trapping license or settlers' deer hunting license has been issued, and no settlers' small game hunting license, settlers' fishing license, settlers' trapping license or settlers' deer hunting license to any holder of a nonresident hunting, fishing or trapping license."

The license issued for net and set hook fishing in outlying waters requires a time interval of 2 years to qualify as a resident. Section 29.33 (3) (c), Wis. Stats., 1959 provides:

"29.33 (3) (c) For the purpose of this section, a nonresident means any person who has not actually resided within this state 2 years immediately prior to the date of application for a license, or, any person applying for a license for the use of a registered boat whose port of record is outside this state or which hails from a port outside this state."

#### Liability for Income Taxes

For many years, the Wisconsin personal income tax law defined a resident as a person who spent more than 7 months within the state. Section 71.01, Wis. Stats., 1959 provided:

"71.01 IMPOSITION OF TAX ; EXEMPT INCOME. (1) Normal tax. For the purpose of raising revenue for the state and the counties, cities, villages and towns, there shall be assessed, levied, collected and paid a tax on all net incomes as hereinafter provided, by every person residing within the state or by his personal representative in case of death; and by every nonresident of the state, upon such income as is derived from property located or business transacted within the state, except as hereinafter exempted. Every natural person domiciled in the state, and every other natural person who maintains a permanent place of abode within the state or spends in the aggregate more than 7 months of the income year within the state, shall be deemed to be residing within the state for the purposes of determining liability for income taxes and surtaxes. This section shall not be construed to prevent or affect the correction of errors or omissions in the assessments of income for former years as provided in s. 71.11 (16) and (20)."

A change in the definition of a resident for income tax purposes was passed by the 1961 Legislature. It provides that every natural person domiciled in the state shall be deemed to be residing within the state for purposes of taxation. Section 71.01 (1) as amended by Chapter 348, Laws of 1961, provides:

"71.01 (1) For the purpose of raising revenue for the state and the counties, cities, villages and towns, there shall be assessed, levied, collected and paid a tax on all net incomes as hereinafter provided, by every person residing within the state or by his personal representative in case of death; and by every nonresident of this state, upon such income as is derived from property located or business transacted within the state, and also by every nonresident natural person upon such income as is derived from the performance of personal services within the state, except as hereinafter exempted. Every corporation organized under the laws of the state and every natural person domiciled in the state shall be deemed to be residing within the state for the purposes of determining liability for income taxes and surtaxes. This section shall not be construed to prevent or affect the correction of errors or omissions in the assessments of income for former years under s. 71.11 (16) and (20)."

Many problems arise in the administration of the income tax as it pertains to the definition of resident and nonresident. To illustrate, if a person lives in one state and earns his income in a bordering state, is he subject to state income taxes in both states, the state where he has his abode or the state where he receives his income? While the specific laws normally define who is liable for a tax in general, the income of nonresidents is taxed only to the extent that it is attributable to the state, but the income of residents may be taxed regardless of the source. The definition of resident, therefore, is a crucial factor in determining if the person is liable for taxes.<sup>1</sup>

Since the laws of the various states differ in the definition of a resident for tax purposes, it is possible for a person to be liable for income taxes levied by more than one state on the same income. By Chapter 348, Laws of 1961, a tax credit on income taxes in certain cases is granted when the income is subject to taxation in Wisconsin and another state. The tax credit is granted on a reciprocal basis only -- that the other state also favors Wisconsin "residents". The provisions of Chapter 348, Laws of 1961, relating to the tax credit provision are set forth in part below:

"71.03 (2) (f) With respect to natural persons domiciled outside Wisconsin who derive income from the performance, on or after January 1, 1961, of personal services in Wisconsin, such income shall be excluded from Wisconsin gross income to the extent that it is subjected to an income tax imposed by the state of domicile; provided that the law of the state of domicile allows a similar exclusion of income from personal services earned in such state by natural persons domiciled in Wisconsin, or a credit against the tax imposed by such state on such income equal to the Wisconsin tax on such income."

"71.05 (5) If in the calendar year 1962 or thereafter, a natural person domiciled in this state pays a net income tax to another state upon income derived from the performance by him of personal services in such other state in the calendar year 1961 or corresponding fiscal year or thereafter, such person may credit the tax paid to such other state on such income against the net income tax otherwise payable to Wisconsin on income of the year in which such personal services were performed in such other state. No such credit shall be allowed unless claimed within the time provided in s. 71.10 (10) (bm) but s. 71.10 (10) (d) shall not apply to such credits. For the purposes of this section, amounts withheld from wages or declared and paid pursuant to the income tax law of another state shall be deemed a net income tax paid to such other state only in the year in which the income tax return for such state was required to be filed. The department of taxation shall compute the revenue loss to the state, county and various tax districts resulting from the tax credits granted under this subsection, and may from time to time correct its computations."

Residence for Tuition Purposes at the State Colleges and the  
University of Wisconsin

In general nonresident students who attend the public supported state colleges and the state University of Wisconsin are required to pay nonresident tuition fees which are higher than tuition fees paid by students who are considered residents of the state. For both the University and the State Colleges, the requirement for establishing residence is based on one year residence in Wisconsin prior to first admission to the school. This means that a person who was a nonresident when he entered the University or State College remains a nonresident throughout his undergraduate career.

One of the most troublesome problems in defining residence for college and university tuition purposes is that most students are minors and therefore have derivative residence, that is they derive their residence status from their parents or legal guardians. There are many problems raised in connection with the status of minors. For example, what settlement do orphans have? Children of divorced parents? Minors who become emancipated due to marriage either before or after matriculation? The rules for interpretation of residence for many of the special cases have been spelled out by law, Section 36.16 relating to nonresident tuition at the University and Section 37.11 relating to the State Colleges. Since the provisions are almost identical for the University and State Colleges, only the following excerpt for the University of Wisconsin is given. It should be noted in subsection (1) (b) that a student may become a resident for tuition purposes if he has lived continuously in the state for 4 years while attending the University. Section 36.16, Wis. Stats., 1959 provides in part:

"36.16 NONRESIDENT TUITION AT UNIVERSITY. (1) (a) Any adult student who shall have been a resident of the state for one year next preceding his first admission to the university, or any minor student whose parents have been bona fide residents of the state for one year next preceding the beginning of any semester for which such student enters the university, or any minor student, whose natural parents are divorced or legally separated, and who has resided continuously for the preceding year with either his mother or father, provided that such mother or father has been a bona fide resident of the state for one year next preceding the beginning of any semester for which such student enters the university, or any minor student who is an orphan who has resided continuously for the preceding year with a grandparent or a legally appointed guardian, provided that such grandparent or guardian has been a bona fide resident of the state for one year next preceding the beginning of any semester for which such student enters the university, or any minor student who is under guardianship in this state pursuant to ch. 48 or 319, provided that the parental rights of the parents of such minor have been judicially terminated, and provided that, if the guardian of such minor is an individual, such individual has been a bona fide resident of the state for one year next preceding the beginning of any semester for which such student enters the university, shall, while he continues a resident of the state, be entitled to exemption from fees for nonresident tuition, but not from tuition, incidental or other fees in the university.

"(ab) Notwithstanding the provisions of par. (b), nonresident members of the armed forces who are stationed in the state and their wives and children shall be entitled to the exemptions provided in par. (a) during the period that such member of the armed forces is stationed in the state.

"(ac) Notwithstanding the provisions of par. (b), any female student who attended the university as a minor student exempt from the fees for nonresident tuition, and who would continue to be entitled to the exemptions provided in par. (a) except for having married a nonresident, shall continue to be entitled to such exemptions.

"(ad) Notwithstanding the provisions of par. (b), any female student who entered the university as a nonresident student and married a resident student after matriculation, shall be entitled to the exemptions provided in par. (a) after attending the university for 2 full consecutive semesters as a nonresident, and while continuing to reside in this state.

"(b) Any student who shall not have been a resident of the state for one year next preceding his first admission to the university, except as above provided, shall not be exempt from the payment of the nonresident tuition fees until he shall have attended the university for 4 academic years; but if he shall have attended the university and thereafter shall continuously have been a resident of this state for a period of combined attendance at the university and subsequent residence in the state of not less than 4 years, he shall, while he continues a resident of the state, be entitled to exemption from payment of the nonresident tuition fees upon re-entering the university. ... "

#### Residence Requirements for Public Welfare Aids

The concept of residence for public welfare aids is extremely involved because there are so many different kinds of programs each with certain eligibility requirements, and because the question of legal settlement arises for certain welfare programs where the cost is charged against a local government. Residence is only one of many conditions which must be met in order to become eligible for aid. An obvious example is that you must be blind within the meaning of the statute to become eligible for aid to the blind.

For the purposes of this report only 2 types of laws are presented, both of which involve the questions of residence and legal settlement: general relief and Social Security aids and institutional care. It should be noted that for general relief a person who does not have a legal settlement (that is, has not resided for a year in a particular county or municipality) may if he has resided in this state less than one year be a state dependent and receive temporary aid charged against the state.

Institutional care. There are no residence period or settlement requirements for commitment to certain public welfare institutions such as state and county mental hospitals, juvenile institutions and for prisons and reformatories, but the county of legal settlement is charged for care and maintenance at these institutions except for prisons and reformatories.

General relief and Social Security aids. General relief is the responsibility of the town, village or city unless a county system of relief has been adopted. With certain exceptions one year continuous residence in the locality is generally required to receive aid from a locality. The requirements for eligibility for general relief are set forth in Section 49.01 (7), Wis. Stats., 1959:

"49.01 (7) 'Eligible' or 'eligibility' means a dependent person who has continuously resided for one whole year in this state immediately prior to an application for relief except that temporary assistance including medical care may be granted during the initial year to meet an emergency situation pending the negotiations for the return of the applicant and family to the former place of residence or legal settlement outside this state or to meet a medical emergency developing during the initial one year period of residence. Such temporary assistance shall not extend beyond 30 days unless a medical emergency requires further extension. Notwithstanding the foregoing, whenever anyone leaves this state, and was at the time of his departure eligible as to residential requirements to receive general assistance under this section other than emergency aid, such person upon returning within one year to this state, shall be eligible to receive such general assistance in this state without limitation on the period of relief to be granted so long as the need continues."

The Social Security aids are administered through the county. The resident requirement for each program is one year in the state. Excerpts from these laws setting forth eligibility standards are as follows:

Aid to the Blind, Section 49.18 (2) (a)

"(2) To entitle an applicant to such aid:  
"(a) He must have resided in this state at the time he lost his sight, or for one year preceding his application. An applicant who has resided less than one year in Wisconsin may be granted aid to the blind if the state from which he removed his residence to Wisconsin grants such aid to any resident of Wisconsin who has moved to such state and lived there less than one year; provided that aid to the blind may not be continued to exceed one year to any recipient who removes his residence to another state."

Aid to Dependent Children, Section 49.19 (4) (b), Wis. Stats., 1959

"49.19 (4) The aid shall be granted only upon the following conditions:

"(b) Each child to be eligible for aid shall have resided in the state for one year immediately preceding the application for such aid or if born within one year immediately preceding the application the parent or other relative as described in sub. (1) (a) with whom the child is living shall have resided in the state for one year immediately preceding the birth of the child. Notwithstanding the foregoing whenever anyone leaves the state and was at the time of his departure eligible for aid to dependent children on the basis of residence, such person upon returning within one year to this state shall be eligible to receive such aid."

Aid to Totally and Permanently Disabled Persons, Section 49.61  
(2) (b), Wis. Stats., 1959, as amended by Chapter 565, Laws  
of 1961

"49.61 (2) Eligibility requirements. Aid under this section shall be granted only to an applicant:

"(b) Who has resided in Wisconsin continuously for one year or more preceding the date of making application or of being granted aid and such aid may be continued for a period of one year to any recipient who removes his residence to another state, provided that the other state similarly reciprocates by granting aid to the disabled for a period of at least one year to persons moving from that state into Wisconsin; "

Old-age Assistance, Section 49.22 (1) (intro. par.), Wis.  
Stats., 1959, and (c) as amended by Chapter 22, Laws of 1961

"49.22 PERSONS ELIGIBLE. (1) Any needy person who complies with the provisions of ss. 49.20 to 49.38 shall be entitled to financial assistance in old age. The amount granted shall be determined by a budget in which all income and resources, except as provided by s. 49.18 (1) (a), as well as expenses shall be considered and the aid per month shall not exceed \$75. Old-age assistance may be granted to a person only if:

"(c) He has resided in the state continuously during the year immediately preceding the date of application or if he has left the state but returned before being absent for one year and was eligible on the basis of residence at the time he left the state. An applicant who has resided less than one year in Wisconsin may be granted old-age assistance if the state from which he removed his residence to Wisconsin grants assistance to any resident of Wisconsin who has moved to such state and lived there less than one year; provided that an applicant who has removed his residence to Wisconsin from a state which requires that an applicant who has removed his residence from Wisconsin to such state, reside in such state more than one year before he is eligible for old-age assistance be required to reside in this state for a like period before becoming eligible for old-age assistance in this state; and provided that old-age assistance may be continued when a recipient removes his residence to another state until he satisfies the residence requirements for eligibility for old-age assistance in such state; "

Rules for determining legal settlement. The legal settlement laws may apply either to determining the responsibility of one county or municipality as against that of another or of the state. When a person's legal settlement is determined, then that unit of government is charged with the cost of the aid. Legal settlement or want thereof is determined by applying the pertinent statute (as construed pursuant to proper legal principles) to the facts. The major statute on the determination of legal settlement is Section 49.10, Wis. Stats. 1959.

"49.10 LEGAL SETTLEMENT; HOW DETERMINED. (1) A wife has the settlement of her husband, if he has any within the state, but if he has none, she has none. A wife living separate from her husband shall, if criminal proceedings have been instituted under s. 52.05, or support proceedings commenced under s. 52.10, begin to acquire legal settlement in her own right as of the date of instituting the criminal proceedings or commencing the support proceedings.

"(2) (a) Legitimate minor children have the settlement status of their father if living, or of the mother if their father is deceased, or if their mother has acquired settlement in her own right under sub. (1) and has actual custody of the children; if the parents are divorced, the children have the settlement status of the parent who has legal custody awarded by a court of competent jurisdiction. If no award of legal custody is made, the children have the settlement status of the parent having actual custody but if custody is awarded to other than a parent, such children have no settlement.

"(b) Illegitimate children have the settlement of their mother; and if her settlement is lost, theirs is lost.

"(c) If parental rights are terminated, notwithstanding any disposition of custody in the same or companion proceedings, the child has no settlement.

"(3) (a) Any person, except as otherwise provided in this section, without a settlement in any municipality in a county (which is not operating on the county system), who voluntarily resides in that county one whole year without the receipt of aid, public or private, as a dependent person, gains a settlement in the county. That which interrupts residence toward the gaining or losing of settlement in a municipality likewise interrupts residence toward the gaining or losing of a county settlement. Every such settlement continues until it is lost by acquiring a new one in this state or by so residing for one whole year elsewhere than the county of settlement or by so residing one whole year in a municipality within the county of settlement, and the residence which went toward gaining the county settlement shall, if voluntarily in the municipality, be included toward the gaining of settlement in the municipality.

"(b) Any person who has a settlement in any municipality in a county (which is not operating on the county system) who resides elsewhere than said municipality for one whole year so as to lose his settlement in the municipality, but does not gain a settlement in another municipality in the county, and does not reside outside the county for one whole year, so as to lose settlement, has a settlement in the county.

"(c) Time spent by any person while residing on land owned, operated or controlled by another municipality or county, shall not be included as a part of the year necessary to acquire a settlement in the town, city, village or county, wherein such lands are located, but shall be included as a part of the year necessary to acquire a settlement in such other municipality or county.

"(4) Every person (except as otherwise provided in this section) who voluntarily resides in any municipality or county operating on the county system one whole year without receiving aid, either public or private, as a dependent person, gains a legal settlement therein. Residence by a person within this state under the following circumstances shall not be considered as voluntary and shall be considered as interrupted, and no settlement status shall be changed:

"(a) While supported as a dependent person by other than a spouse, parent or child.

"(b) While employed on any governmental program as a needy person.

"(c) While an inmate or under the control and supervision of any public institution or an inmate of a private institution.

"(d) While residing or while employed on any Indian reservation land which is not subject to taxation by the municipality or county wherein such land is located.

"(e) While under confinement or on probation or parole under the state or federal criminal statutes.

"(f) While supported in whole or in part in any institution or foster home as a public charge.

"(5) Time spent in the armed forces on active duty exceeding 30 days in the aggregate per annum shall not be included as part of the year necessary to change settlement status.

"(6) Marriage emancipates minors so that they may acquire legal settlement in their own right.

"(7) Every settlement continues until it is lost by voluntarily acquiring a new one in this state or by voluntarily residing for one whole year elsewhere than the municipality or county in which such settlement exists; and upon voluntarily acquiring a new settlement or upon voluntarily residing one whole year elsewhere than the municipality or county of settlement, all former settlements are lost.

"(8) Where a divorce has been granted, the date from which a new settlement may be acquired by a married woman is the day on which the divorce is granted and not the termination of the period when the divorce judgment becomes final.

"(9) When any territory is organized into or attached to any municipality, every person having a settlement in such territory, and who actually dwells or has his home, or if absent, has his last dwelling place or home therein, thereafter has a settlement in such new municipality or the one to which such territory is so attached. The organization into or attachment to any municipality of any territory shall not prevent any person from acquiring a legal settlement therein within the time and by the means by which he would have gained it there if no new municipality had been organized or such territory had not been attached.

"(10) This section shall not affect any commitments to institutions, payments or decisions made or actions, proceedings or petitions pending or causes of action existing on the basis of legal settlement before the effective date of this section (1960).

"(11) When this section is applied to any county operating under the county system of administering public assistance the term 'municipality' as used herein means such county unless the context clearly requires otherwise.

"(12) In addition to the definitions in s. 49.01, the following definitions apply to this section.

\* \* \*

"(c) 'Residence' is the voluntary concurrence of physical presence with intent to remain in a place of fixed habitation. Physical presence shall be prima facie evidence of intent to remain."

\* \* \*

### Veterans Benefits

A general definition of veterans and their dependents considered to be eligible for various benefits provided by the state of Wisconsin is contained in Section 45.35 (5a) of the 1959 Stats.:

"45.35 (5a) 'Veteran' as used in this chapter, except in ss. 45.21 and 45.30 and unless otherwise restricted, means any person who served under honorable conditions in the active military or naval service of the United States for 90 days or more during a war period, as enumerated below, or if having served less than 90 days was honorably discharged for disability incurred in line of duty, who has lived continuously in this state for at least 10 years next preceding his application or was a resident of this state at the time of his enlistment or induction into service and such resident at the time of making application and, in all cases, who continues his residence in the state during the full period of his rehabilitation. If the service was in more than one period, each period must have been served under honorable conditions or have been terminated by an honorable discharge. The benefits available to veterans shall also be made available to the dependents of servicemen who were officially reported missing in action, killed in action or who died in service.

"(a) Indian war: Between 1860 and 1898.

"(b) Spanish American war: Between April 21, 1898 and April 11, 1899.

"(c) Philippine insurrection: Between April 12, 1899, and July 4, 1902 (extended to July 15, 1903, if actually engaged in Moro Province hostilities).

"(d) Boxer rebellion: Between June 16, 1900, and May 12, 1901.

"(e) World War I: Between April 6, 1917, and November 11, 1918 (extended to April 1, 1920, if service was in Russia).

"(f) World War II: Between August 27, 1940, and July 25, 1947.

"(g) Korean conflict: Between June 27, 1950, and January 31, 1955."

#### Professional and Occupational Licenses

There are a number of trades and occupations which require a period of residence to secure a license. The 3 examples cited below require one year residence in the state.

##### Private detective

"175.07 PRIVATE DETECTIVES NOT TO ACT WITHOUT LICENSE; PENALTY FOR VIOLATION. (1) No person shall act or hold himself out as a private detective, private police, or private guard, nor shall any person solicit business or perform any service in this state as a private detective, private police, or private guard, or receive any fees or compensation whatever for acting as private detective, private police or private guard for any person, firm or corporation, without first having obtained the license and filed the bond provided for in this section. No person shall be licensed under this section unless he is a citizen of the United States and shall have resided in this state continuously for one year immediately preceding, but this shall not apply to the state manager of any private detective agency whose headquarters are outside of the state, when such agency shall satisfy the secretary of state of the necessity for employing a nonresident as state manager."

Tavern operators' license for sale of beer

"66.054 (11) Operators' licenses. (a) Every city council, village or town board may issue a license known as an 'Operator's' license, which shall be granted only upon application in writing, and which shall not be required of any person or for any purpose other than to comply with par. (b). Said operator's license shall be issued only to persons 21 years of age or over, of good moral character, who have been citizens of the United States and residents of this state continuously for not less than one year prior to the date of the filing of the application. Such licenses shall be operative only within the limits of the city, village or town in which issued. For the purpose of this subsection any member of the immediate family of the licensee shall be considered as holding an operator's license."

Master barber's license

"158.11 MASTER BARBERS. (1) A master barber's license shall be issued only to one:

- "(a) Who is at least 21 years of age;
- "(b) Who holds an active journeyman's license and who has practiced barbering averaging at least 40 hours a week for one year under a journeyman barber's license in this state.
- "(c) Who has satisfactorily passed an examination conducted by the board to determine his fitness to practice barbering;"

SUMMARY

It follows from the foregoing enumeration of residence requirements that residence is an elusive thing which is acquired and denied almost promiscuously. There is a decided lack of uniformity, and the varying interests make it reasonably doubtful that uniformity could be attained. It is apparent that when one is asked who is a resident of Wisconsin one must in turn ask for what purpose.