

OFFICIAL OPINION NO. 90-01, Proper county for annual registration of motor vehicles

January 10, 1990

Karen A. Johnson
Custer County State's Attorney
P.O. Box 749
Custer, SD 57730

OFFICIAL OPINION NO. 90-01

Proper county for annual registration of motor vehicles

Dear Ms. Johnson:

You have requested an official opinion from this Office based upon the following factual situation:

FACTS:

There are some individuals who have residences in both Custer County and Shannon County. These families have homes in both counties. One spouse is an enrolled member of the Tribe and is also registered to vote in Shannon County. The other spouse is registered to vote in Custer County. One spouse also works in Pine Ridge. Presently, these individuals have vehicles registered in both counties. The ranch vehicles are registered in Shannon County, the location of the ranch. The family also has a car registered in Custer County.

In a related situation, two individuals are listed as owners of a vehicle. One individual lives in Custer County, but the individual who drives the car lives in another county. The car is not registered in Custer County.

Based upon the above facts, you asked the following question:

QUESTION:

Which county is the proper county for the annual registration of these vehicles?

The annual registration of automobiles for license plates is addressed in SDCL ch. 32-5. The contents of a registration application can be found in SDCL 32-5-2 and 32-5-3. These statutes read as follows:

SDCL 32-5-2. Every owner of a motor vehicle, motorcycle, truck tractor, road tractor, trailer or semitrailer, or recreational vehicle or trailer, which is operated or driven upon the public highways of this state, shall, except as otherwise expressly provided, present to the county treasurer of his county, or, in case of a nonresident of this state, the treasurer of any county, application for the registration of that vehicle. The application form shall be furnished by the department and shall contain but not be limited to the following information:

- (1) The number of cylinders or the bore and stroke of each cylinder;
- (2) The manufacturer's weight;
- (3) Whether the vehicle operates on diesel fuel, liquefied petroleum gas, gasoline or any other special fuel;
- (4) The make, model, body, year, color and vehicle identification number of the vehicle;
- (5) The odometer reading; and
- (6) The purchase price and the name and address of the seller, buyer and lienholder, if any.

Any person who fails to provide the above information to the county treasurer or the department is guilty of a Class 2 misdemeanor. The department or the county treasurer may not accept an incomplete application form or an application form which the department considers erroneous.

SDCL 32-5-3. The application required by 32-5-2 shall also state the name of the owner of the motor vehicle, his residence post office address and his business address, including county, and if in a city, his street number, and in case of a truck, truck tractor, road tractor, trailer, semitrailer or recreational vehicle whether or not used exclusively within the corporate limits of any town or city, and such other information as may be required by the department.

It must be noted that the registration referred to in this opinion centers on the annual registration for license plates. The actual title registration for the vehicle is addressed in SDCL ch. 32-3, and beyond the scope of this inquiry.

To paraphrase SDCL 32-5-2, every owner must present to his county treasurer the application for registration. This Office has previously discussed the interpretation of this section in 1937-38 AG Report, p. 405, and 1953-54 AG Report, p. 65. My predecessors have opined that the meaning of "present to the county treasurer of his county" in SDCL 32-5-2 refers to the county of residence of the owner of the vehicle. In other words, if one is a resident of Custer County, SDCL 32-5-2 states that the annual registration of that vehicle is to be made in Custer County.

SDCL 32-5-2 states in part that "[a]ny person who fails to provide the above information to the county treasurer or the department is guilty of a Class 2 misdemeanor." (Emphasis added.) The county treasurer referred to in that section is the county treasurer for the county in which the owner of the motor vehicle resides. In essence, it is the same county treasurer that is referred to previously in SDCL 32-5-2, wherein it is stated that your registration is to be "present[ed] to the county treasurer of his county." (Emphasis added.)

Therefore it is a Class 2 misdemeanor for a motor vehicle owner to fail to apply for the annual registration for license plates in the county of his residence. To determine the residence of the owner, guidance can be found in our election laws. Specifically, SDCL 12-1-4 addresses this issue and reads in full as follows:

For the purposes of this title, 'residence' shall be the place in which a person has fixed his habitation and to which, whenever he is absent, he has the intention of returning.

A person who has left his home and gone into another state or territory or county of this state for a temporary purpose only shall not be considered to have lost his residence.

A person shall be considered to have gained a residence in any county or city of this state in which he actually lives, providing such person has no present intention to remove himself therefrom.

If a person moves to another state, or to any of the other territories, with the intention of making it his permanent home, he shall be considered to have lost his residence in this state.

From the facts presented, it is difficult to ascertain whether the owner of the vehicle is a resident of Custer County or Shannon County. Apparently, the owners of the vehicles have homes in both counties. I am of the opinion that residence for the purpose of SDCL 32-5-2

would be the place that the person has fixed his or her habitation to a greater extent. Residence is purely a factual question that must be addressed on a case-by-case basis.

Your facts also detail a situation where two individuals are listed owners of the vehicle, but reside in different counties. I am of the opinion that the registration of that vehicle can be legally accomplished in the county of residence of either of the owners.

Respectfully submitted,

ROGER A. TELLINGHUISEN
ATTORNEY GENERAL

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