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THE DEPARTING RESIDENT AND THE NON-RESIDENT MOTORIST ACT

The Wyoming Non-Resident Motorist Act, Wyo. Stat. § 1-52 (1957), which provides that, "The use and operation by a non-resident of the State of Wyoming or his agent of a motor vehicle over or upon any street or highway within the State of Wyoming, shall be deemed an appointment, by such non-resident, of the secretary of state of the State of Wyoming as his true and lawful attorney whom may be served all legal processes in any action or proceeding against him, her or his or her personal representative. . . ." does not apply where the motorist is a resident of the State at the time of the accident, although he thereafter leaves the state and becomes a resident of another state. In order for service of process upon the secretary of state to be effective in obtaining in personam jurisdiction over a non-resident, he must be a non-resident at the time of the accident and his residence or non-residence at a time subsequent thereto is immaterial under the present provisions of the statute.

The courts of other states in construing statutes similar to that of Wyoming have uniformly held that such statutes do not apply to a motorist who was a resident of the state at the time of the accident although he later leaves the state and becomes a non-resident.[1] This has been held to be true even though it was the defendant's intention at the time he began the trip during which the accident occurred to establish residence in another state.[2]

Several states have amended their statutes so that service of process on the designated state official effective in obtaining personal jurisdiction over the motorist who was a resident of the state at the time of the accident but later removed from the state to become a resident of another state. By amending their Non-Resident Motorist Acts, these states have made it possible for their citizens to bring actions against such former residents in the local courts rather than being forced to follow them to their new residence in order to obtain effective personal service of process.[3]

Should the Wyoming Legislature deem it advisable to amend the Non-

1. Solis v. Bailey, 139 F. Supp. 842 (S.D. Texas 1956); Mackie v. Rankin, 87 F. Supp. 614 (E.D. Mich. 1940); Wood v. White, 97 F.2d 646 (Court of Appeals for District of Columbia 1938); Carlson v. District Court of City and County of Denver, 116 Colo. 330, 180 P.2d 523 (1947); Stern v. Mottram, 20 Conn. Supp. 406, 137 A.2d 551 (1957); Red Top Cab and Baggage Co. v. Holt, 157 Fla. 77, 16 So.2d 649 (1949); Welsh v. Roupp, 228 Iowa 70, 289 N.W. 760 (1940); Colon v. Pa. Greyhound Lines, 27 N.J.S. 280, 99 A.2d 181 (1953); Fisher v. Terrell, 51 N.M. 427, 187 P.2d 387 (1947); Northwestern Mortgage and Security Co. v. Noel Construction Co., 71 N.D. 256, 300 N.W. 28 (1941); Clendering v. Fitterer, ____ Okla. ____, 201 P.2d 896 (1953); Teague v. District Court of the Third Judicial District in and for Salt Lake County, 4 Utah 2d. 147, 289 P.2d 331 (1935); 61 C.J.S., Motor Vehicles 502 (1949).
2. Northwestern Mortgage and Security Co. v. Noel Construction Co., 71 N.D. 256, 300 N.W. 28.
3. A typical amendatory clause is found in Code of Iowa 321.498 (4) (1958): "The term non-resident shall include any person who was at the time of the accident or event, a resident of the state of Iowa but who removed from the State before the commencement of such action or proceeding."

Resident Motorist Act, the members of that body should take into consideration the fact that these amendments for the most part have been construed prospectively, rather than retrospectively and therefore are not applicable to actions which arose before the adoption of the amendment. The overwhelming weight of authority is that such statutes create new rights and hence deal with substantive rights and therefore cannot be construed retroactively.[4] The Supreme Court of Delaware in *Monacelli v. Grimes* said, "In the instant case the procedure itself creates a substantial legal right. It creates the right to subject a non-resident to a judgment in personam in a jurisdiction where he has not been personally served. Such a statute involves the fundamental notion of due process of law and hence deals with substantive rights."[5]

Another theory is that the authority of the designated state official to accept service of process rests upon a power of attorney created by the statute following from the voluntary acts of the non-resident and that a power of attorney cannot be made retroactive without clear words to that end. A persuasive expression of this theory and its application to an amendment of a non-resident motorist statute is found in the opinion of the Supreme Court of Iowa in the case of *Davis v. Jones* where the court says, "It is apparent that the statute prior to the amendment herein discussed, was based on the implied consent or agreement of an out of state motorist to name an officer of this state upon whom notice could be served. No such consent was given or could have been given at the time of the accident because the defendant was not then the class to which the statute was applicable. Hence he should not be deemed to have made such an agreement."[6]

Although the general rule of statutory interpretion is that all statutes are prospective in their operation, this rule is subject to an exception in the case of statutes relating only to remedies or procedures. A small minority are of the opinion that an amendment to a non-resident motorist act deals with procedural rather than substantive rights, falls within the exception to the general rule and hence, should be given a retroactive application.[7]

The Supreme Court of Wyoming has not favored retroactive legislation

4. Clouse v. Adonian, 189 F. Supp. 78 (N.D. Ind. 1960); Clews v. Steles, 181 F. Supp. 172 (D. N.M. 1960); Fidler v. Victory Lumber Co., 93 F. Supp. 650 (N.D. Fla. 1950); Hartley v. Utah Construction Co., 106 F.2d 953 (Ninth Cir. 1939); Redner v. Eide, 151 Cal. App.2d 800, 312 P.2d 75 (1957); De Pier v. Maddov, 87 Cal. App.2d 460, 197 P.2d 89 (1948); Monacelli v. Grimes, 48 Del. 122, 99 A.2d 255 (1933); Davis v. Jones, 247 Iowa 1031, 78 N.W.2d G (1957); Paraboschi v. Shaw, 258 Mass. 531, 155 N.E. 445 (1927); Chapman v. Davis, 233 Minn. 62, 45 N.W.2d 823 (1951); Hinton v. Peters, 238 Minn. 48, 55 N.W.2d 442, (1952); Ashley v. Brown, 198 N.C. 307, 151 S.E. 725 (1930); Cassan v. Fern, 33 N.J.S. 96, 109 A.2d 482; Kurland v. Chernobil, 252 N.Y.S. 955, 183 N.E. 380 (1932); Shaeffer v. Alva West Co., 53 Ohio App. 270, 4 N.E.2d 720 (1936).
5. 48 Del. 122, 99 A.2d 255, 267 (1953).
6. 247 Iowa 1031, 78 N.W.2d 6, 9 (1956).
7. Ogdon v. Gianakos, 415 Ill. 591, 114 N.E.2d 686 (1953); Tellier v. Edwards, ... Wash. ......, 334 P.2d 925 (1960).

and would probably subscribe to the majority opinion and give such an amendment a prospective construction. In an early decision, *Lee v. Cook and Corey* (1878), the Court said, "The effect of retrospective remedies is inevitably to disturb the interests of involuntary and innocent parties and to create general distrust of legislation. Hence, it is the violent presumption of the courts that whatever language legislature may use in a remedial statute, it intends for the statute only a future operation and the presumption will yield only when it is impossible to avoid a restrospective operation."[8] In *Mustanen v. Diamond Coal and Coke Co.*, the Court said, "The Supreme Court recognizes the well known rule that retrospective legislation is not favored and ordinarily a statute must be construed as prospective only."[9] In a more recent decision, *State v. Board of County Commissioners* (1956), the Court held in part that a rule issued by the Board of Education defining first class teachers' certificates required by a statute in order to qualify the holder thereof for the position of County Superintendent of Schools could not be applied retroactively and in so doing, the court stated that "retrospective legislation is not favored."[10]

Another factor to be considered by the legislature in amending the statute is the fact that the Wyoming statute of limitations for personal injury actions, Wyo. Stat. § 1-18 (1957), provides a four year period within which such actions must be brought. Thus, if the Non-Resident Motorist Act were amended, it would not be until four years after such an amendment were enacted into law that it would be immune from circumvention unless the Supreme Court were to give the amendment a retrospective interpretation.

The primary purpose of the Non-Resident Motorist Act is to afford to the citizens of Wyoming access to the courts of Wyoming for suits against non-resident tortfeasors, thereby giving them an opportunity to bring an action which they could not do otherwise because of financial or geographical obstacles. Under the present provisions of the Act, the citizens of Wyoming are denied the convenience of bringing their action in Wyoming when a resident tortfeasor becomes a non-resident. This being the case, it would seem that an amendment to the Act would be extremely desirable.

Because the Supreme Court of Wyoming would probably contrue such an amendment prospectively, the legislators of Wyoming should act diligently. An amendment should be enacted into law before a resident of this state is deprived of recovery for personal injuries due to the inconvenience and expense of having to follow a former resident of Wyoming to another jurisdiction in order to bring his action.

Other states have amended their Non-Resident Motorists Acts and Wyoming should follow suit.

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8. 1 Wyo. 413, 414 (1878).
9. 50 Wyo. 462, 477, 62 P.2d 287, 292 (1936).
10. 75 Wyo. 435, 442, 296 P.2d 886, 988 (1956).