

Opinion No. 355.**Old Age Pension—Residence, Loss of.**

HELD: Under the provisions of Section 355.20(5), R. C. M. 1935, an old age pensioner loses his residence for the purpose of the act (1) by acquiring a new legal residence by moving elsewhere with the intention of making the place to which he moves his residence, or (2) by absenting himself voluntarily and continuously for one year from the county in which he has resided.

September 24, 1936.

Montana Relief Commission
Helena, Montana

You have requested an opinion of us in the following language:

"Section 3, Paragraph 5, Chapter 170, Session Laws of the 24th Legislative Assembly reads as follows: 'For the purpose of this Act, every person who has resided one (1) year or more in any county in this state shall thereby acquire a legal residence in such county, which he shall retain until he has acquired a legal residence elsewhere, or until he has been absent voluntarily and continuously for one (1) year therefrom'.

"The question is constantly raised by County Old Age Pension Commissions as to how long a person

may absent himself from the State after he has established his right to an old age assistance grant subsequent to his receiving such grant. We have assumed that the statement claimed in paragraph 5, Section 3 'or until he has been absent voluntarily and continuously for one year therefrom' to mean in effect that an old age assistance recipient would lose such assistance by absenting himself from the state continuously and voluntarily for the period of one year."

You are correct in your assumption that a person, under the provisions of the Old Age Pension Act, loses his residence for the purpose of the Act after he has absented himself voluntarily and continuously for one year from the county in which he has established his residence. However, if you will notice from the wording of Subsection 5 of Section 3 of Chapter 170, Laws of Montana 1935 (Old Age Pension Act), a person also loses his legal residence by acquiring legal residence elsewhere and such provision is in addition to the losing of a legal residence for the purpose of the Act by voluntary and continuous absence for one year.

A person acquires a new legal residence by moving to another place with the intention to set up his residence in the place to which he has moved. Section 33, R. C. M. 1921; Section 574, R. C. M. 1921, as amended by Chapter 25, Laws of Montana 1935. You can readily see that the means of losing one residence and acquiring another is achieved by the act of moving joined with the intention of acquiring a new residence.

Therefore, in our opinion, a person, under the provisions of said Chapter 170, may lose his legal residence for the purpose of the Act by either one of two means, that is (1) By acquiring a new legal residence by moving elsewhere with the intention of making the place to which he moves his residence, or (2) By absenting himself voluntarily and continuously for one year from the county in which he has resided. This applies not only to a person who has left the state but also to a person who has left the county in which he had a residence.