

Insurance Agent, License of. Residence, Required for Insurance Agent. License, of Insurance Agent, When. Residence of Agent, How Determined.

The law requires the licensed agent of an insurance company to be a legal resident of the State of Montana. The auditor should determine, as a matter of fact, whether the person applying for license meets this requirement. Certain rules for determining residence stated.

February 10th, 1913.

Hon. William Keating,
State Auditor,
Helena, Montana.

Dear Sir:

I am in receipt of your letter of the 6th inst., submitting a question

“As to the duty to be performed by you in issuing licenses to insurance agents in the State of Montana.”

The specific question presented appears to be whether you should issue a license to one F. H. Fischer, in view of the fact that information has reached your office that Mr. Fischer is not a resident of Montana. The provisions of 4023, Revised Codes, as amended by Chap. 14 of the Session Laws of 1909, require agents of life insurance companies to procure a license and also the requirement is there contained that such agent is “a legal resident of the State of Montana” and whether or not Mr. Fischer or any other person applying for a license is a resident of the State of Montana is a question of fact rather than law, and where doubt exists it is well within your province and authority to institute an inquiry to determine whether or not such agent is a resident. The term used in the law is “a legal resident,” but the terms “legal residence,” “domicile” and “home” are practically synonymous. Sec. 32 of the Revised Codes contain rules for determining place of residence, which need not be here repeated. Numerous definitions of the term “residence” are collated in 34 Cyc. 1647 et seq. The mere fact that a man owns property in a place does not make him a resident of that place. By

the statute it is stated "residence of the husband is presumptively the residence of the wife" and the place where the wife resides is necessarily presumed to be the residence of the husband. And the mere fact that the attendant may claim a certain place as his legal residence does not constitute it his legal residence. He must actually reside there or make it his home in some manner recognized by law. The mere fact that he may call there at times or may occasionally sleep there are not of themselves sufficient to make it his home, if he or his family habitually dwell elsewhere. In other words it is "the abode or dwelling place as distinguished from a mere locality of existence." In investigating this question some of the questions which you should determine are:

"1. Did Mr. Fischer ever reside with his family within this state?

"2. If so, does he now reside with his family within this state?"

It is stated in the affidavit of Mr. Fischer that he has no legal residence outside of Kalispell. It seems to be easy of determination whether he now does reside at Kalispell with his family or not. Of course, mere temporary absence on business would not vitiate his residence provided it was once established there, and had not been established elsewhere, for a man can have only one residence.

Very truly yours,

D. M. KELLY,
Attorney General.