

Opinion No. 211

**Highways—Employees—Residence
—Intention.**

HELD: A bona fide resident of Montana is defined in Chapter 102, Laws

of 1931, and the only sure guides as to his intention to make his permanent residence in this state are his expressions to other, unbiased parties.

May 16, 1933.

You request an opinion and submit numerous instances in which the right of persons now employed in highway work in Flathead County is brought in question.

Our statutes relative to the matter are as follows:

"Residence, rules for determining. Every person has, in law, a residence. In determining the place of residence the following rules are to be observed:

1. It is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he returns in seasons of repose.

2. There can only be one residence.

3. A residence cannot be lost until another is gained * * *

5. The residence of the husband is presumptively the residence of the wife." (33 R. C. M. 1921.)

Section 574, R. C. M. 1921, is for the purpose of determining residence of one who may desire to exercise the right to vote at elections and we do not consider it strictly pertinent to your inquiry.

"A bona fide resident of Montana is hereby declared to be a person, who at the time of his said employment and immediately prior thereto, has lived in this State in such a manner and for such time as is sufficient to clearly justify the conclusion that his past habitation in this State has been coupled with intention to make it his home. Sojourners, or persons who come to Montana solely in pursuance of any contract or agreement to perform such labor, shall under no circumstance be deemed to be bona fide residents of Montana within the meaning and for the purpose of this Act." (Chapter 102, Laws of 1931.)

"The residence of a voter must be determined from his acts and intent." *Sommers v. Gould*, 53 Mont. 538.

"If a person actually lives at a certain place with the intention of remaining there indefinitely, that place must be said to be his place of resi-

dence." *Marston v. Watson*, 129 Pac. 611 (Calif.)

"The meaning (of residence) when employed in a statute is often provocative of dispute, often making it difficult to give an exact definition. * * * for when used in statutes it has different meanings in different connections. * * * As its statutory definition depends upon the legislative purpose as well as on the context of the statute, it must be construed in every case in accordance with the object and intent of the statute in which it occurs; hence its meaning is to be determined from the facts and circumstances taken together in the particular case." 54 C. J. 708.

"Its meaning is dependent upon the circumstances then surrounding the person; upon the character of the work to be performed; upon whether he has a family or a home in another place, and largely upon his **present intention**." *In re Garneau*, 127 Fed. 677.

The only sure guide is to get the intention of each individual employed, and any other evidence you can by expressions to other, unbiased parties by the employee. One knowing the purpose of a direct inquiry might not be frank in his reply, and any facts contrary to his expressed intent may be taken into account to get at the truth.

The use of the phrases in your "Special Provisions" relative to "Selections of Labor"—"labor living in the county, adjacent counties, or in the state," being given preference and the reference to "legal residence," clearly shows the intent to restrict employees to those in need of employment to persons having some claim of residence in Montana. This restriction to resident employees does not apply to ex-service men, nor to certain other employees mentioned in the regulations.

Whether a particular person is a resident of Montana within the meaning of your regulations, will depend upon the facts your supervisors can gather by direct inquiry and from the intent of each employee as expressed about his place of residence.