

Opinion No. 144.

Public Welfare—Old Age Assistance.
Residence.

HELD: 1. Residence is a matter of intent to be determined under the facts of each case, and in conformity to the rules of Sections 33 and 574, R. C. M. 1935.

2. One may, under certain facts, be absent from the state or county for one year or more and not be ineligible to receive further assistance under Part III, Chapter 82, Laws, 1937.

3. To be ineligible for further assistance under Chapter 82, Laws, 1937, Part III, one must have lost his legal residence, in state or county, or have been absent voluntarily and continuously for one year therefrom.

August 20, 1937.

Hon. Board of County Commissioners,
Daniels County, Montana
Scobey, Montana

Gentlemen:

Your request for opinion, addressed to this office, has been referred to me for answer.

The questions upon which you desire an opinion are stated as follows:

1. Does a person residing without the State on account of ill health, for more than one year, thereby lose his residence and become disqualified to receive old age assistance?

2. Does a person who resides without the State for more than one year, because of cheaper and better living conditions, thereby lose his residence and become disqualified to receive old age assistance?

At the outset we may say that the term residence as used in Section 11 of Chapter 82, Part III, has been held

by this office to mean legal residence as contradistinguished from actual residence. We will therefore deal with these questions on this basis.

Residence (meaning legal residence) under the great weight of authority in the United States, is held to be a matter of intent, to be determined from the facts and in accordance with certain well defined rules of law. In many states this has been incorporated into the statutory law of the state, as in Montana. (See Sections 33 and 574, Revised Codes of Montana, 1935.)

However, the answer to your particular questions is to be determined by the provisions of Chapter 82, Laws of Montana, 1937, and sections of the code relating to residence.

Section 11 (d) of Part III, Chapter 82, provides in part as follows:

“ * * * For the purpose of this act, every person who has resided one 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.”

It must be assumed that one receiving an old age assistance grant possessed the residence requirement at the time of the grant. Under the sections quoted, therefore, he retains such residence until one of two contingencies occur, namely:

1. ... has acquired a legal residence elsewhere, “or
2. ... has been absent voluntarily and continuously for one year therefrom.”

To determine whether or not the recipient has acquired a legal residence elsewhere, the Board must be guided by the rules laid down by Sections 33 and 574 of our code. These rules, insofar as applicable here, are as follows:

Section 33. 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 be only one residence.
3. A residence cannot be lost until another is gained.
4. (not applicable)
5. The residence of the husband is presumptively the residence of the wife.
6. (not applicable)
7. The residence can be changed only by the union of act and intent.

As relates to the right to vote, the following rules are set forth in Section 574:

1. That place must be considered and held to be the residence of a person in which his habitation is fixed, and to which, whenever he is absent, he has the intention of returning.
2. A person must not be considered to have lost his residence who leaves his home to go into another state, or other district of this state, for temporary purposes merely with the intention of returning, provided he has not exercised the right of the election franchise in said state or district.
5. A person must not be considered to have gained a residence in any county into which he comes for temporary purposes merely without the intention of making such county his home.
6. If a person removes to another state with the intention of making it his residence, he loses his residence in this state.
7. If a person removes to another state with the intention of remaining there for an indefinite time, and as a place of present residence, he loses his residence in this state, notwithstanding he entertains an intention of returning at some future period.
8. The place where a man's family resides is presumed his place of residence, but any man who takes up or continues his abode with the intention of remaining, or a place other than where his family resides, must be regarded as a resident of the place where he so abides.
9. A change of residence can only be made by the act of removal joined with the intent to remain in another place. There can only be one resi-

dence. A residence cannot be lost until another is gained."

It is the province and the duty of the County Board of Welfare, subject to review of the state department, to determine the question of eligibility. This they must do from the facts of the particular case, guided by the rules of law quoted. If, under the facts of a particular case, after applying the rules, it be determined that the recipient has not lost his legal residence, altho absent a year or more, it would then be necessary for the Board to determine if the case comes within the second contingency, namely, "has been absent **voluntarily and continuously** for one year."

Under the second contingency, it is my opinion that one may be absent from the county or state a year or more, and yet not lose his residence so as to make him ineligible for further assistance under Part III of Chapter 82. He must be absent **continuously and voluntarily**. It can be said that one absent and unable to return on account of illness or injury which is of such nature that he is compelled to remain for specialized treatment; or because of climatic conditions conducive to his health, especially in case of old age recipients, is not "voluntarily" absent.

If, however, the facts of a particular case, tested by the rules and statutes quoted, show the recipient has lost his residence in the county or state, or is voluntarily and continuously absent therefrom for one year, then he is ineligible to receive further assistance.

It is, therefore, a question for the board to decide under the facts as presented, whether one absent from the state or county for one year or more has lost his legal residence and gained a new residence elsewhere, or has been absent for said period "voluntarily and continuously."

Summing up, therefore, a recipient of old age assistance under a given state of facts may be absent from the state or county for a year or more, and not as a matter of law thereby be deprived of his right to receive further assistance under Part III of Chapter 82, Laws of Montana, 1937.