

Opinion No. 257.**Public Welfare—Relief—Residence,
How Acquired.**

HELD: 1. One may not establish residence in Montana while drawing relief grants from another state.

March 7, 1938.

Mr. Leif Erickson
County Attorney
Sidney, Montana

Dear Sir:

You have submitted the following facts: Persons from North Dakota have moved into your county and worked at temporary jobs for a short time. When their work ceased they continued to live in Montana and secured relief from agencies in their home state. After remaining in Montana a year, they were cut off by the North Dakota agency and now have applied for relief in Montana.

One of the eligibility requirements for general relief is, the applicant must have resided in the State of Montana for a period of one year, six months of which must be in the county where application is made. Your question then is whether a person can acquire a residence in Montana while receiving relief from a neighboring state.

Section 33, Revised Codes of Montana, 1935, declares that:

“Every person has, in law, a residence. In determining the place of

residence the following rules are to be observed:

(2) There can only be one residence.

(3) A residence cannot be lost until another is gained.

(7) A residence can be changed only by the union of act and intent.

Inasmuch as there can only be one residence, and the first cannot be lost until the new one is gained, the assumption is that a resident of North Dakota remains so until it is affirmatively shown that he has changed. And change takes place only by union of act and intent. The test of residence laid down in the case of *In re: Peterson's Guardianship* (229 N. W. 885; 887; 119 Neb. 511) is, "Did one remove from his former residence with an intention to abandon the same, and with an intention of acquiring a new residence elsewhere?"

The fact that a person is receiving relief from another state would rebut any intention of abandoning residence in that state or of acquiring a new residence in Montana.

An inspection of cases arising out of the administration of the poor laws in the New England states shows that the question of establishing residence in one town while receiving relief from another frequently arose. In those cases it was uniformly held that a person must reside the statutory period without receiving support or aid from the public, and residence is not counted if during the time the person lived in the community he received support or relief from the town of his first settlement. (*City of Worcester v. Inhabitants of Auburn*, 4 Allen (Mass.) 574; *Inhabitants of Oakham v. Inhabitants of Sutton*, 13 Met. (Mass.) 192, and cases therein cited; *Overseers of Poor of Lawrence Township v. Overseers of Poor of Delaware Township*, 23 A 1124, and cases therein cited; *Inhabitants of Norwich v. Inhabitants of Saybrook*, 5 Conn. 384; *Town of Wilmingtaon v. Town of Somerset*, 35 Ver. 232.)

Then it is my opinion that a person while drawing relief grants from some other state cannot acquire a residence in this state.

In this connection subsection (d) of Part II, Chapter 82, Laws of 1937, is of importance, for those people without

a legal Montana residence may be in immediate need. Subsection (a) provides for temporary relief for interstate transients until such time as they may be returned to the state of residence or origin. If these transient families are stranded and without means of return, the law provides that transportation expenses be paid out of state funds.