

**Opinion No. 287.**

**Public Welfare—Residence, Rules for  
Determining Purposes of Relief.**

HELD: 1. Section 33, R. C. M. 1935, applies in determining residence for purposes of relief, rather than Section 574.

2. One may establish county residence while employed on W. P. A., or while receiving relief from another county.

3. A student at the University of Montana may establish a county residence for purposes of relief, depending upon the facts as applied to the rules of Section 33, Revised Codes of Montana, 1935.

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June 10, 1938.

County Board of Public Welfare  
Missoula County  
Missoula, Montana

Gentlemen:

You have requested an opinion relative to residence for purpose of relief.

Two fact cases have been presented by your board as follows:

(a) "A relief recipient, resident of Lake County, was certified by that county to W. P. A., and assigned to the Writers' Project; he moved his family to Missoula County, where the project was located and was employed on the project more than six months; at the termination of the project, he applied to your county for relief, basing his right on his residence in Missoula County for a period of six months, during which time he was employed on W. P. A.

(b) "A female student at the University of Montana, whose home is in Richland County where her father owns a farm on which he resides, applies to your board for certification to W. P. A. The facts show this student came to Missoula about two years ago to attend the University, and has since, or up until a short time ago, been such student; her father remained on the farm, while her mother resided with her in Missoula, working to contribute to her support. She bases her right to relief and certification to W. P. A. on her residence while a student at the University."

These facts present two questions for determination of residence, viz.,

May one establish a residence,

1. While employed on W. P. A.
2. While a student at the University?

Residence is a question of intention. In law, every person has a residence which he retains until a new one is established. One does not lose a residence once gained until a new one is established (Section 33, Revised Codes of Montana, 1935). The legislature has laid down rules to be followed in determining residence. Section 33, Revised Codes of Montana, 1935, provides rules in general, and Section 574, the rules "for the purpose of registration or voting." Inasmuch as the provisions of Section 574 specifically refer to purpose of registration and voting, we must look to the provisions of Section 33 to determine the rules for purpose of relief. That section provides:

"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.

4. A residence of the father during his life, and after his death the residence of the mother, while she remains unmarried, is the residence of the unmarried minor children.

5. The residence of the husband is presumptively the residence of the wife.

6. The residence of an unmarried minor who has a parent living cannot be changed by either his own act or that of his guardian.

7. The residence can be changed only by the union of act and intent."

In many of the states the Public Welfare Act specifically provides that one cannot establish a residence while on relief. But even in those states it has been held by opinion of the Attorney General that such provision does not apply to one employed on W. P. A. (Attorney General of Illinois, dated Sept. 23, 1937); (Attorney General of Connecticut, dated May 17, 1938).

Our Public Welfare Act does not provide that one cannot establish residence while on relief or employed on W. P. A. Had the legislature intended to provide a different rule to be applied to those on relief it could have done so. Nor can it be said that such intention may be gathered from a reasonable reading of the provisions of the Act. In fact, it would rather appear that the opposite view would be the reasonable interpretation of the provisions of the whole act.

That the legislature recognized the right of one to establish residence while receiving relief assistance is shown by the provisions of Section II (d), Part III, where it is provided that "any person otherwise qualified who has resided in the state for five years or more during the nine (9) years immediately preceding the application, one (1) year of which state residence shall have been immediately prior to

the date of his application and who has no legal county residence, shall file his application in the county in which he is residing, and his assistance, shall be paid entirely from state funds until he can qualify as having a legal residence in said county."

It is a cardinal principle of law that in construing a statute, the courts may not insert what has been omitted or omit what has been inserted. This principle is a part of our statutory law. (Section 10519, R. C. M., 1935.) And our supreme court has many times so held.

See: *Lynes v. Northern Pac. Ry. Co.*, 43 Mont. 317, 330; 117 P. 81.

*County of Hill v. County of Liberty*, 62 Mont. 15, 17; 203 P. 500.

*Morrison v. Farmers, etc. State Bank*, 70 Mont. 146, 155; 225 Pac. 125.

*Maki v. Anaconda Mng. Co.*, 87 Mont. 314; 287 P. 170.

*Mills v. State Board of Equalization*, 97 Mont. 13, 28; 33 P. 2d 563.

In the latter case cited, the court said in the course of its opinion:

"In construing a statute the Supreme Court will not read into it words necessary to make it conform to a supposed intention of the legislature; its intention in enacting it must be gathered from the language employed therein, not from street rumor or other similar sources."

The only requirement as to residence under Part II, General Relief, is found in Section II, Part II, where it is provided that:

"(a) An applicant to be eligible for general relief 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."

It is not a requirement for relief that one be a registered voter of the state or county.

Therefore, in determining the question for the purpose of relief, the county board must be guided by the rules of Section 33 rather than those of Section 574. The fact that the applicant is employed on W. P. A., or is receiving relief from another county is not to be considered as prohibiting him from establishing a county resi-

dence. Each case must be determined by applying the rules of Section 33, Revised Codes of Montana, 1935, to the particular facts.

In determining the eligibility of the applicant in the first fact case submitted, applying the rules of Section 33, and taking into consideration that the applicant moved his family to Missoula and established a home there, it is my opinion that he has established a county residence, and, if in need, is entitled to relief assistance from Missoula County.

Applying the above to the second fact case and taking into consideration the fact that the subject is an unmarried female over the age of eighteen years, and therefore an adult under the provisions of Section 5673, Revised Codes of Montana, 1935, and capable of establishing her own residence separate and apart from that of her parents, together with the fact that she has resided in Missoula for a period of two years, it is my opinion that she has established a county residence and is entitled to relief assistance if in need, and likewise to certification to W. P. A., regardless of the fact that she has been a student at the University while so residing in Missoula County.