

**Opinion No. 138.****Public Welfare—Personnel—  
Residence.**

HELD: One who comes into the State for the special purpose of accepting a position with the personnel of the department of public welfare, and remains here only temporarily may not qualify as a resident as that term is used in the Public Welfare Act.

September 18, 1939.

Mr. Fredric R. Veeder  
Director Public Assistance  
State Department of Public Welfare  
Helena, Montana

My Dear Mr. Veeder:

You have requested my opinion on the interpretation of Subsection (b) of Section 2, Chapter 129, Laws of 1939, as applied to the following facts:

Applications to take senior caseworker and child welfare examinations under the Merit System have been received from a man and wife. The husband claims residence in this state on the fact that in October, 1938, he came to the State of Montana to accept a position as caseworker in Missoula County, in which capacity he was em-

ployed until July 1, 1939. On July 1 he resigned and returned to the University of Chicago to resume his studies; prior to leaving the state, he registered to vote, making notation on his registry card that he would be able to vote after October 1, 1939; that he left some personal property of some value with a friend at Missoula. The wife bases her claim of residence on that of her husband, although she personally has never lived continuously in Montana.

We need only concern ourselves with the question of the residence of the husband, for the reason that his residence status will determine that of his wife.

Subsection (b), Section VI, Part 1, of Chapter 82, provided, among other things, as follows:

"\* \* \* \* All state department and county department personnel shall insofar as possible be legal residents of the State of Montana."

This subsection was amended by the Legislature of 1939 and now appears as subsection (b), Section 2, Chapter 129, Laws of 1939, and reads as follows:

"\* \* \* \* All state department and county department personnel shall be legal residents of the State of Montana."

It will be noted that in the amendment the phrase, "insofar as possible," was omitted. This is significant in that it would appear that the legislature intended that all such personnel should, without qualification, be legal residents.

This office has heretofore held that residence is determined from a union of act and intent, an act of removal from one place to another, coupled with the intent to make the latter the new residence. The intent must be determined from the facts in each case.

In *Corpus Juris*, we find a lengthy article on the meaning and interpretation of the term "residence," as used in statutory law. Among other things, it is stated,

"It is difficult to give an exact definition of what is meant by 'resident' as used in particular statutes,

for, although often construed by the courts, the term has no technical meaning, but is differently construed in courts of justice, according to the purposes for which inquiry is made into the meaning of the term. The construction is generally governed by the connection in which the word is used and the meaning is to be determined from the facts and circumstances taken together in each particular case.

"As a noun. A dweller, or one who dwells or resides permanently in a place or who has a fixed residence, as distinguished from an occasional lodger or visitor; an inhabitant; one dwelling or having his abode in any place; one who dwells, abides or lies in a place; one who has his residence in a place; one who resides or dwells in a place for some time; also one who has a seat or settlement in a place.

"In a legal sense, a person coming into a place with intent to establish a domicile or permanent residence and who in consequence actually remains there; one who has a residence in a legal sense."

(54 *Corpus Juris*, page 712.)

Our Supreme Court, in the case of *State ex rel Duckworth, v. District Court*, 107 Mont. 97, says:

"Where the statute refers only to residence and not to domicile, the courts have held with substantial uniformity that, for purposes of divorce jurisdiction, the word 'residence' will be construed to mean practically the same as 'domicile.'

"That place is the domicile of a person in which he has voluntarily fixed his habitation, not for a mere temporary or special purpose, but with a present intention of making it his home unless and until something which is uncertain and unexpected, shall happen to induce him to adopt some other permanent home."

The legislature in omitting the words "insofar as possible" from this section, unquestionably meant that it be mandatory that only actual, bona fide residents of this state be employed. This interpretation is only reasonable when we consider that under the present

economic conditions each state is striving to provide employment for its own citizens. To permit outsiders to come into our state and by merely complying with the technical rules of residence for voting purposes, compete with our own citizens and taxpayers for employment financed by relief funds, would be to thwart the will and plain intention of the legislature. The facts in this case do not come within the definition of our supreme court in the Duckworth case, *supra* or with the generally accepted meaning and application of the term as given in *Corpus Juris*. The applicant here came to Montana for a special purpose, *viz.*, to accept a position with the Department of Public Welfare, and remained only temporarily. He did not bring his wife and establish a home. Insofar as the facts show, he intends to return only in the event he is successful in the examination and secures appointment to the personnel of the department.

It is therefore my opinion that under the facts given, the applicant in question has not met the requirements of residence as that word is used in the statute in question, to qualify him for employment under the Public Welfare Act. Applicant not being a resident, his wife could likewise not qualify.