

Opinion No. 48.**Public Welfare—Aid to Dependent
Children—Residence.**

HELD: 1. In determining residence under the provisions of Subsection (c), Section III, Part IV, Chapter 82, Laws, 1937, the specific fact of each case must be considered.

2. The term "immediately preceding" as used in Subsection (c) has an elastic rather than a precise meaning.

April 18, 1939.

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

Dear Sir:

You have requested an opinion as to the legal meaning of the residence requirement for Aid to Needy Dependent Children as defined in Subsection (c), Section III, Part IV, Chapter 82 of the 1937 Session Laws, and give the following specific fact case.

A child who was born in the state and lived here for three years moved with its parent to the State of California for a period of five months, at the end of which time returned to this state. The question arises as to the meaning of the phrase "has resided in the state for one year immediately preceding the application * * *"

Our Supreme Court had a similar phrase under consideration in the case of Putman v. Putman, reported in 86 Mont. 135, 282 Pac. 859. In that case the phrase was in regard to Section 5738, Revised Codes of Montana, 1935, which provided that in a divorce case on the grounds of cruelty the acts of cruelty must have "existed and persisted in for a period of one year immediately before the commencement of the action for divorce." The court had the following to say in interpreting this phrase:

"* * * The lawmakers were not content to say 'existing and persisted in for a period of one year before the commencement of the action,' but said 'immediately before.' The word 'immediately' has been variously defined by the courts. See 31 C. J. 247-250; Words and Phrases, First, Second, and Third Series; State ex rel Johnson v. Case, 14 Mont. 520, 37 P. 95. It has or has not a precise meaning according to its grammatical or other connections. As used in the statute, supra, where it relates to time, it has an elastic rather than a precise meaning. Taking the liberal view, it means, when referring to the doing of an act, as soon as the act can with reasonable diligence be performed (State v. Bonsfield, 24 Neb. 517, 39 N. W. 427), with due diligence under the circumstances of the particular case, and without unnecessary or unreasonable delay (Remington v. Fidelity & Deposit Co. 27 Wash. 429, 67 P. 989), within a reasonable time, with due diligence, under the circumstances of the particular case, and without unnecessary delay (Ex parte Menner (Okla. Cr. App) 250 P. 541; Words and Phrases, Third Series, Vol. 4, p. 65). Viewing the word in the phrase, 'immediately before the commencement of the action for divorce,' the statute evidently means that the action must be commenced within a reasonable time, under the attending circumstances, and without unnecessary delay, after the right of action accrues and while it is still existing."

It would seem, therefore, that such a phrase must be considered in the light of the specific facts in each case. Under Part IV, it is the status of the child which determines eligibility, but subsection (c) provides two conditions, namely, (1) when the child has resided in the state for one year immediately preceding the application, and (2) when the child was born within the state within one year immediately preceding the application if the mother has resided in the state for one year immediately preceding the birth of the child.

It is apparent from these provisions that it was the intention of the Legislature that only bona fide residents of

the state should participate in the benefits of the act. This is particularly borne out by the fact that the lawmakers recognized the fact that a child less than one year of age might be in need of assistance and in such case they provided that if the child were born within the state within one year immediately preceding the application it would be eligible, providing the mother had resided in the state one year prior to the birth.

It would seem, therefore, that, as in the case cited *supra*, the term "immediately preceding" as used in this statute relating to time has "an elastic rather than a precise meaning."

Under the facts of the case at hand, the child was born within the state and lived here for three years with its parents. Its parent was a bona fide resident and presumably had not lost such residence. It is therefore my opinion that the facts given meet the requirements of Section III, Subsection (c), Part IV, Chapter 82, Laws of 1937, and the child is eligible for Aid to Dependent Children assistance.