

No. 324

**SILICOSIS—RESIDENCE—PUBLIC INSTITUTION—
VETERANS' HOSPITAL**

- Held: 1. A bona fide resident of the state of Montana for a period of ten years or more immediately preceding the date of application for silicosis payments, if otherwise eligible, may not be deprived of such payments because of temporary absence from the state during said period for medical care or other reasonable purpose.
2. The United States Veterans' Hospital at Fort Harrison is not a public institution within the meaning of Chapter 5, Laws of 1941, and hence one eligible for silicosis payments may receive such while an inmate of said hospital, awaiting transfer to the State Tuberculosis Sanitarium.

December 24, 1941.

Mr. Frank J. Roe
County Attorney
Silver Bow County
Butte, Montana

Dear Mr. Roe:

You have submitted your opinion on the following questions pertaining to silicosis payments under the provisions of Chapter 5, Laws of 1941, and ask for my views thereon:

- "(a) Where a person has resided and been a resident of the State of Montana for the last ten years continuously, is he precluded from receiving silicosis payments simply because he was temporarily absent from the State because of institutional care or other valid reasons?
- "(b) Would the fact that a person who is lodged temporarily at the Veterans' Hospital at Helena, Montana, awaiting transfer to Galen, to which he has made application, preclude him from receiving the silicosis payments?"

With reference to the first question, Section 3, Chapter 5, Laws of 1941, provides the eligibility requirements to receive payments under the act. Sub-section (b) provides:

- "(b) Has resided in and been an inhabitant of the State of Montana for ten (10) years, or more, immediately preceding the application."

It was obviously the intention of the legislature that benefits provided under this act should go only to bona fide legal residents of the state. It set the period of residence at ten years immediately preceding the date of application.

The question, as you point out, relates to the meaning of the term "resident in and been an inhabitant of" the state. Our statute defines residence as "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." (Section 33, Revised Codes of Montana, 1935.) Corpus Juris, in treating the meaning of the words "residence" and "domicile," says:

"As its statutory definition depends upon the legislative purpose as well as the context of the statute it must be construed in every case in accordance with the object and intent of the statute in which it occurs; hence its meaning is to be determined from the facts and circumstances taken together in each particular case." 54 C. J. 709.

If we, therefore, consider the objects and purposes of Chapter 5, Laws of 1941, we may not say the legislature intended to bar from its provisions any otherwise eligible person who was temporarily absent from the state receiving treatment for silicosis or any other bodily infirmity, or for other valid reasons. We think the term as used here means legal residence and must be determined under the rules laid down by Section 33, supra. If—under the facts of any particular case—the person in question is a bona fide resident within the rules of Section 33, supra, he should not be deprived of the benefits of the act, for the reason that during part of such period he was temporarily absent receiving treatment or for other valid reason, unless it be clearly shown that by such absence he intended permanently to change his residence.

The second question relates to the meaning of the phrase "an inmate of any public institution," as used in subsection (c) of Section 3, Chapter 5, Laws of 1941. This section provides, among other things, that payment shall be made to any person who "is not at the time receiving payment under this Part an inmate of any public institution, except Montana state tuberculosis sanitarium . . ." Here again we must look to the intent of the legislature. The fact the legislature excepted the state tuberculosis sanitarium is significant. We think the legislature had in mind state public institutions, such as the state hospital, state prison, county poor farms, etc. It was obviously the intent of the legislature to restrict from the benefits of the act only those persons who were being cared for by the state at some state institution other than the tuberculosis sanitarium.

In construing a statute, the general design and purpose of the law are to be kept in view and the statute given a fair and reasonable construction with a view to effectuate its purpose and objects. (In re Wilson's Estate, 102 Mont. 178, 56 Pac. (2nd) 733.) Applying this rule of construction to the statute here in question, we must come to the conclusion only state institutions were meant. The Veteran's Hospital at Fort Harrison is not a state institution. While it is a public institution in the sense it is created by law and maintained at public expense, yet under the broader view of the term "public institution," it is not open to the general public. Only a certain class, viz., war veterans, are entitled to its benefits.

From the foregoing, I therefore agree with the conclusions you have reached in your opinion on both questions here presented.

It is my opinion:

- (1) A bona fide resident of the state of Montana for a period of ten years or more immediately preceding the date of application for silicosis payments, if otherwise eligible, may not be deprived of such payments because of temporary absence from the state during said period for medical care or other reasonable purpose.
- (2) The United States Veterans' Hospital at Fort Harrison is not a public institution, within the meaning of Chapter 5, Laws of 1941, and hence one eligible to silicosis payments may receive such, while an inmate of said hospital, awaiting transfer to the State Tuberculosis Sanitarium.

Sincerely yours,

JOHN W. BONNER
Attorney General