

## No. 440

**RESIDENCE, how determined—DOMICILE—SILICOSIS**

**Held:** To be eligible for silicosis payments under Subsection (6), Section 3, Chapter 5, Laws of 1941, an applicant need not have been physically present within the state for ten full years immediately before the date of application.

The phrase "has resided in and been an inhabitant of," as used in Sub-section (b), Section 3, Chapter 5, Laws of 1941, interpreted to mean "domicile" and rules laid down in Section 33, Revised Codes of Montana, 1935, govern.

July 2, 1942.

Mr. J. B. Convery  
Administrator  
State Department of Public Welfare  
Helena, Montana

Dear Mr. Convery:

You have requested my opinion as to the meaning of Sub-section (b) of Section 3, Part IX, Chapter 82, Laws of 1937.

Part IX was added to the Public Welfare Act (Chapter 82, Laws of 1937) by Chapter 5, Laws of 1941, and provides for payments to persons having silicosis as defined therein.

Section 3 provides the eligibility requirements and Subsection (b) is as follows:

"Payments shall be made under this Part to any person who . . .

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

Your question involves the interpretation of the phrase "Has resided in and been an inhabitant of . . ." as used in this act.

The word "residence," "reside," and "inhabitant," as used in statutes, have various and sundry meanings, depending to a large extent upon the context and purpose of the statute wherein used. These words are elastic and should be interpreted in the light of the object or purpose of the statute in which they are employed. (*McGrath v. Stevenson*, 77 Pac. (2nd) 608, 609, 194 Wash. 160; *United States v. Rockteschell*, C. C. A. Cal., 208 Fed. 530, 532; *Tylor v. Murray*, 57 Md. 418, 441; *Baker v. Conway*, 108 So. 18, 214 Ala. 356.) The words "inhabitant" and "resident" have been held to be synonymous.

"A 'resident' and an 'inhabitant' mean the same thing. A person resident is defined to be 'one dwelling or having his abode in any place,' an 'inhabitant,' 'one that resides in a place.'"

*Atkinson v. Washington & Jefferson College*, 46 S. E. 253, 259, 54 W. Va. 32.

The words "resident" and "inhabitant" have also been held to be synonymous with the word "domicile." (*Houston Printing Co. v. Temnant* (Tex.), 39 S. W. (2nd) 1089, 1090.) In *Annotated Cases*, 1915C, page 786, the note to the reported case says:

"Whether the word 'residence' as used with reference to particular matters is synonymous with 'domicile' is a question of some difficulty, and the ultimate decision must be made from a consideration of the purpose and intent with which the word is used. In a majority of the cases, however, the words are held not to be convertible and have been distinguished by the courts."

Our Supreme Court has held:

"The place of one's residence is prima facie his domicile, the essential elements of domicile being residence and the intention to make the place his home."

In re Coppack's Estate, 72 Mont. 431, 234 Pac. 258.

And in the case of Kroehnke v. Gold Creek Mining Co., 102 Mont. 21, 26, 55 Pac. (2nd) 678, the Court said:

"The question as to place of residence of a given person is ordinarily one of fact."

The Supreme Court of the United States has interpreted the phrase, "Has resided continuously within the United States for at least five years before the date of his application," as used in the Naturalization laws, as not requiring physically uninterrupted presence for five years. The Court in the case of United States v. Contini, reported in 212 Federal Reporter, page 925, at page 927, said:

"It is scarcely to be doubted, we think, that the phrase 'resided continuously' would be unreasonably restricted if it should be confined to the precise and literal meaning of the words. The continuous character of an alien's residence would thus be fatally interrupted by the briefest visit of pleasure, or friendship, or business, beyond the boundaries of the United States; and the rules of construction admonish us that we are not to suppose that Congress intends any statute to produce an unreasonable result, unless the language used be such as to leave no fair doubt that such a result was the object of the law."

The Court held it to be a question of fact to be determined from all the circumstances in each case whether the intention to abandon the residence existed at any time during the five year period.

See also: United States v. Shanahan, 232 Fed. 169, 172;

In re Conis (D. C., N. Y.), 35 Fed. (2nd) 960, 961.

When we consider the evident purpose of this statute, as pointed out in Opinion 324, Report and Official Opinions of the Attorney General, Volume 19, benefits provided thereunder were intended only for bona fide legal residents of the state. It cannot be said that, by the use of the words "resided in and been an inhabitant of," the legislature intended an applicant should have been physically present in the state for an uninterrupted period of ten years immediately before application.

Then, in determining the eligibility of an applicant, the rules laid down in Section 33, Revised Codes of Montana, 1935, must govern. The facts of each individual case must be measured by these rules.

Under this interpretation of Subsection (b) of Section 3, therefore, it is necessary the applicant be physically present within the state for ten full years immediately before the date of his application. It is only necessary he have his domicile within the state for that period, measured by the following applicable rules of Section 33, *supra*, relating to place of residence:

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 be only one residence.
3. A residence cannot be lost until another is gained.
4. The residence can be changed only by the union of act and intent.

Sincerely yours,

HOWARD M. GULLICKSON  
Attorney General