

Opinion No. 93

**Public Welfare—County Welfare Department—State Welfare Department
—Old Age Assistance—Residence**

Held: A recipient of old age assistance by moving to another county for the purpose of receiving treatment or care not available in his own county, does not in so doing change his legal residence.

June 12, 1952.

Mr. Frank T. Hooks
County Attorney
Broadwater County
Townsend, Montana

Dear Mr. Hooks:

You have requested my opinion as to whether elderly needy people receiving support from public welfare and entering Broadwater County for the purpose of staying at the County Rest Home become legal residents after a stay of one year.

At the outset it should be noted that

there is a marked distinction between a change of actual residence as distinguished from a change of legal residence. It has been judicially determined that a legal residence may be at a different place than is the actual residence. (See *Wilson v. Hoisington*, 11 Mont. 20, 98 Pac. (2d) 369).

Section 71-413, Revised Codes of Montana, 1947, relates to the change of residence of persons receiving old age assistance and reads:

"A recipient who moves to another county in this state shall continue to receive assistance, with the approval of the state department; the county from which he has moved shall be charged by the state department for such county share of his assistance for a period of one (1) year after which time the county to which he has moved shall be charged therefor. The state department will determine the date of transfer. The company from which a recipient moves shall notify the state department and the county to which the recipient moves."

Subsection (e) of Section 71-401, Revised Codes of Montana, 1947, subjects the county departments of public welfare to all the rules and regulations of the federal social security board and the state department of public welfare.

Section 4362 of the staff manual of the State Department of Public Welfare containing the rules and regulations of the said department reads, in part, as follows:

"A recipient who moves to another county for the purpose of receiving medical treatment, hospitalization, or nursing home care not available in his own county will continue to be the responsibility of that county until the recipient has completed a year of residence in the other county following completion of the treatment or care. Whenever the transfer of a case involves unusual circumstances, these should be related to the division of public assistance as soon as they develop so that advice may be forthcoming relative to transfer or non-transfer of the case." (Emphasis added)

The purpose behind this regulation was to prevent over-burdening counties which have better than average

medical and nursing care facilities. (See *Opinions of Attorney General*, Vol. 23, p. 148).

In the problem presented in your communication, if the recipient entered the Broadwater County rest home for the purpose and with the intent of receiving nursing care, such recipient would not in so moving change his legal residence.

The rules for determining residence are provided by Section 83-303, Revised Codes of Montana, 1947. Residence is there defined 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. This section also provides that a residence can only be changed by a union of act and intent. In this connection, I call your attention to Vol. 22, *Opinions of the Attorney General*, p. 59, in which it was held that by departing from Ravalli County for Camas Hot Springs in Sanders County for the purposes of using the baths, the recipient of old age assistance did not change his residence under the statute.

It is my opinion, therefore, that a recipient of old age assistance by moving to another county for the purpose of receiving treatment or care not available in his own county, does not in so doing change his legal residence.

Very truly yours,
ARNOLD H. OLSEN
Attorney General