

OPINION
69-276

May 22, 1969 (OPINION)

Mr. Leslie O. Ovre

Executive Director

Public Welfare Board of North Dakota

RE: Public Welfare - Residence - Effect of U.S. Supreme Court Decisi

This is in response to your letter in which you make reference to certain provisions of Title 50 which, amongst other things, sets forth certain residence requirements for eligibility for Aid to Families with Dependent Children, Old Age Assistance, Aid to the Blind, and Aid to the Permanently and Totally Disabled in North Dakota. You then call our attention to the case entitled "Shapiro v. Thompson", which was recently decided by the U.S. Supreme Court (April 21, 1969), in which it held that residential requirements were invalid and unconstitutional if same are used to determine eligibility for any of the welfare programs.

In the above mentioned case the U.S. Supreme Court had under consideration the residential requirements as an eligibility test for welfare assistance in the States of Connecticut, Pennsylvania, and the District of Columbia. These cases were all consolidated and disposed of in the same case. The Court said:

"In sum, neither deterrence of indigents from migrating to the State nor limitation of welfare benefits to those regarded as contributing to the State is a constitutionally permissible state objective."

It also held that the waiting period requirement clearly violates the equal protection laws. It also concluded that the residential requirements are in violation of due process.

The statutes of the states which were declared unconstitutional and invalid are, in substance, similar to the provisions of Section 50-09 05 and Subsections 7, 8, and 9 of Section 50-24-03.

The decisions of the U.S. Supreme Court are deemed the law of the land. Even though the statutes of North Dakota were not specifically involved, nevertheless the decision has full application to the North Dakota residential requirements. The same rule of law would apply to them. Any Court which would be confronted with this question would be bound to recognize the decision of the U.S. Supreme Court and, consequently, the result would be the same.

It is, therefore, our opinion that the residential requirements set forth in the North Dakota Code as an eligibility test for welfare assistance, such as Aid to Families with Dependent Children, Old Age Assistance, Aid to the Blind, and Aid to the Permanently and Totally Disabled in North Dakota, are invalid and unconstitutional.

The Supreme Court decision mentioned herein apparently predicated its conclusion on the facts that the persons claiming benefits were citizens of the United States and residents of either one or the other state. The question did not involve whether or not resident requirements can be imposed in instances where the individual is not a resident of one of the fifty states or a citizen of the United States. Consequently, the decision would not be controlling where the person seeking welfare benefits is not a citizen of the United States or a legal resident of one of the fifty states.

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Attorney General