

**OPINION
70-277**

July 27, 1970 (OPINION)

Mr. Calvin N. Rolfson

Pembina County State's Attorney

RE: Public Welfare - County Residence - Residence in Hospital

This is in reply to your letter requesting an opinion of this office with regard to county residence for poor relief purposes under the provisions of section 50-02-04 of the North Dakota Century Code.

You quote that portion of said section 50-02-04 stating:

"RESIDENCE IN COUNTIES - HOW GAINED. If no type of public assistance of poor relief, whether county, state, or federal, has been received, residence in a county, for poor relief purposes, shall be gained as follows:

* * * *

4. For the purposes of this section the time spent while receiving institutional care in any state licensed home for the aged, inform, neglected or indigent shall not be included in the computation of time necessary to establish the residence hereunder."

Your questions are stated as:

1. "May an individual who resides in a medical hospital licensed under authority of the State of North Dakota come under the provisions of subsection 4 of the above quoted section for purposes of residence. In other words, is a medical hospital considered a facility involving 'institutional care' sufficient to bring it under the provisions of subsection 4 of this section."
2. "Also, if the aforementioned question is answered in the affirmative, may a hospital also be considered a '* * * state licensed home for the aged, inform, neglected or indigent * * *' to also bring it under the provisions of subsection 4 of section 50-02-04, North Dakota Century Code?"

We would assume that generally, at common law, or under the statutory adoption of common law, or under the statutory adoption of common law principles embodied in section 54-01-26 of the North Dakota Century Code, hospitalization, confinement of institutional care, staying in homes for the aged, infirm, neglected or indigent, would be considered in the usual instance "special or temporary purpose" as provided in subsection 1 of said section 54-01-26 and would not constitute "residing" for purposes of establishing residence. We would assume that the reasons why the institutions specifically described in said subsection 4 of said section 50-02-04 were included

therein, is that quite often individuals spend very great lengths of time in such institutions, and perhaps lose contact with the place that would otherwise be their residence. Unlike a hotel, apartment, rented or purchased lodging, etc., the purpose of these institutions is basically to provide a special type of care adapted to the needs of the individuals maintained therein, not to compete with otherwise available residence facilities. While some unfortunate individuals may spend a great length of time in particular hospitals, quite obviously the purposes in being there are not to establish a home, domicile or residence. Considering the fact that hospitals, also, are not in the business of furnishing lodgings or residences, but are basically designed to furnish a particular and very specialized type of care, we would also assume that patients at a hospital are primarily there for a special or temporary purpose and cannot establish residence therein for poor relief or other purposes, even though they may remain patients at such hospital for a very great length of time. As to medical hospitals if independent acts of patient are performed consistent with intent, a change of residence would be accomplished.

We do recognize that the residence statutes under chapter 50-02 of the North Dakota Century Code may to some extent modify the existent general principles as to establishment of residence. Subsection 4 of section 50-02-04 of the North Dakota Century Code appears to go further than merely providing that such institutionalization shall not count towards establishment of residence by reason of the stay at the hospital in the area where the institution is located. In specific terms it provides that time spent in the named institutions shall be excluded in the computation of time necessary to establish residence under this section. On such basis, while we would recognize time spent in a medical hospital as not establishing residence at the hospital, by reason of the stay at the hospital being for a special or temporary purpose, we would not conclude that a hospital would in all cases be considered a "state licensed home for the aged, infirm, neglected or indigent", within the meaning of that phrase as used in said subsection 4 of section 50-02-04.

It is our understanding that the stay at a medical hospital is generally for a short term period. The stay at homes denominated for the "aged, infirm, neglected or indigent" or at so called "nursing homes" is generally considered to be for a greater length of time. In the usual instance we would assume that the stay at a hospital would be considered a part of the time the person resided at the place where he resided immediately prior to his admission to the hospital. We do not necessarily conclude that this would have to be an inflexible rule. We are enclosing a copy of a letter of date February 17, 1958, from this office with regard to whether a nursing home can be considered a "state licensed home for the aged, infirm, neglected or indigent" wherein we conclude that it can. You might also consider the decision of the Supreme Court of this state in *Bush v. North Dakota Health Council*, 128 N.W.2d. 866, decided June 8, 1964, in which that court did consider the concept of whether a hospital and a nursing home fall within the same licensing statute with regard to "hospital and related medical institutions which render medical and nursing care."

Considering the apparently flexible lines of demarcation between

hospitals, nursing homes, homes for the aged, infirm, neglected or indigent, it is conceivable that a medical hospital might in a particular instance give the same type of institutional care received in institutions denominated "homes for the aged, infirm, neglected or indigent" where the medical criteria was not the primary basis for the person's stay at such an institution. The hospital licensing statutes are not so restrictive as to prevent this type of care from being given by a medical hospital. Generally, we would assume that the prevalent shortage of hospital beds and space would prevent this type of situation from arising. If such a situation did arise, however, where the hospital was actually acting as a "home for aged, infirm, neglected or indigent", and the patient was admitted for such purpose in a particular case, we would prevent this type of situation from arising. If such a situation did arise, however, where the hospital was actually acting as a "home for aged, infirm, neglected or indigent", and the patient was admitted for such purpose in a particular case, we would assume that the provisions of subsection 4 of section 50-02-04 of the North Dakota Century Code would apply, and that the time that patient spent at the institution should not be included in the computation of time necessary to establish residence under said section 50-02-04.

We hope the within and foregoing will be sufficient for your purposes.

HELGI JOHANNESON

Attorney General