

**OPINION
73-143**

May 16, 1973 (OPINION)

Mr. T. N. Tangedahl, A.C.S.W.
Executive Director
Department of Social Services
Capitol Building
Bismarck, ND 58501

Dear Mr. Tangedahl:

You have requested the opinion of this office as to whether or not chapter 50-02, Residence for Poor Relief Purposes, applies to section 50-09-21 of the North Dakota Century Code, 50-24-20 North Dakota Century Code, and 50-24.1-03 North Dakota Century Code, for purposes of determining the county liable for reimbursing the Social Service Board of North Dakota for the county share of Aid to Families with Dependent Children, Aid to the Aged, Blind, or Disabled, and Medical Assistance.

We have given consideration to the freedom of interstate travel with its immediate eligibility for public assistance in the state to which a person moves. This is the holding of the United State Supreme Court in the case of Shapiro v. Thompson, 394 U.S. 618. While they did not enter in a decision as to travel or movement of people from county to county, it would appear the basic reasoning of the case would apply to that as well as to movement by people from state to state.

We also gave consideration to section 50-09-21 North Dakota Century Code, 50-24-20 North Dakota Century Code, and 50-24.1-03 North Dakota Century Code, and their relationship to chapter 50-02, North Dakota Century Code.

Durational residence requirements for eligibility for public assistance in counties have been declared unconstitutional and prohibited from enforcement in view of the Shapiro v. Thompson case above cited. In Arizona a county was permanently enjoined from enforcing a county durational residence requirement in Valenciano v. Bateman (DC Ariz., No. Civ. 70-563 PHX, 3-2-71).

An Indiana statute requiring county residence for welfare assistance eligibility was declared unconstitutional in view of the Shapiro v. Thompson case (Major v. Van DeWalle DC Ind. ND South Bend Div. No. 4169, 12-10-69 and 3-2-70).

A Florida statute requiring county durational residence for Medical Assistance was declared unconstitutional in view of the Shapiro v. Thompson case. Crapps v. Duval County Hospital Authority (DC Fla., MD, Jacksonville Div., No. 70-194-Civ. -3, 6-11-70).

The aforementioned cases, while interesting in themselves, are not dispositive of the question presented.

Section 50-09-05 as pertaining to aid to dependent children, sets

forth some of the eligibility requirements which include durational residency in the state. These provisions, however, have been nullified by the Shapiro case.

Section 50-09-21 requires that the county reimburse the state agency for one-fourth of the amount expended for aid to dependent children in such county in excess of the amount provided by the federal government for assistance payments to dependent children. In order to determine which county is to reimburse the state agency, some criteria must be taken into account. In the absence of any other provision, chapter 50-02 would be appropriate standards to follow in determining which county shall be liable for the payments.

Intrastate movements under North Dakota law do not deprive the eligible recipients from payments. The main question is which county makes the payments or which county must reimburse the state agency.

It is therefore our opinion that aid to dependent children under chapter 50-09 in determining which county is liable for the payment or for reimbursement to the state agency, the provisions of chapter 50-02 would be applicable. If the facts such as first entering into the state make it difficult to apply chapter 50-02, then the place of physical residence would be the county charged with such responsibility.

As to aid to the aged, blind or disabled, under chapter 50-24, it is noted that in section 50-24-03 subsection 7, applicants for old age assistance shall, in addition to other requirements, have attained the age of sixty-five years. It also provides that a county in which an applicant has residence for poor relief purposes will be financially responsible for the county's share of any assistance provided under this chapter.

In determining which county is liable, the provisions of chapter 50-02 would be applicable in our opinion.

As to medical assistance for needy persons under chapter 50-24.1, we find that the eligibility requirements set out in section 50-24.1-02 recognize residency as some criteria. Residence in this instance is for purposes of determining which county shall be liable, as distinguished from the question whether or not the individual or individuals are entitled to benefits.

It is therefore our opinion that chapter 50-02 has application in determining which county is liable for the payments and for the reimbursement to the state department as provided for in section 50-24.1-03.

It is our further opinion that under the provisions of Senate Bill 2406 of the 1973 Legislative Session, the county of liability for reimbursement for the county's share of aid to families with dependent children for dependent children under 21 years of age living in a licensed foster home or in a licensed child caring or child placing institution as defined in subdivision d of subsection 6 of section 50-09-01 of the North Dakota Century Code is determined by the provisions of chapter 50-02 of the North Dakota Century Code.

I trust this answers your inquiry.

Sincerely yours,

ALLEN I. OLSON

Attorney General