

OPINION
56-158

September 21, 1956 (OPINION)

RESIDENCE

RE: Poor Relief - Qualifications

We are in receipt of your letter of September 11, 1956, in which you ask for an opinion concerning the residency of a Mrs. Bertha M. Crooker for purposes of poor relief.

As we understand it, Mrs. Crooker was a resident of Cass County but entered the North Dakota Soldiers Home at Lisbon, North Dakota, in 1944. She has continued to live there since that time and has at various times voted in the city of Lisbon.

Subsection 5 of section 37-1510 of the North Dakota Revised Code of 1943 (1953 Supplement) provides in part that a person neither shall gain nor lose legal residence while a member of the Soldiers Home. Therefore, the question is, of what county was Mrs. Crooker a resident at the time this provision became effective in 1953?

Mrs. Crooker was a resident of Cass County when she entered the home and section 50-0206 of our Code provides but two ways through which a person can lose his residence: (1) by acquiring a new residence, or (2) by voluntary absence for one year or more from the county in which such residence has been obtained. Mrs. Crooker does not fall within the first requirement because section 50-0204 of the 1943 Code (1953 Supplement) provides that before a residence can be gained for poor relief purposes the person must have resided one year continuously in a county in the state during which time no type of public assistance or poor relief, whether county, state or federal, has been received.

It seems clear that Mrs. Crooker has been receiving public assistance while a member of the home. The question then is, has she been absent "voluntarily" for a period of one year from Cass County?

We do not feel that the word "voluntary" as used in the statute was meant by the Legislature to include situations in which a person enters a public institution due to circumstances over which he has little or no control. While there seems to be no decisions directly bearing on this problem there is some language in the case of Nelson County v. Williams County, 276 N.W. 265 (1937) which tends to support this conclusion. Thus, in determining whether the person in question in that case had been voluntarily absent from a county, the court said, ". . .nor is there any claim that at any time during her absence from Williams County she has been an inmate of any public institution that she has received a mother's pension or assistance from the poor fund of any county or from funds provided by the state or federal government for relief purposes." (Emphasis supplied)

Our conclusion therefore is that Mrs. Crooker is still a resident of Cass County for purposes of poor relief since she has neither gained

a new residence nor been voluntarily absent from Cass County for a period of one year or more. The fact that she may have voted in a different county does not change this result since a person may have one residence for purposes of voting and another for purposes of poor relief.

LESLIE R. BURGUM

Attorney General