

OPINION
58-113

March 10, 1958 (OPINION)

INSTITUTIONS

RE: Residence - Reciprocal Agreement

We have received your letter of March 8, 1958, with reference to residence.

The facts are as follows: Mr. and Mrs. Paul White of Mountrail County, North Dakota, in July or August of 1957 moved to the State of Washington. On January 10, 1958, Mrs. White was committed to the Western State Hospital in Olympia, Washington, as a nonresident person. The above-mentioned hospital is a state owned and operated institution for the mentally ill. Mr. A.L. Whitmore, County Judge of Mountrail County, has questioned the residence status of Mrs. White on the theory that even though she has not been away from the State of North Dakota for one year that the Whites left North Dakota with the intention of making the State of Washington their permanent home. Your question then is whether Mrs. White is a resident of the State of North Dakota.

You further enclose a reciprocal agreement between the board representing the State of North Dakota and the State of Washington wherein the term "resident" is defined as meaning any person who has maintained his domiciliary residence in either state for a period of one year preceding commitment to a state institution, and further providing that any period of time spent by any such person as an inmate of the state hospital or state institution shall not be counted in determining the time of residence in either state.

Subsection 2 of section 50-0204 of the 1957 Supplement to the North Dakota Revised Code of 1943 provides that each person who has resided one year continually in the state, but not in any one county, shall have a residence in the county in which he or she has longest resided within such year. This section indicates that any person who would move into this state from another state would gain a state residence after residing in this state for one year and if such person resided in more than one county in this state, the county in which the greater portion of time during such year was spent would be the county of residence.

Section 50-0206 of the North Dakota Revised Code of 1943 deals with how residence is lost in a county and provides as follows:

Each residence for poor relief purposes, when once legally acquired in any county in this state, shall continue until it is lost or defeated by acquiring a new residence in this state, or by voluntary absence for one year or more from the county in which such residence has been obtained. Upon acquiring a new residence, or upon such voluntary absence, all former residence shall be defeated and lost. If within a year of removal, the county of former residence contributes to the poor relief of

such person in the county to which he has moved, such absence from the county of former residence shall not be construed to be voluntary as that term is used in this section."

Section 50-0207 deals with how residence in the state is lost and provides as follows:

If any person voluntarily moves from this state with the intent to acquire residence within another state, his residence in this state for poor relief purposes is lost, destroyed, or defeated in the same manner and upon like conditions as the residence of a person in that state voluntarily moved to this state would be lost, destroyed, or defeated. However, not more than one year of voluntary absence from this state shall be required to lose residence in this state for poor relief purposes."

This statute, in effect, sets up a reciprocity plan and then further provides that in any event not more than one year of voluntary absence from this state is required to lose residence for relief purposes in this state.

In the case of Nelson County v. Williams County, 68 N.D. 56 our Supreme Court had this to say, "The term 'voluntary absence' means absence pursuant to the free will and choice of the individual as contradistinguished from an absence induced by threats, compulsion, coercion or restraint. Such absence does not cease to be voluntary because the individual may not have formed, or carried out, an intention to establish "a new residence elsewhere."

In the case of Enderlin v. Pontiac Twp. 62 N.D. 105 the court said, "When the statute speaks of a person 'who shall have resided one year continuously in any county in this state,' and of the county in which a person 'has longest resided within such year,' it has reference to actual habitation or residence, that is it means the county in which such person has actually lived."

Then in the case of In re Boise, 11 N.W.2d. 80 the court said:

When a person entitled to poor relief has resided on year continuously in any county, he gains a residence and settlement therein for poor relief purposes, and such residence and settlement continue until such person is voluntarily absent from the county for one year."

Later in the same case the court said, "Where a person entitled to relief has acquired a residence and settlement within a specific county for relief purposes and has been voluntarily absent from said county for at least one year without any support having been given by that county, the responsibility of that county for the support of such person is ended even though part of the time of the absence may have been spent in another state."

It seems quite obvious from reading the above statutes and cases that since Mrs. White had not been absent from North Dakota and Mountrail County for a period of one year when she was committed to a public institution in the State of Washington, that she is a resident of

North Dakota for relief purposes, and since her residence was apparently a continuous residence more than one year in Mountrail County prior to the date that she left this state, that Mountrail County is the county of her residence for relief purposes.

With reference to the reciprocity agreement, it is our opinion that since your board has complete administrative powers over the charitable institutions of this state and since your reciprocity agreement is in conformity with our residence and other laws for relief purposes, we would say that it is a perfectly legal document and one which the board has a legal right to enter into with other states.

LESLIE R. BURGUM

Attorney General