

Opinion No. 44-4599

October 11, 1944

BY: C. C. McCULLOH, Attorney General

TO: Mr. G. Herkenhoff, State Director, Department of Public Welfare, Santa Fe, New Mexico

We have your letter of September 27, 1944 wherein you state that a question has arisen concerning a resident of the state of New Mexico who is now receiving Old Age Assistance payments from your department and, who, due to poor health, finds it advisable to temporarily leave the state to live with a relative in order to obtain care from such relative that he cannot obtain in the state of New Mexico, due to the fact that he has no one who can personally take care of him. The question is raised concerning whether or not your department can continue to make payments to a person temporarily residing outside the state of New Mexico.

You further state that the care outside the state by a relative of an Old Age Assistance recipient who may be ill and feeble in many cases will save the Department of Public Welfare money because the nursing care needed may be obtained in the home of a relative without additional cost, whereas if the Old Age Assistance recipient remains in New Mexico, it may be necessary to furnish nursing care which must be paid for by the Department in addition to the Old Age Assistance recipient's normal needs.

In examining the Public Welfare Act, it is noted that no specific provision either authorizes or prohibits the payment of amounts to people who have otherwise qualified to receive payments and who leave the state for various reasons. The question then becomes simply whether or not such a person is no longer eligible under the provisions of the Act to receive payments. The title to the Public Welfare Act, Chapter 18, Laws of 1937, provides in part:

"An Act to Provide for the Advancement of the Public Welfare and Social Security of the Inhabitants of the State of New Mexico; * * *"

An inhabitant is defined by the following cases as synonymous with legal residence or domicile: *In re Silkman*, 84 N. Y. S. 1025, 1034, 1038, 88 App. Div. 102; *Steidle v. Reading Co.* (C. C. A. N. J.) 24 F. (2d) 299, 301; *Standard Stoker Co. v. Lower* (D. C. Md.) 46 F. (2d) 678, 683; *Judd v. Lawrence*, 55 Mass. 531, 535, 1 Cush. 531, 535; *Briscoe v. Southern Kansas Ry Co.*, 40 F. 273, 277, quoting 1 Bouv. Law Dict 709; *Ness v. Comm. of Corporations & Taxation* (Mass.) 181 N. E. 178, 180; *Kennedy v. Ryall*, 67 N. Y. 379, 386, citing *Crawford v. Wilson*, 4 Barb. 504, 520; *Coleman v. Territory* 47 P. 1079, 1081, 5 Okl. 201; *Crawford v. Wilson*, N. Y., 4 Barb. 504, 522; *Bechtel v. Bechtel*, 112 N. W. 883, 884, 101 Minn. 511, 12 L. R. A., N. S., 1100; *State ex rel Sathre v. Moodie*, 258 N. W. 558, 564, 65 N. D. 340; *Borland v. City of Boston*,

132 Mass. 89, 98, 42 Am. Rep. 424; Gorman v. A. B. Leach & Co., D. C. N. Y., 11 F.2d 454, 456.

It is further well-established that one may be a resident or inhabitant of one county and have prolonged absence therefrom and spend most of the time in another county or state, residence, inhabitancy and inhabitant being relative terms, depending upon particular circumstances and not infrequently on intention. See Popejoy v. Boynton, 230 P. 1016, 112 Or. 646.

In view of the foregoing, it would appear that if a person should leave the state intending to remain a resident or inhabitant of New Mexico, they would continue to be such and would be eligible for benefits under the Public Welfare Act, if otherwise qualified. The question is strictly one of intention which must be determined by various surrounding facts to verify such intention, and is a question to be determined by your department in each particular case and in which you should use great caution in determining that such persons are still eligible for benefits.

By HARRY L. BIGBEE,

Asst. Atty. General