

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 91-01

Date issued: February 4, 1991  
Requested by: Cameron D. Sillers  
Cavalier County State's Attorney

- QUESTION PRESENTED -

Whether continued receipt of public assistance benefits prevents a person from gaining a new county of legal residence for poor relief purposes.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that continued receipt of public assistance benefits prevents a person from gaining a new county of legal residence for poor relief purposes.

- ANALYSIS -

County poor relief is a public benefit program administered by the county social service board. N.D.C.C. " 50-01-01 through 50-01-06 and N.D.C.C. ' 50-01-09(1). In most circumstances, poor relief is only available to persons who are residents of the county. N.D.C.C. ' 50-01-01. In specific circumstances, poor relief may be furnished to nonresidents. N.D.C.C. ' 50-01-14.

For purposes of this opinion, it has been assumed that a person has already established residency for poor relief purposes in one county and has moved to a second county. The question concerns the circumstances in which that person may gain residence in the second county. If such a person gains residence in the second county, the cost of furnishing and administering any poor relief benefits required by that person is the obligation of the second county. The acquisition of a new county of residence for poor relief purposes is generally governed by N.D.C.C. " 50-02-04, 50-02-05, and 50-02-06.

Residence, once legally acquired, continues until it is lost by acquiring a new residence in another county or "by voluntary absence for one year or more from the county in which such residence had been obtained." N.D.C.C. ' 50-02-06. A contribution of "poor relief" from the county of former residence prevents the absence from being construed as voluntary. Id.

Thus, if poor relief continues, the county residence of the poor relief recipient will not change.

The acquisition of a new residence, for poor relief purposes, is also prevented if other types of public benefits are received. N. D. C. C. " 50-02-04 and 50-02-05. Section 50-02-04 allows the gaining of a new residence "[i]f no type of public assistance or poor relief, whether county, state, or federal, has been received . . . ." (Emphasis added.) The running of the time for gaining a new residence "begins with the date of the last type of aid or poor relief or other assistance . . . given, or the date of discharge from . . . [a hospital, poor house, jail, prison, or other public] institution." N. D. C. C. ' 50-02-05. (Emphasis added.) Under the literal terms of section 50-02-06, a person could lose residence for poor relief purposes in one county, yet be prevented by section 50-02-04 or 50-02-05 from gaining residence in another county. That could occur if the person left the county or residence for poor relief purposes, spent a year in another county, and during that year received "public assistance," but did not receive "poor relief." However, these statutes have long been interpreted to prevent such a harsh result.

In Ward County v. Ankenbauer, 257 N.W. 474 (N.D. 1934), the court held that residency cannot be lost under the predecessor of N. D. C. C. ' 50-02-06 (subdivision 6 of section 4 of 1933 N.D. Sess. Laws ch. 97) during periods of receipt of benefits furnished through the federal emergency relief administration. In Ankenbauer, it was contended that the federal benefit did not constitute "poor relief," and that the indigent person lost residence in a county in spite of its receipt. The court disagreed, concluding that the reason for furnishing "poor relief" was "precisely the same" as the reason for furnishing "emergency relief," and based its holding on the "maxim of our jurisprudence that when the reason is the same the rule should be the same." 257 N.W. at 479 (citation omitted). The Ankenbauer court noted that the Attorney General had already issued such an opinion, an apparent reference to a May 8, 1934, opinion of Attorney General P. O. Sathre. That opinion, as excerpted at p. 231 of the Report of the Attorney General of North Dakota to the Governor for the period July 1, 1932, to June 30, 1934, expresses the Attorney General's opinion that federal benefits come within the purview of the statute, the same as relief from official county funds, and that families may not gain a new residence during the time of such receipt.

A year later, in Griggs County v. Cass County, the court stated:

Subdivision 4 and

subdivision 6 [of section 4 of 1933 N.D. Sess. Laws ch. 97] must be read together. It was not contemplated that a person who had a legal residence in North Dakota for poor relief purposes might nevertheless . . . have no such residence in any county. A person who moves from one county to another does not acquire a legal residence for poor relief purposes in the county to which he moves, unless and until he loses his residence in the county from which he moved, or vice versa.

260 N. W. 2d 417, 419 (N. D. 1935) (Emphasis added.)

The North Dakota Supreme Court has since held that receipt of benefits under the Aid to Dependent Children program prevented the gain of a new county of residency for poor relief purposes, citing section 50-0204, N. D. R. C. 1943 (Now N. D. C. C. ' 50-02-04). In re Steinborn, 71 N.W.2d 833 (N.D. 1955). The Steinborn court specifically rejected an argument based on section 50-02-06, N. D. R. C. 1943, stating:

[T]he construction urged . . . would have made it impossible . . . [for the claimant] to gain a residence for poor relief purposes anywhere. Clearly such a result was not intended by the legislature.

71 N.W.2d of 35. In view of the decisions of the North Dakota Supreme Court and the May 8, 1934, opinion of this office, it must be concluded that N. D. C. C. " 50-02-04, 50-02-05, and 50-02-06 must be read together. Thus, section 50-02-06 may not operate to deprive a person of a county of residency for poor relief purposes unless and until that person is able to acquire a county of residence for poor relief purposes under N. D. C. C. " 50-02-04 and 50-02-05. A new residence for poor relief purposes cannot be gained unless one year passes during which that person receives no type of public assistance or poor relief, whether county, state, or federal, or becomes an inmate of any hospital, poor house, jail, prison, or other public institution. The descriptions of the types of assistance which preclude the acquisition of a new county of legal residence are broad and all encompassing. No distinction of any kind is made between benefits which require the establishment of a residence and benefits which have no such requirement. Therefore, it is my opinion that continued receipt of public assistance benefits prevents a person from gaining a new county of residence for poor relief purposes.

- EFFECT -

This opinion is issued pursuant to N. D. C. C. ' 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

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