

**OPINION
79-217**

March 9, 1979 (OPINION)

Mr. T. N. Tangedahl, ACSW
Executive Director
Social Service Board of North Dakota
State Capitol
Bismarck North Dakota 58505

Dear Mr. Tangedahl:

This is in response to your February 21, 1979, letter requesting a formal opinion relative to the residence of an individual for public assistance purposes. Apparently, a dispute has arisen between the Slope County Social Service Board and the Burleigh County Social Service Board as to which county is legally responsible for this individual's needs.

The facts surrounding this situation as presented in your letter are as follows:

The individual, a twenty-two year old female, born August 9, 1956, came to North Dakota on December 23, 1976, and moved in with her grandparents in Amidon, Slope County, North Dakota. Apparently, she came to North Dakota to enroll for studies at Dickinson State College. Prior to coming to North Dakota, she had been living in California. She continued to reside with her grandparents in Slope County until March 1, 1977, when she moved into a dormitory at Dickinson State College, in Dickinson, Stark County, North Dakota, to begin the spring quarter there.

While attending Dickinson State College, the individual decided she wanted to attend beauty college. As such, she left Dickinson on or about May 20, 1977, and returned to her grandparents' home in Slope County, remaining there until June 3, 1977, when she moved to Bismarck, Burleigh County, North Dakota. Upon arriving in Bismarck, the individual stayed with a relative until July 9, 1977, when she moved into her own apartment. During this period, she attended a beauty college in Bismarck and continued attending the college until quitting on October 5, 1977. After quitting beauty school, she remained in Bismarck until February 13, 1978, working part-time in a local tavern.

In January 1978, the individual found out that she was pregnant. Upon learning of the pregnancy, she made application for AFDC at the Burleigh County Social Service Board office on January 9, 1978.

On February 13, 1978, while her application for AFDC was still being processed by the Burleigh County Social Service Board, the individual went to California, apparently to advise the father of the child(ren) of her pregnancy. Although she left the state, she left most of her personal belongings in her

apartment in Bismarck. She was gone from the state from February 13, 1978, to April 13, 1978, during which time, her application for assistance was denied by the Burleigh County Social Service Board.

On April 13, 1978, she returned to North Dakota and again moved in with her grandparents in Slope County. Upon her return, she was advised of the denial of her January, 1978, application for assistance by the Burleigh County Social Service Board. Because of her financial situation, she applied for assistance at the Slope County Social Service Board office on April 20, 1978. After numerous contacts with the Burleigh County Social Service Board, Slope County Social Service Board approved the individual's application for AFDC effective May 1, 1978, such approval being certified under protest as Slope County felt that Burleigh County was the county of legal residence. The individual continues to receive assistance through Slope County. However, since the first part of December, 1978, the individual has been living in Bismarck.

The first area that must be addressed is whether the individual at any time throughout the period in question, was a resident of the State of North Dakota. In this regard, reference is made to N.D.C.C. Section 54-01-26 which contains the general rules for determining residence in this state. This section provides:

Every person has in law a residence. In determining the place of residence the following rules shall be observed:

1. It is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he returns in seasons of repose;
2. There can be only one residence;
3. A residence cannot be lost until another is gained;
4. The residence of the father during his life, and after his death, the residence of the mother, while she remains unmarried, is the residence of the unmarried minor children;
5. The residence of the husband is presumptively the residence of the wife except in the case of establishing residence for voting purposes;
6. The residence of an unmarried minor who has a parent living cannot be changed by either his own act or that of his guardian; and
7. The residence can be changed only by the union act and intent."

It is considered that subsection 7 of Section 54-01-26, quoted above, is applicable. Although the individual originally entered North Dakota for purposes of attending college, there is no indication that she planned on leaving the state upon the completion of her

educational endeavors. In fact, consideration of the events transpiring after her arrival point to an individual who intended to continue living in North Dakota, although somewhat uncertain as to her plans. Noted particularly are her continued presence in the state for over a year, her rental of an apartment in Burleigh County, and her securing employment also in Burleigh County. Her physical presence in this state coupled with the circumstances surrounding that presence indicates an intention on the part of the individual to become a resident of North Dakota, and as such, it is considered that absent any information to the contrary, the individual became a resident of the State of North Dakota upon her arrival in December, 1976.

Although it was necessary to consider the general rules for determining the individual's residence in this state, for purposes of her residence for poor relief, consideration must be given to the provisions contained in N.D.C.C. Chapter 50-02, specifically Section 50-02-04 and 50-02-07.

N.D.C.C. Section 50-02-04, relating to county residence provides:

If no type of public assistance or poor relief, whether county, state or federal, have been received, residence in a county, for poor relief purposes, shall be gained as follows:

1. Each male person and each unmarried female over the age of eighteen years, who has resided one year continuously in any county in the state, shall be deemed to have residence in such county;
2. Each person who has resided one year continuously 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;
3. Every minor not emancipated and settled in his own right shall have the same residence as the parent with whom he last resided;
4. For the purposes of this section the time spent while receiving institutional care in any state licensed home for the aged, infirm, neglected or indigent shall not be included in the computation of the time necessary to establish residence hereunder."

And, N.D.C.C. Section 50-02-07 provides:

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."

Applying the above-quoted provisions of North Dakota law to the facts presented, it is considered that the individual at the time of both the January, 1978, application and the April, 1978, application was a resident of Burleigh County for poor relief purposes.

The facts clearly indicate that prior to the January, 1978, application, the individual continuously resided in North Dakota for one year but not in any one county. And, she had received no type of public assistance. As such, subsection 2 of N.D.C.C. Section 50-02-04 is considered to be controlling. In reviewing the sequence of events, it is noted that during the year immediately preceding the January, 1978, application, the individual lived in Slope County for roughly two and a half months, in Stark County for roughly two and a half months, and in Burleigh County for roughly seven months. Thus, it is clear that she resided for the longest time in Burleigh County and therefore, at the time of the first application, was a resident of Burleigh County for purposes of poor relief.

However, the first application was denied by the Burleigh County Social Service Board and the individual did not challenge the denial. Consequently, it is necessary to move to a consideration of the circumstances surrounding the second application made in April, 1978.

Before addressing the issue of county residence relative to the second application, it is first necessary to consider what effect, if any, the individual's two month stay in California had on her state residence for poor relief purposes. N.D.C.C. Section 50-02-07, quoted above, provides that a person loses residence in this state for poor relief purposes if he voluntarily removes himself from this state with the intent of acquiring a new residence in another state. In reviewing the facts surrounding the individual's trip to California, there is no indication of an intent on her part to establish a new residence. Rather, her reason for going to California, to tell the father of her pregnancy, as well as the fact that she left all her personal belongings in Bismarck, Burleigh County, North Dakota, supports the conclusion that her absence from this state was only temporary and that she fully intended on returning to this state.

Consequently, it is our opinion that she did not lose her residence in the State of North Dakota for poor relief purposes when she went to California. And, because she did not lose her residence in the state, it is our further opinion that her county residence at the time she went to California continued during her stay in California.

Having concluded that the individual did not lose her North Dakota residence for poor relief purposes, it is now necessary to determine the county residence of the individual for poor relief purposes. Again, reference is made to subsection 2 of Section 50-02-04 as she had resided in the State of North Dakota for at least a year, but not in any one particular county, without receiving any type of public assistance. The facts indicate that during the year immediately preceding the April, 1978, application, the individual resided for one month in Stark County, one-half month in Slope County, and ten and a half months (including the two months in California) in Burleigh County.

Thus, it is clear that the individual has resided for the longest time in Burleigh County for poor relief purposes.

It is hoped that the foregoing will be of assistance.

Sincerely,

ALLEN I. OLSON

Attorney General