

OLD AGE PENSION: Qualifications as to "residence" under
Old Age Assistance Act.

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Colonel Allen M. Thompson
Commissioner
Old Age Assistance Division
Jefferson City, Missouri

Dear Sir:

This will acknowledge receipt of your request
for an opinion, which reads as follows:

"Please give us an opinion as to whether or not the persons in the following hypothetical cases are entitled to apply for assistance under the residence requirements set forth in Section 6 of the Missouri Old Age Assistance Law:

"1. John Jones has lived in Missouri for many years. He went to Arkansas two years ago to live with a daughter because she can give him a home.

"2. John Jones has lived in St. Louis for fifty years. Five years ago it was discovered he could no longer live in this climate, therefore he went to Denver to live, and has remained there ever since. His wife, however, remained in St. Louis. John Jones did not enter a hospital or sanatorium.

"3. Mrs. John Jones has lived in Kansas City for many years. Three years ago she went to Colorado to visit a daughter; while there, she decided to enter the Masonic Home at Monte Vista and has lived there ever since. She has no relatives remaining in Kansas City. "

Section 6 of the Old Age Assistance Act, found in the Laws of Missouri, 1935, page 310, reads as follows:

"Old age assistance may be granted only to an applicant who, has attained the age of 70 years or upwards, is incapacitated from earning a livelihood and is without adequate means of support, is a citizen of the United States, has resided in the State for 5 years or more within the 9 years immediately preceding application for assistance and for the one year next preceding the date of application for assistance (absence in the service of the State or of the United States shall not be deemed to interrupt residence in the state if domicile be not acquired outside of the state), is not at the date of making application or of receiving aid an inmate of any prison, jail, insane asylum, or any other public reform or correctional institution, and has no child or other person responsible under the law of this state and found by the state board or by the county board able to support him."

It is plain from the above section that an applicant for assistance under the Old Age Assistance Act must have resided in the State for five years or more within the nine

years preceding application for assistance and for one year next preceding the date of application. In order to answer your questions it is necessary to construe the underlined portion of Section 6, supra.

54 C. J., Sections 1, 2 and 3, pages 702, 703, defines the word "reside" in the following language:

"In General. An elastic words, often defined and construed by the courts; it is employed in a wide variety of significations, and its meaning has been variously shaded according to the variant conditions of its application, for it is capable of different meanings, and may receive a different meaning according to the connection in which it is found. Specifically, the word is used in two senses, the one, constructive, technical, legal, the other denoting the personal habitual habitation of individuals.

"In the Ordinary Sense. To abide continuously, to sojourn, to dwell permanently or for a length of time; to be present; to be settled as in a home; to have a settled abode for a time, or a dwelling, a home; to have one's dwelling or home; to live in a place; to make an abode for a considerable time; to remain for a long time; to stay. Also to be in official residence; to continue to sit; to exist as an attribute of, inhere.

"In Legal Sense. While the word does not necessarily apply to a legal residence, still it may refer to a person's legal residence and mean an established place of abode, adopted with no present intention of moving elsewhere, being synonymous with

'domicile' in its strict legal sense; and although it means something different from being bodily present, yet in statutes it may be used as meaning actually to occupy, or to live, or it may be employed as synonymous with being a 'citizen' or an 'inhabitant.'

Section 4 of the same volume in regard to "Continuity and Permanency" states the following:

"While it is said that the word may signify a temporary abiding, the word in its ordinary sense carries with it the idea of permanence, as well as continuity, and embraces the idea of fixed or permanent residence, to be construed as excluding the mere casual presence of a transient, and implying a permanent abode as contradistinguished from a mere temporary locality of existence. Furthermore it imports a habitation of some degree of permanency, coupled with the home thought."

The word "resided" is defined in Section 7, page 704, as follows:

"Domiciled; lived; the term is said to be interchangeable or synonymous with 'residence.' It may be used, not in the sense of actual pedal presence, but rather of legal residence. It ordinarily refers to a fixed, permanent, and established residence, one's home, as distinguished from a mere stopping place for the transaction of either business or pleasure."

Section 1, pages 705-706, gives the following definition of "residence":

"An ambiguous, elastic, flexible, or relative term, which, notwithstanding numerous definitions are to be found in the books, is difficult of precise definition, as it has no fixed meaning applicable alike to all cases, but instead is used in different and various senses and has a great variety of meanings and significations, because its meaning is variously shaded according to the variant conditions of its application. Also, its meaning often depends upon the subject matter and connection in which it is used, and the sense in which it should be used is controlled by reference to the object; hence it may be given a restricted or enlarged meaning, considering the connection in which it is used."

From the above it is plain that the words "reside," "resided" and "residence" have no fixed and definite meaning and are used in a wide variety of senses.

48 C. J., Sections 91 and 92, pages 471, 472, has the following to say in regard to the necessity of continuous personal presence in order to maintain a continuous residence:

"The residence for the required length of time must be continuous, and many of the pauper statutes expressly so provide. Separate periods of residence cannot be added together to make up the statutory time. But where a residence has once been established by the concurrence of intention and personal presence, continuous personal presence thereafter is not essential to a continuous residence, especially when he whose residence is in question has a family between whom and him mutual family relations are in full force.

"An intention to remove in the future, without an actual removal, will not break the continuity of the residence.

"The continuity of a residence within the contemplation of the pauper laws is not broken by a mere temporary absence with the intention of returning, or without any definite intention of abandoning such residence, in the absence of statute to the contrary. Thus continuity is not broken by an absence while temporarily employed or while seeking employment, or while serving a term of enlistment in the army, unless the statute so provides. So where a person, living in a town in which he had not a settlement, removed to another town, by direction of the overseers of the poor, solely to prevent his gaining a settlement in the former town, and with the intention to return at the expiration of a few weeks, it was held that the continuity of his residence was not broken.

"In some jurisdictions it has been held that an absence may be *animo revertendi*, although during the person's absence he does not retain in the place any house over which he has legal control, or to which he may resort as a matter of right; but in others the contrary has been held.

"The question whether *animus revertendi* exists is one of fact to be determined by the jury."

Section 655, R. S. Mo. 1929, gives the following definition of "residence":

"The place where the family of any person shall permanently reside in this state, and the place where any person having no family shall generally

lodge, shall be deemed the place of residence of such person or persons respectively;"

Section 6 of the Old Age Assistance Act uses both the word "residence" and the word "domicile." We think it plain that they did not intend to use the words interchangeably.

19 C. J., Section 2, page 395, distinguishes between "domicile" and "residence" as follows:

"While the terms 'domicile' and 'residence' are frequently used synonymously, they are not, when accurately used, convertible terms. The former is of more extensive signification and includes, beyond mere physical presence at the particular locality, positive or presumptive proof of an intention to constitute it a permanent abiding place. 'Residence' is of a more temporary character than 'domicile.' 'Residence' simply indicates the place of abode, whether permanent or temporary; 'domicile' denotes a fixed, permanent residence, to which, when absent, one has the intention of returning. 'Residence' has a more limited, precise, and local application than 'domicile,' which is used more in reference to personal rights, duties, and obligations. That there is a difference in meaning between 'residence' and 'domicile,' is shown by the fact that a person may have his residence in one place while his domicile is in another. It has also been said that domicile and residence are not synonymous for the reason that a person may have more than one residence at the same time, but only one domicile."

The courts of this State have on many occasions defined the term "residence" as used in various statutes. A review of some of these decisions should help us to determine what construction to place upon the word "residence" as used in the statute under consideration.

In the case of *In Re Langford's Estate*, 197 S. W., 1. c. 148, the court said:

"Residence is largely a matter of intention. *Langford v. Gebhart*, 130 Mo. 621, 32 S. W. 1127, 51 Am. St. Rep. 585. This intention is to be deduced from the acts and utterances of the person whose residence is in issue."

In the case of *Adams, Administrator, v. Abernathy et al.*, 37 Mo., 1. c. 198, the court stated:

"Where a man makes provision for his family, and leaves them at his residence, although he may be personally absent an indefinite period of time, attending to his business, no attachment will lie, because the law has pointed out a mode by which service can be had. But where he leaves the country, and permits his family to sojourn with a relative, the presumption is that they are merely staying with the latter, and that he has no fixed or permanent place of abode. Upon the circumstances of this case, whether the defendant had such a permanent residence as to make it his usual place of abode, within the meaning of the law, was a question of fact and intent, and as the triers of the fact have found that he did not, we see no sufficient reason for disturbing the verdict. With this view of the case, we have found it unnecessary to examine the instructions in detail."

In the case of Greene et al., v. Beckwith, 38 Mo., 1. c. 387, it was said:

"A man's residence, like his domicile, or usual place of abode, means his home, to and from which he goes and returns, daily, weekly or habitually, from his ordinary avocations and business, wherever carried on--Chaine v. Wilson, 1 Bosw. (N. Y.) 673. In the sense of the attachment law, a man's residence is his home or habitation fixed in any place, without any present intention of removing therefrom--Stratton v. Bingham, 2 Sneed, 420, Sto. Confl. L. Sec. 43. A mere residence of a temporary nature is not enough to constitute a man a resident of this State. It has been said that inhabitancy or residence does not mean precisely the same thing as domicile, but that they mean a fixed and permanent abode, or dwelling place for the time being, as contra-distinguished from a mere temporary locality of existence--Matter of Wrigley, 4 Wend. 602; S. C. 8 Wend. 134. The evidence all tended to show that the defendant's domicile and permanent place of abode or residence of himself and family was in the State of Illinois, and that his business and residence in this State were altogether of a casual and temporary character. This was not enough to constitute him a resident of this State within the meaning of the attachment act, and to negative the other direct testimony that his actual residence and domicile were in the State of Illinois; that is to say, he was not a resident of this State, but a non-resident."

In State ex rel. v. Smith, 64 Mo. App., 1. c. 320, the court stated the law as follows:

"In determining who resides in its district, the school board, or the person by it engaged to make the enumeration, must necessarily be guided by the usual and ordinary indicia of residence, or absence of such indications; and the enumeration is not to be condemned because of certain secret mental resolves, or concealed intentions of persons living or having lived, in the district. These remarks apply to the facts of this case. On the face of things, Rhodes had left the school district; had taken his family and household goods and moved to another; and for what length of time he was to remain, if, indeed, he was ever to return, was not known to the school board, or to the enumerator. The board had the clear right, it was its duty, to act on these manifest appearances and treat Rhodes and his children as non-residents of that school district."

In the case of Reger v. Reger, 293 S. W., 1. c. 420, it was said:

"The place of residence of a person is specifically defined by statute of this state (section 7058, R. S. 1919) as follows:

'The place where the family of any person shall permanently reside in this state, and the place where any person having no family shall generally lodge, shall be deemed the place of residence of such person or persons respectively.'

"It has been judicially ruled in this state that the intention, or mental determination, of a party is largely determinative of his place of residence."

In the case of Venuci, et al v. Dademartori, 59 Mo. l. c. 353, 354, the court declared the law to be as follows:

"The only question presented by the record, is, whether the statute of limitations constituted a defense. The case was tried on an agreed statement of facts, and it shows that on the 1st of August, 1859, defendant made his promissory note for the sum of \$278, payable to one of the plaintiffs one year after the date thereof; that at the time of the execution of the note defendant resided in the city of St. Louis with his family, and that in the spring of 1861, he went to Italy, leaving his wife and family at his residence in the said city, and that he remained absent till the year 1872, when he returned; that at the time he left for Italy, he left his family, consisting of his wife and children, at his residence, where they remained during the whole time, and provided for their support until his return;

* * * * *

"The language of the statute is, where a person 'departs from and resides out of the State.' This contemplates that he should change his residence so that the process of the law cannot be served upon him. Where this happens then the creditor is remediless, and the debtor by his act has prevented the creditor from proceeding to obtain satisfaction. But if the residence is not changed, and under the provisions of the law service can be had which will authorize a personal or general judgment, then the statute continues to run, and cannot be arrested in its course.

"Under our statute a summons may be served by leaving a copy of the petition and writ at defendant's usual place of abode, with some white person of the family, over the age of fifteen years. (Wagn. Stat., 1007, Sec. 7.) And the place where a person's family permanently resides is deemed in this State his place of abode. (Wagn. Stat., 599, Sec. 60.)

"The defendant's family had a permanent residence in the State. He left them at his residence, where they continued all the time that he was gone and until his return. He supported them all that time, and his property was left here. From these circumstances the presumption is, that he intended to return, and he actually did return. As his place of abode under the law was here, and service of summons there was entirely good at any time, there was nothing to prevent the plaintiff from bringing an action and obtaining a personal judgment, and prosecuting it to satisfaction. Under such circumstances, we can see no obstacle to the statute's running."

" In view of the above authorities we think we can safely draw the following conclusions: That the word "residence" as used in Section 6 of the Old Age Assistance Act, means the place where the family of any person shall permanently reside in this State, or, if such person has no family, where he or she shall generally lodge; that while the term "domicile" and "residence" are not synonymous that "residence" does mean a fixed and determined home rather than a transient or temporary abode; that where a residence has been established, continuous personal presence thereafter is not essential to a continuous residence, especially when the person, whose residence is in question, has a family with whom he carries on family relations; that

the continuity of a residence is not broken by a mere temporary absence with the intention of returning or without a definite intention of abandoning such residence; that if a person leaves his residence, and while absent forms the intent of not returning, the continuity of his residence is broken as though he had formed the intent at the time of removing. We call your attention to the fact that the question of "residence" is a question of fact that must be determined in each individual case from all the facts and surrounding circumstances. "

Bearing in mind all of the above, we now answer your questions in the order in which they were asked:

"1. John Jones has lived in Missouri for many years. He went to Arkansas two years ago to live with a daughter because she can give him a home."

From the limited facts given in the above case we think it plain that John Jones abandoned his residence in this State two years ago when he went to make his home with his daughter, and is therefore not entitled to assistance under the Old Age Assistance Act for the reason that he has not resided within this State one year next preceding the date of application for assistance.

"2. John Jones has lived in St. Louis for fifty years. Five years ago it was discovered he could no longer live in this climate, therefore he went to Denver to live, and has remained there ever since. His wife, however, remained in St. Louis. John Jones did not enter a hospital or sanatorium."

Under the above state of facts it is our opinion that John Jones still has a legal residence in St. Louis, Missouri, in view of the definition of "residence" contained in Section 655, R. S. Mo. 1929. Of course, if the

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said John Jones had established a domicile in Denver, he would have lost his residence in St. Louis by so doing.

"3. Mrs. John Jones has lived in Kansas City for many years. Three years ago she went to Colorado to visit a daughter; while there, she decided to enter the Masonic Home at Monte Vista and has lived there ever since. She has no relatives remaining in Kansas City."

It is our opinion that Mrs. John Jones, under the above state of facts, is not entitled to assistance under the Act for the reason that she has not resided within this State one year next preceding the date of application for assistance, although she did not necessarily give up her residence when she left to visit her daughter, still when she decided to enter the Masonic Home, after visiting her daughter, she did abandon her residence in Missouri.

Yours very truly,

J. E. TAYLOR
Assistant Attorney-General

APPROVED:

JOHN W. HOFFMAN, JR.
(Acting) Attorney-General.

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