

- RESIDENCE:
- (1) Person's residence is a matter of intention to be determined by such person's acts and utterances;
  - (2) City of St. Louis cannot return persons requiring institutional care to alleged legal residence when such person has evidenced an intention by acts and utterances to become a resident of the City of St. Louis.
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July 25, 1936.

Mr. S. C. O'Brien, M.D.  
Assistant Commissioner  
City of St. Louis  
Hospital Division  
202 Municipal Courts Building  
Saint Louis, Missouri



Dear Sir:

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

"We are asking for an opinion as to the legal residence, and what steps this Department may take in order to return a person requiring institutional care to that legal residence.

"In our dealings with other states regarding the return of such cases, we have certain rules: one year's residence (same as for voting), not a public charge during that time; wife's residence is the same as husband's, as also is the children's residence, etc.

"Specifically, we have in our City Hospital, a Mr. Robert Van Hoy, Active Tuberculosis, born Sparta, Missouri, 1888, divorced, lived at Joplin till 1930 and on a farm in Anderson (McDonald County) till June, 1935, when he came to Saint Louis to live with a sister. In August, 1935, he became a patient here in Saint Louis after two month's residence. A letter to Mr. Wayne Maness, Clerk of the County Court, McDonald County, Pineville, Missouri, stating these facts, and requesting authority to return the patient to the care of McDonald County, brought the answer copy of which is attached herewith.

"The request, as you see, was refused for no valid reason. This is but one of the

many cases we have to contend with in Saint Louis, and we therefore ask, whether in a case of this kind, it is lawful for Saint Louis to send such patients via our ambulance back to their legal residence, on prior notification to the sheriff, to whom we will turn the patient over."

"May we have your opinion as soon as possible?"

In the course of this opinion, we shall first determine the question as to the legal residence of a person, as such residence may apply to your instant inquiry.

The question of residence is largely to be determined by some act or acts in conformity with an intention of the party whose residence is in question.

In the case of Johnson v. Smith, 43 Mo. loc. cit. 501, the Court said:

\*\*\*\*a man's domicile is where he has fixed his ordinary dwelling, without a present intention of removal, \*\*\*\*.

In discussing one's mental attitude, the Court in State ex rel. Ramey v. Dayton, 77 Mo. loc. cit. 682, said:

\*\*\*\* The physical act of staying must be accompanied with the mental determination of making a home or domicile in the place where the party stays or abides. \*\*\*\*

In the case of In re Lankford Estate, 272 Mo. loc. cit. page 9, the Court stated:

"Residence is largely a matter of intention. (Lankford v. Gebhart, 130 Mo. 621.) This intention is to be deduced from the acts and utterances of the person whose residence is in issue. \*\*\*\*"

In Trigg v. Trigg, 41 S. W. (2d) loc. cit. 589, the Court said:

\*\*\*\* We hold in accord with the general expression of the law that residence is largely a matter of intention evidenced by some act or acts in conformity with such intention. \*\*\*\*

You will note from the above quotations that a person's residence is a matter of intention evidenced from the acts and utterances of the person whose residence is in issue.

Your attention is directed to Section 12950, R. S. Mo. 1929, relating to county's liability to support the poor. It reads as follows:

"Poor persons shall be relieved, maintained and supported by the county of which they are inhabitants."

Section 12952, R. S. Mo. 1929, relating to who is deemed an inhabitant, reads as follows:

"No person shall be deemed an inhabitant within the meaning of this article, who has not resided in the county for the space of twelve months next preceding the time of any order being made respecting such poor person, or who shall have removed from another county for the purpose of imposing the burden of keeping such poor person on the county where he or she last resided for the time aforesaid."

Section 12951, R. S. Mo. 1929, defining who is a poor person, provides:

"Aged, infirm, lame, blind or sick persons, who are unable to support themselves, and when there are no other persons required by law and able to maintain them, shall be deemed poor persons."

Section 12953, R. S. Mo. 1929, relating to the duty of the county court to provide for the support of the poor, reads as follows:

"The county court of each county, on the knowledge of the judges of such tribunal, or any of them, or on the information of any justice of the peace of the county in which any person entitled to the benefit of the provisions of this article resides, shall from time to time, and as often and for as long a time as may be necessary, provide, at the expense of the county, for the relief, maintenance and support of such persons."

It is evident from the above statutes that poor persons shall be relieved, maintained and supported by the county of which they are inhabitants. The aged, infirm, lame, blind or sick persons who are unable to support themselves shall be deemed poor persons within the meaning of the law.

Section 12952, supra, very plainly states that no person shall be deemed an inhabitant within the meaning of this article, who has not resided in the county for a space of twelve months next preceding the time of any order being made respecting such poor person. It further becomes the duty of the county court of each county, on the knowledge of the judges of such tribunal, or any of them, or upon information of any justice of the peace of any county in which any person entitled to the benefit of the provisions of this article resides, to provide at the expense of the county for the relief, maintenance and support of such person.

Your particular attention is directed to Article 4, Chapter 46, Section 8686, R. S. Mo. 1929, relating to the State Sanatorium and its free patients. It provides in part as follows:

\*\*\*\*\*Each person desiring free treatment at said sanatorium shall apply under oath to the county court in which he or she may reside, and if a resident of the city of St. Louis, to the comptroller of said city, who shall at once certify the said name of said applicant to the superintendent of said sanatorium for the admission and treatment of such person, which certification shall be filed and recorded in a book kept by the superintendent in order of their receipt. Admission to the sanatorium shall be in order in which the names of the applicant appear on the record book so kept by the superintendent. \*\*\*\*\*

You will note that the Comptroller of the City of St. Louis shall at once certify the name of any such applicant, who shall apply under oath to the county court in which he or she may reside, to the Superintendent of said Sanatorium for admission and treatment of such person.

There are no provisions under our laws whereby the City of St. Louis could send any patient via their ambulance back to their legal residence on prior notification to the

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sheriff to whom such patient shall be turned over.

CONCLUSION.

In light of the above, it is the opinion of this department that, since the person whom you have mentioned in your request for an opinion, and from the facts accompanying your request that such person left McDonald County in the State of Missouri for the purpose of fixing his future residence in the City of St. Louis, Missouri, and that such a person is a legal resident of the City of Saint Louis, Missouri.

We further conclude that you may not send such patient, as you have mentioned in your request, via your ambulance back to his or her alleged legal residence.

Very truly yours,

RUSSELL C. STONE  
Assistant Attorney-General.

APPROVED:

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

RCS/afj