

**OPINION
54-136**

December 1, 1954(OPINION)

WELFARE

RE: Aid to Dependent Children

This office acknowledges receipt of your letter of November 20, 1954, requesting our opinion in regard to aid to dependent children under Chapter 50-09 of the N.D.R.C. of 1943, as amended.

You desire an answer to the following questions and you state the summarized facts as follows:

"(1) Both mother and child have physically resided or lived in North Dakota for more than one year immediately preceding the date of application, (2) said child's father is married to the child's mother, and is a non-resident of the State of North Dakota, and (3) said husband and wife have separated, or the husband has abandoned the wife and child, but such separation or abandonment was without divorce and occurred less than one year preceding the date of application, (4) in all other respects, applicant is eligible."

Your specific question is as to whether or not Chapters 50-01 and 50-02 of the 1953 Supplement have any bearing on residence requirements for aid to dependent children. In order to properly understand this opinion it is necessary to appreciate the fact that Chapters 50-01 and 50-02 deal with poor relief and the residence requirements therefor. Under this law the Federal Government does not participate, but the expense thereof is borne by the state and county. The Federal Government participates financially in certain aid, among which is the aid to dependent children as provided for by Chapter 50-09 of the 1953 Supplement to the N.D.R.C. of 1943. The Federal Government participates specifically in this program and this chapter in our law was enacted in accordance with the requirements of the Federal Social Security Act.

The Act known as Subsection (b) of Section 402 of the Social Security Act reads as follows:

"(b) The Board shall approve any plan which fulfills the conditions specified in subsection (2), except that it shall not approve any plan which imposes as a condition of eligibility for aid to dependent children, a residence requirement which denies aid with respect to any child residing in the State (1) who has resided in the State for one year immediately preceding the application for such aid, or (2) who was born within the State within one year immediately preceding the application, if its mother has resided in the State for one year immediately preceding the birth."

This means that the state in order to avail itself of the contribution from the Federal Government was required to provide such legislation as would conform to the Federal requirements as set forth in the quoted section. Considering therefore the history of this legislation known as Chapter 50-09 of the 1953 Supplement, it is our opinion that this Chapter 50-09 is separate and independent of any other legislation dealing with relief. In other words aid to dependent children is controlled exclusively by Chapter 50-09 and the residence requirement as provided for poor relief generally does not apply. It is, therefore, our opinion that in order to qualify for aid to dependent children the eligibility for residence provided for in Chapter 50-09 must be complied with and no other eligibility requirement need be considered. It is further our opinion that the constructive residence as used in these other laws pertaining to aid has no applicability to aid to dependent children.

Answering specifically your questions, our opinion is that a dependent child will qualify for assistance under each one of the situations set forth in your statement of facts numbers 1, 2, 3, and 4. In other words, except as specifically set forth in Section 50-0905, the physical presence of the child in the state is all that is required regardless of where the parents may have their residence.

LESLIE R. BURGUM
Attorney General