

**OPINION
71-283**

September 13, 1971 (OPINION)

Mr. Leslie O. Ovre

Executive Director

Department of Human Services

RE: Public Welfare - Residency Statute

Constitutionality

This is in response to your letter in which you call our attention to the decision of the United States Supreme Court in *Graham v. Richardson*, 29 L. Ed. 2d. 534. You then ask in view of the decision in section 50-24-03(1) valid?

Section 50-24-03(1) provides as follows:

"ELIGIBILITY. Assistance shall be granted under this chapter to any person who shall meet the following requirements:

1. Has resided ten years in the United States, or is a citizen of the United States."

The *Graham* case had under consideration the statutory provision of the state of Arizona which provided as follows:

"No person shall be eligible for general assistance who does not meet and maintain the following requirements:

1. Is a citizen of the United States or has resided in the United States a total of fifteen years."

The Supreme Court in disposing of the question noted the provisions of the Fourteenth Amendment which as is material to the question provides as follows:

"* * * Nor shall any state deprive any person of life, liberty or property without due process of law; nor deny any person within its jurisdiction the equal protection of the laws."

The court referred to its decision in the *Shapiro v. Thompson* case, 22 L. Ed. 2d. 611 and 615, and observed that classifications of this kind are inherently suspect and are therefore subject to the strict judicial scrutiny whether or not a fundamental right is impaired. The court further noted that aliens, like citizens, pay taxes and may be called into the Armed Forces and contribute to the economic growth of the state.

The court then specifically held "that a state statute that denies welfare benefits to resident aliens and one that denies them to aliens who have not resided in the United States for a specific number of years violates the Equal Protection Clause."

The decisions of the United States Supreme Court constitute the law of the land and apply to all states. The statutes under consideration by the United States Supreme Court are so similar to the state of North Dakota statutes that we cannot recognize or make a legal distinction or difference.

Based on the decision of *Graham v. Richardson* and the companion cases, it is our opinion that subsection 1 of section 50-24-03 of the North Dakota Century Code quoted above is unconstitutional as being in violation of the Fourteenth Amendment.

HELGI JOHANNESON

Attorney General