

**District Court—Retaining of Jurisdiction Over Child  
Committed to Orphans' Home in Divorce Proceedings.**

The District Court has and retains jurisdiction over a child committed by it to the Orphans' Home in connection with divorce proceedings so as to make a valid order preventing the placing of such child by adoption.

H. W. George, Esq.,  
Supt. State Orphans' Home,  
Twin Bridges, Montana.

My dear Mr. George:

You have requested my opinion on the following question:

"Can the District Court committing a child to the State Orphans' Home, as a result of divorce proceedings, retain jurisdiction over such child so as to prohibit the placing of such child by adoption after a period of one year has elapsed?"

The Constitution of Montana, Section 11, Article VIII, among other things gives to the District Court jurisdiction "of actions of divorce and for annulment of marriage."

Section 5770, Revised Codes of 1921, is as follows:

In an action for divorce the court or judge may, before or after judgment, give such direction for the custody, care, and education of the children of the marriage as may seem necessary or proper, and may at any time vacate or modify the same."

This section was construed in the following cases:

Pearce v. Pearce, 30 Mont. 269;

Brice v. Brice, 50 Mont. 388;

Kane v. Kane, 53 Mont. 519.

The jurisdiction of divorce proceedings being given to the District Court by the Constitution, and the jurisdiction of the children thereof remaining in the court, adoption of a child so within the jurisdiction of the court, and against the court's order, would be an attempt to deprive the court of the jurisdiction conferred by the constitutional and statutory provisions above referred to.

It is, therefore, my opinion that the court has and retains jurisdiction over a child committed by it to the Orphans' Home in connection with divorce proceedings so as to make a valid order preventing the placing of such child by adoption.

Very truly yours,

WELLINGTON D. RANKIN,  
Attorney General.