

Opinion No. 44**Parent and Child—Schools and School Districts—Residence—Orphans' Home.**

Held: The residence of a child committed to the State Orphans' Home is that of his parents. If the parents move from the state of Montana the county of the former residence of the parents is no longer under obligation to transfer funds to the high school at Twin Bridges in Madison County. The expense of such education is the obligation of the State of Montana.

July 11, 1947

Mr. J. Chandice Ettien
County Attorney
Granite County
Philipsburg, Montana

Dear Mr. Ettien:

You have requested my opinion concerning the following:

A child whose parents were resident in Granite County was committed by the district court to the Montana State Orphans' Home. The parents

subsequent to the commitment moved from Granite County to the State of Washington. Must Granite County provide for the transfer of funds to Madison County for the education of the child in the High School located at Twin Bridges under the provision of Chapter 219, Laws of 1943?

The question to be decided is the residence of the child, as Chapter 219 provides that the county treasurer of the county of a pupil's residence shall transfer to the Twin Bridges High School in Madison County funds for education of the child.

Section 33, Revised Codes of Montana, 1935, provides in part:

"The residence of the father during his life, and after his death the residence of the mother while she remains unmarried is the residence of the unmarried minor children."

From the above quoted it would appear that the residence of the child follows that of the father and would now be in the State of Washington.

In State ex rel Johnson v. Kassting, 74 Mont. 25, 238 Pac. 582, our Court considered the residence of girls committed to the Vocational School in Lewis and Clark County. The Court held that even if the state has become the guardian of the child committed, the residence of such minor children will not be changed by the commitment to the school. The Court said:

"Therefore these girls can not be held to have acquired a residence in School District No. 6 of Lewis and Clark County, nor lost their residence in the county in which their parents resided by reason of commitment to this school."

There is an apparent conflict between the rule stated in the above case and Section 5850, Revised Codes of Montana, 1935, which permits a parent entitled to the custody of a child to change his residence. As the commitment to the Orphans' Home deprives the parents of the custody of the child, it might well be argued that the right to change the residence is dependent on the right to custody. However, Section 5850 must be considered in conjunction with related

sections and the conclusion reached that the section has reference to the conflicting claims of the two parents, and no application when there is no controversy between the parents, as is the case here. Also, the general rule is stated in 17 Am. Jur. 628:

“A needy, delinquent, or neglected child does not lose the domicile of its parents by being sent to an institution.”

It might be urged that Section 1051, Revised Codes of Montana, 1935, as amended, would also preclude the child from being considered a resident of Granite County as this section fixes the rules for the making of the school census. However, the transfer of funds under Chapter 219, Laws of 1943, is based on the residence of the pupil, and whether the pupil is included in the school census is immaterial.

The parents of the child having moved from the state of Montana, and thus relieved the county from the duty to transfer funds, it now becomes the duty of the State to pay the expense of education, as Sections 1492 and 1493, Revised Codes of Montana, 1935, provide that inmates of the Orphans' Home are to receive free education at the expense of the State. Chapter 219, Laws of 1943, would control, being subsequent legislation, if the parents continued to reside in Montana, but having departed, Sections 1492 and 1493 will fill the need and supply the necessary funds.

It is, therefore, my opinion that the residence of a child committed to the State Orphans' Home is that of his parents. If the parents move from the State of Montana the county of the former residence of the parents is no longer under obligation to transfer funds to the high school at Twin Bridges in Madison County. The expense of such education is the obligation of the state of Montana.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General