

Dependent Children, Residence of. Residence, of Dependent Children.

The residence of an unmarried minor child is the residence of the father if living, or of the mother if the father is dead and the mother unmarried. Residence being a matter of the union of act and intent, the residence of dependent minor children cannot be ascertained until the intent of the parent in whose charge they are, as to her residence, is known.

March 20th, 1914.

Hon. M. L. Rickman,

Secretary Bureau Child and Animal Protection,
Helena, Montana.

Dear Sir:

I am in receipt of your communication under date of the 26th instant, asking me to ascertain what determines legal residence of children. Sec. 32 of the Revised Codes of Montana, 1907, provides in part as follows:

“Every person has in law a residence. In determining the place of residence the following rules are to be observed: (4) 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; (6) the residence of an unmarried minor who has a parent living cannot be changed by either his own act or that of his guardian; (7) the residence can be changed only by the union of act and intent.”

Your letter states a case—that of a woman who moved from Musselshell County to Lincoln County, taking with her two children. Two days after her arrival in Lincoln County she left that place, deserting the children. From Quotation of Subdiv. 7, Sec. 32, Revised Codes, above quoted, it will be seen that it is impossible to say from the facts in hand whether a residence in Lincoln County was established by this woman or not, in as much as there are no facts showing what her intention was. It is not shown either whether or not these children had a father living. Hence, since the residence of a minor child depends upon the residence of the father if living and the mother if the father is dead, and there is no means of knowing what the intent of the mother was when she came to Lincoln County, and no showing that the children had a father living, it is impossible to tell from the state of facts whether or not the children have a legal residence in Lincoln County. And since the liability of Lincoln County for the care of dependent children depends upon the question of their residence therein, I am unable at this time to say whether Lincoln County can be held responsible for moneys expended by Mr. Lang in taking them to the orphans' home.

Yours very truly,

D. M. KELLY,
Attorney General.