

**Abandonment, of Children. Children, Abandonment of.  
Parent, Desertion of Child. Desertion, of Child by Parent.**

Under the provisions of Section 8346, the question as to whether a parent has deserted the child, is wholly one of fact. The mere leaving of the family is not necessarily desertion; nor does the fact that after leaving, the parent made a payment necessarily deprive the act of being a desertion.

July 15, 1915.

Hon. Wade R. Parks,  
County Attorney,  
Thompson Falls, Montana.

Dear Sir:

I am in receipt of your letter asking for construction of the provisions of Section 8346, Revised Codes relating to the desertion and abandonment of children under the age of twelve years. The question of abandonment, and also of desertion, is almost wholly one of fact to be determined from the circumstances and conditions surrounding the particular case. The statement of facts in your letter is hardly sufficient to constitute the basis of any specific statements relative to the probable outcome of an action based thereon. We must keep in mind the fact that this statute is highly penal, and that the presumption as in all criminal actions, is in favor of the defendant. However, the mere fact that the husband made a single payment to the wife or the children, after leaving them, is only a mere item of evidence, and is not at all conclusive, for such payment might be a subterfuge. Neither is the fact that he left the children with their mother, evidence that he was not guilty of desertion or abandonment. Children of that age are usually left with the mother, and the father could certainly not render himself immune from the charge of abandonment by alleging that he did not desert any particular member of the family because he deserted the entire family. The father's duty to his children as such, remains constant, and he cannot by any single act of his own divorce himself from that duty, although he may have been divorced from his wife.

Opinions Attorney General, 1912-14, p. 449.

You will find this matter discussed to some extent in

State vs. Bess (Utah), 137 Pac. 829;  
Evans v. Evans (Tenn.), 140 S. W. 745;  
29 Cyc. 1676, 1677;

It is also true that the mere fact that the father left the children in comfortable circumstances would not of itself convict him of abandonment, unless the time of his absence was greatly in excess of the provision he had made for their maintenance. The word "wholly," as used in the statute adds but little to its meaning, for the accusation would be sustained only by evidence of abandonment. There is not any provision of law that would authorize the prosecution for the partial commission of a crime, nor must the meaning of Section 8346 be confounded with the provisions of Section 3741, and other sections relating to civil liability. I have called the attention of the Bureau of Child and Animal Protection to this matter, but in as much as no names are given in your letter, I was not able to give any specific information. Without further specific information, I can only refer the matter to you for investigation, and for the exercise of your judgment as to whether you think, under all the facts of the case, a prosecution would be justified, under the provisions of Section 8346.

Yours very truly,

J. B. POINDEXTER,

Attorney General.