

Adoption of Child. Children, Adoption of by Mixed Races.

Whether parents of mixed races may adopt a child also of mixed races is a question for the court in which the Petition is filed.

September, 8th, 1916.

Hon. M. L. Rickman, Secretary,
Bureau of Child & Animal Protection,
Helena, Montana,

Dear Sir:—

I am in receipt of your favor of the 6th instant, relating to the adoption of laws of the State of Montana, the statement therein being to the effect:

“Whether a man $\frac{3}{4}$ Indian and $\frac{1}{4}$ African, whose wife is white, can legally adopt a child $\frac{7}{8}$ white and $\frac{1}{8}$ African.”

Section 3761, Revised Codes, cited by you, is to the effect that any minor child may be adopted by any adult person who is a citizen or, under the laws, may become a citizen, and is of the same race as the child to be adopted. Other restrictions contained in the following sections are to the effect that neither a married man nor a married woman can adopt a child without the consent of the other. This Statute by its terms, appears to deal only with the pure blood, and does not contain any provisions relating to the adoption of a child of mixed races by an adult who is also of mixed races. There is probably not any doubt but what the wife above referred to, might adopt this child, although if we were to say that the person adopting and the child adopted must be wholly of the same race, then even the wife in this case could not adopt. I am inclined, however, to believe that the law should not be drawn so strictly.

This is a matter, however, which must come before a Court of general jurisdiction and the opinion of this office, not being in any sense controlling upon any court whatsoever, it could amount to nothing

more than mere discussion or suggestion. I therefore recommend that this matter be submitted to the District Court for final determination.

Yours very truly,

J. B. POINDEXTER,

Attorney General.