

**Bureau of Child and Animal Protection—Children—Residence.**

The law does not contemplate that the bureau of child and animal protection shall place a child beyond its jurisdiction and beyond the jurisdiction of the court committing the child to the bureau.

Mrs. Maggie Smith Hathaway, July 23, 1925.  
Secretary, Bureau of Child and Animal Protection,  
Helena, Montana.

My dear Mrs. Hathaway:

You have submitted to this office the following inquiry:

“If a child has been committed to the bureau by the court, has the bureau any right to place said child outside of this state?”

An examination of our statutes governing the bureau of child and animal protection, sections 336-339, R. C. M. 1921, and of the law governing dependent and neglected children, sections 10465-10479, and of the juvenile delinquency law, sections 12275-12301, discloses that we have no express statutory provision decisive of your inquiry. The question must therefore, be determined in the light of public policy and of the holdings of courts relative to the status of guardians and wards.

Whenever a dependent or neglected child is committed to the custody of the bureau of child and animal protection the relationship of guardian and ward is, under section 10471, established between the child and the bureau. This section further provides:

"Such association or individual shall by, and with the consent of the court have authority to place such child in a suitable family home with, or without, any indenture and may by attorney or agent appear in any court where adoption proceedings are pending and assent to its adoption."

The appointment of a non-resident guardian is not favored by the courts. The rule is thus stated in 28 C. J., page 1081:

"While in the absence of statutory provisions to the contrary, a non-resident may be appointed guardian, such appointments are not favored, the rule being that a resident should be appointed rather than a non-resident unless some very strong reason for appointing the latter is made to appear." (Citing authorities.)

Section 5885, R. C. M. 1921, provides that a guardian may be removed by the district court "for removal from the state." The question then is: It being the policy of the law that a non-resident shall not act as guardian, may a resident guardian place the person of his ward beyond the control of the court which confers upon the guardian his powers of guardianship?

It is my opinion, in the absence of any controlling statute or decisions, that the law does not contemplate that your bureau shall place a child beyond the jurisdiction of the court by which the control and custody of the child is committed to you. However, in the absence of express statutory prohibition, your bureau might in a proper case place a child outside the state of Montana with the distinct understanding and agreement that the bureau is to retain the control of the child and may demand its return to Montana at any time.

In other words, if your bureau wishes to assume the responsibility for placing a child outside of your jurisdiction and outside of the jurisdiction of the court through which you derive your right to the control of the child, you would, in my opinion, be violating no express requirement of law. In such case, however, you would be acting at your peril and with the full knowledge that the court which committed the child to your custody might at any time require you to account and to produce the child here in Montana. You should, therefore, make ample provision to insure the return of the child to you by the non-resident upon demand.

Very truly yours,

L. A. FOOT,  
Attorney General.