

Opinion No. 324**Orphans—Children—Residence
—State Orphanage.**

HELD: Where the father of children is unable to support them, the children cannot be discharged from the state orphanage because their father has acquired a residence in another state.

August 29, 1933.

You submit the following matter for an opinion from this office: "In 1927 five children, father living, mother dead, were placed in our state orphanage. Later the father took up his residence in Oregon, and in September, 1931, sent for his oldest daughter, who went to Portland where he found a home for her with a family. The other four children have remained at the orphanage. Since then he has not been able to make arrangements for the younger children and the report is to the effect that he is not financially able to provide for them."

You are confronted by the following problems:

1. Inmates of the State Orphans'

Home can be discharged only upon their reaching the age of sixteen years. (Section 1505) and then only in the discretion of the board; or the board may return them to the county of their residence when they were committed.

2. You have no control over the father residing in another state. He is not a fugitive from justice and cannot be extradited, and if he could be brought back you have no assurance that he is better able to support the children than when they were committed. He was a resident of the state at the time of the commitment and the presumption is that the commitment was legal. There is no sound reason why Montana should desire to burden another state with her indigent inmates of the State Orphans' Home and this state can compel no other state to receive them.