

Opinion No. 101.**Montana Training School—Commitment—Jurisdiction—County Chargeable for.**

HELD: A child may be committed to State Training School by the Judge of any District Court, but to charge the county of residence, such commitment must be made by Judge of that county.

July 19, 1939.

Montana State Training School
Boulder, Montana
Attention of Mr. Howard Griffin,
President.

Gentlemen:

Your inquiry to this office comprises three questions.

1. Can a judge in a jurisdiction other than that of the residence of a child commit the child to the Montana State Training School and make a charge on the child's home county?

2. The legal custody of a child from "F" County is placed with the Montana State Orphans home. Application is made by those in authority of the Orphans Home for commitment of the child to the Montana State Training School. Upon admission to the training school the question arises as to the county chargeable with the expense of the child at the training school.

3. A child is committed from "M" county. Later the child's family moved to "C" county and the child was committed from "C" county. The family then returned to "M" county but there was no later commitment from "M" county. The question then is as to which commitment is effective.

Questions Nos. 1 and 2 will be answered together as follows:

Section 5850 provides in effect that a parent having custody of his child has a right to change his residence and the residence of the parent is the residence of the child.

Section 5880 provides that a guardian of a child may fix the residence of his ward at any place within the state.

Section 9096 provides that actions, excepting such actions as are expressed in Sections 9093, 9094, and 9095, Revised Codes of Montana, 1935, shall be tried in the county of the residence of the defendant and section 9097 enlarges thereon by providing that an action may be tried in any county in the state (there being no territorial limits to the district courts), unless defendant demands trial in the proper county (which is the county of his residence). Since there is no territorial limitation limiting the power of a district court to exercise authority in any matter in which it is given jurisdiction and even though the statutes set out proper places for the trial of certain causes, if no demands are made by the parties entitled to so demand a change of place of trial, such district court in which the action is commenced has jurisdiction subject however to the exceptions set out in Sections 9093, 9094, and 9095.

Bullard v. Zimmerman, et al, 82 Mont. 434, 442, 268 Pa. 512;

State ex rel Haynes v. District Court, 106 Mont. 578, 595, 81 Pac. (2d), 422.

While in applying for admission to the training school the application must state the residence of the proposed inmate, (Section 1475, Revised Codes of Montana 1935) it is not required under the said section that application must be made to the district court of the judge thereof of the county of the residence of such proposed subject. In order, however, to charge the county of the residence of the subject as provided for by Section 1480, Revised Codes of Montana, 1935, it would be the better practice to have the order come from the district court of the county of the residence for the reason that if the cause be heard before a court other than that of the residence of the subject, the county of the residence will not have its day in court as a matter of defense and the general rule of law as to such a judgment is "one not a party to a judgment is not bound thereby." Therefore it would be impossible to enforce a collection of such a judgment.

Conrow v. Huffine, 48 Mont. 437, 447;

Wills v. Morris, et al., 100 Mont. 514, 523, 50 Pac. (2d) 862;

Section 10558, Revised Codes of Montana, 1935.

The jurisdiction necessary to make an effective judgment must be such as gives jurisdiction over the cause, the parties, and the thing when a specific thing is the subject of the judgment.

Section 10567, Revised Codes of Montana, 1935;

Gans & Klein Investment Company v. Sanford, et al., 91 Mont. 512, 521, 2 Pac. (2d), 808.

3. Apparently the child set out in Question No. 3 as having been committed to the training school from "M" county had been discharged from the training school and then re-committed after his parents had moved to "C" county, and that such child is still at school under commitment from "C" county although the parents have returned to "M" county.

The matter of residence is a question of intention. (Section 33, Revised Codes of Montana, 1935.) One does not necessarily lose residence in one county by moving to another, so it is possible the parents still consider "C" County as their residence, though they are at present living in "M" County. In any event, it is the last judgment which controls, (Gans & Klein Investment Co. v. Sanford, et al., 91 Mont. 512, 521, 2 Pac. (2d), 808 and "C" County is therefore chargeable with the expenses as set out in Section 1480, Revised Codes of Montana, 1935, until the subject of the commitment is discharged.