

No. 293

ADOPTION—RESIDENCE, meaning of word—
CHILDREN, adoption of

Held: The word "resides," as used in Section 5861, Revised Codes of Montana, 1935, is not restricted to permanent residence, but includes temporary residence, and a person temporarily residing in the State of Montana is qualified to adopt a minor child.

November 14, 1941.

Mr. J. B. Convery, Administrator
State Department of Public Welfare
Helena, Montana

Dear Mr. Convery:

You have requested my opinion on the following question:

"Is a person who desires to adopt a child in the State of Montana required to have a legal residence before the Court can legally approve the adoption, or may a person temporarily residing in the state legally adopt a child?"

You call my attention to Section 5861, Revised Codes of Montana, 1935. This section merely provides that in proceedings for adoption the person adopting, the child adopted and the other persons whose consent is necessary, if within or resident of the county, must appear before the judge of the district court of the county where the person adopting resides, and those persons whose consent is necessary must give consent if present. Otherwise such consent may be in writing and filed in the proceedings, and the person adopting must enter into an agreement before the judge. It will be noted the only reference to residence is that the proceedings must be had before the district court where the person adopting resides.

In determining this question, all provisions dealing with the subject must be read together. Section 5856, Revised Codes of Montana, 1935, provides:

"Who may adopt minor child. Any minor child may be adopted by any adult person who is a citizen, or who, under the laws of the United States, may become a citizen of the United States, and is of the same race as the child to be adopted, in the cases and subject to the rules prescribed in this chapter."

It will be noted that, under the above statutes, any adult person who is a citizen of the United States, or who may become such citizen and who is of the same race as the child, may adopt a minor child. It will be further noted the proceedings must be had in the county where the

person adopting "resides." The question therefore is as to the meaning of the word "resides" as used in this statute.

The interpretation of the word "resides" or "resident" as used in adopting statutes has many times been before courts of various jurisdictions. In the case of Appeal of Wolf, reported in 13 Atl. 756, the Supreme Court of Pennsylvania, after reviewing these decisions, says:

"Does the word 'resident,' as used in the act of May 4, 1855, supra, include a temporary resident? This word 'resident' has received various interpretations by many different courts, depending largely on the scope of the statute in which it is found, and the connections in which it is used. Thus it is sometimes used in connection with the words 'inhabitant,' 'citizen,' 'freeholder,' and the like; again it is used in elections; 'he shall have resided in the state one year, and in the election district two months,' etc.; as in our divorce laws the applicant must have resided in the state one year or more. The purpose of our adoption act is to promote the welfare of the child to be adopted, and any one desirous of adopting a child may invoke the power of the court of the county in which he or she may reside. It does not say that he shall be a permanent resident, which has been held synonymous with inhabitant, nor that he may be a temporary resident, which has been held synonymous with a sojourner. After a careful examination of all the authorities cited (they are too numerous to be classified or referred to here), I am of opinion that the word 'resident,' as used in the act of May 4, 1855, includes both a permanent and a temporary resident, and the jurisdiction of the court is therefore sufficiently set forth in the petition."

See also *Van Matre v. Sankey*, 148 Ill. 536, 36 S. E. 628.

The Pennsylvania adoption statute considered in the case cited provided any one desirous of adopting a child must present his or her petition to the court "in the county where he or she may be a resident." In that case the petitioner for adoption was a legal resident of California and only temporarily residing in Pennsylvania for the purpose of the adoption proceedings.

It is therefore my opinion the word "resides," as used in Section 5861, Revised Codes of Montana, 1935, is not restricted to permanent residence, but includes temporary residence. It is my opinion a person temporarily residing in the State of Montana is qualified to adopt a minor child.

Sincerely yours,

JOHN W. BONNER
Attorney General