

Opinion No. 107**Residence—Emancipation of a Minor
—Request for Right of an
Emancipated Minor to Establish a
Residence of its Own.**

- Held:** 1. A minor child who has been emancipated, that is, where there has been an entire surrender of the right to the care, custody and earnings of such child as well as a relinquishment of parental duties, may establish its domicile of choice.
2. An emancipated minor may be eligible to receive payment of adjusted compensation under the Montana Veteran's Honorarium Law.

August 9, 1952.

Mr. James F. Neely, Director
Adjusted Compensation Division
Arsenal Building
Helena, Montana

Dear Mr. Neely:

You have requested my opinion concerning the right of an emancipated minor child to establish and acquire a domicile of choice entirely independent from the domicile of its father; and whether an emancipated minor may be eligible to receive payment of adjusted compensation under the Montana Veteran's Honorarium Law.

First, it is clear that in Montana residence and domicile are the same,

State ex rel. Duckworth v. District Court, 107 Mont. 97; 80 Pac. (2d) 367.

Rules for determining residency are expressly stated in Section 83-303 of the Revised Codes of Montana, 1947, which provides:

"Every person has by law a residence. In determining the place of residence, the following rules are to be observed: (1) It is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he returns in season of repose. (2) There can only be one residence. (3) A residence cannot be lost until another is gained. (4) The residence of the father during his life and after his death, the residence of the mother, while she remains unmarried is the residence of the unmarried minor children. (5) The residence of the husband is presumptively the residence of the wife. (6) The residence of an unmarried minor who has a parent living cannot be changed by either his own act or that of his guardian. (7) The residence can be changed only by the union of act and intent."

This section states the applicable rules for determining both the residency of a minor and the residency of one who has reached majority. As it can be readily noted in this section, a minor's residence is, as a general rule, to be determined by the residence of his parents through operation of law.

Goodrich says:

"There is good authority that, after emancipation, a minor who has attained years of discretion may acquire a separate domicile. By such emancipation, the minor goes on his own responsibility, freed from parental authority, control and assistance. The law, in recognizing a minor's separate domicile, merely gives legal effect to what is already the fact, his independent existence." (Goodrich on Conflict of Laws, Section 34. See also Wharton on Conflict of Laws, Section 41.)

The American Law Institute's Restatement on Conflict of Laws published in 1934 provides in Comment of Section 31:

"An emancipated minor child can acquire a domicile of choice", and in this section the comment goes on to explain that, "If a minor child is emancipated, the power of the parent to control the domicile of the child ceases."

The cases on the subject, surprisingly few in number, are in conflict. Those supporting the right of an emancipated infant to establish a domicile of choice are Russell v. State, 62 Neb. 512, 516, 87 N. W. 344; Van Matre v. Sankey, 148 Ill. 536, 556, 36 N. E. 628, 23 L. R. A. 665, 39 Am. St. Rep. 196; Bangor v. Inhabitants of Readfield, 32 Me. 60; Lewis v. Missouri, K. & T. R. Co. 82 Kan. 351, 108 Pac. 95; Hess v. Kimble, 79 N. J. Eq. 454, 81 A. 363; Cohen v. Delaware, 269 N. Y. S. 667, 150 Misc. 540; Bjornquist v. Boston & A. R. R. Co., 250 F. 929, 5 A. L. R. 951 (C. C. A. 1st Cir.); Woolridge v. McKenna (C. C.) 8 F. 650; Contra Gulf, C & S. F. Ry. Co. v. Lemons, 109 Tex. 244, 206 S. W. 75, 5 A. L. R. 943; Delaware L & W. R. R. Co. v. Petrowsky, 250 F. 554 (C. C. A. 2d Cir.); Spurgeon v. Mission State Bank, 151 F. 2d 702, 66 S. Ct. 682, 327 U. S. 782, 90 L. Ed. 1009).

If we consider the inability of a minor to acquire a domicile of choice as having its basis in the parental authority of the father, in the legal inseparability of father and child so essential to their mutual legal obligations, emancipation, while it continues, puts an end to the power and control of the father over his child, and modifies, if it does not entirely eliminate, their mutual legal rights and duties.

Therefore, I am of the opinion, that an emancipated minor is free to acquire a domicile of choice. A child, upon emancipation, ceases to be a part of the parent's family, and a subsequent change of domicile by the parent does not change the domicile of the child. An emancipated child may acquire a new domicile of its own.

An emancipated minor has the right to receive his own earnings, Section 61-119, Revised Codes of Montana, 1947. The Veteran's Honorarium Law recites that the purpose of the Act is to, in part, replace the losses of earnings incurred as a result of war time service. Section 2 of the Act recites, in part:

"In recognition and appreciation of

the valor and devotion of the men and women who, by their military service, carried out and discharged the obligation of the State of Montana to contribute of its manpower to the defense of this Republic in World War II, and in partial adjustment for the economic detriment suffered by them by reason of their service . . . " (emphasis supplied).

Now the question arises whether an emancipated minor child will be bound by Section 83-303 quoted above or whether such minor child will be free to establish his domicile of choice. That a minor child may be emancipated by its parents' consent, express or implied, is well established law. (Stanley v. National Union Bank, 115 N. Y. 122, 134, 22 N. E. 29).

In Montana, emancipation of a minor is provided for expressly by statute. Section 61-119 of the Revised Codes of Montana, 1947, provides:

"The parent, whether solvent or insolvent, may relinquish to the child the right of controlling him and receiving his earnings. Abandonment by the parent is presumptive evidence of such relinquishment."

The meaning of emancipation is not that all of the disabilities of infancy are removed, but that the infant is freed from parental control, and has a right to his own earnings. (Commonwealth v. Graham, 157 Mass. 73, 76, 31 N. E. 706, 16 L. R. A. 578, 34 Am. St. Rep. 255).

The effect of emancipation is to deprive the parent of control over the child so long as the emancipation continues. It involves a surrender of the right to the care, custody and earnings of the child, as well as a renunciation of parental duties. The child becomes entitled to his time and his earnings and to property purchased from his earnings, free from any claims of the parent or the parent's creditors. (Shute v. Dorr, 5 Wend. 204; Madden on Domestic Relations, p. 409). "The best test which can be applied is the separation and resulting freedom from parental and filial ties and duties, which the law ordinarily bestows at the age of majority." (Inhabitants of Lowell v.

Inhabitants of Newport, 66 Me. 78, 90). So far as the parent is concerned, the child is thrown upon his own resources and is free to act upon his own responsibility and in accordance with his own desires.

In the main, the parental authority is the basis of the general doctrine that the domicile of the minor child is that of the parents. By the statute of emancipation the minor is freed from the power and control of his parents. Therefore, it follows that an emancipated minor who has reached the age of discretion, should be able to select his own domicile.

A thorough search reveals no controlling authority on the subject in Montana. However, the general authorities lend support to this conclusion.

Professor Beale supports the right of an emancipated infant to establish an independent domicile:

"A father may, by the consent of a child, give a child his time or, to use the legal term, may emancipate him; after which the father ceases as between the two to be obliged to support the child, and on the other hand, the child's earnings belong to himself. The child, upon emancipation, ceases to be a part of the father's family, and a subsequent change of domicile by the father does not change the domicile of the child. A child so emancipated by his parents' consent may, it is usually held, acquire a new domicile of his own." (The Conflict of Laws, Volume I by Joseph H. Beale, page 212.)

It follows that the minor who was living in Montana and who had control of his earnings is equally entitled to the adjusted compensation provided by the Montana Veteran's Honorarium Law.

It is therefore my opinion, that a minor emancipated at the time of his entry into service may be eligible to receive payment of adjusted compensation under the Montana Veteran's Honorarium Law.

Very truly yours,
ARNOLD H. OLSEN
Attorney General