

NEGLECTED CHILDREN- BOARD OF CHARITIES AND CORRECTIONS- COURT PROCEDURE,
Sections 14161, 14162 and 14166 R. S. Mo. 1929,
Laws 1931, p.167. RESIDENCE, Section 655 R.S. Mo.1929

~~Subsequent~~ { 14166 Law-31
14101RS Mo 1929 }
March 16, 1933.

FILED ✓

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Mrs. W. F. Henderson
Executive Secretary
Board of Charities and Corrections
Jefferson City, Missouri

Dear Mrs. Henderson:

Your recent letter directed to the Attorney-General has been handed the undersigned for attention. In your request for an opinion you state the following:

"Kindly give us an opinion for immediate and future use as to securing privacy in cases of illegitimacy in commitment of children to this Department:

First, where birth of child occurs in city away from home county of the mother.

Second, where mother is a minor.

Third, period of time required for mother (of age) to have resided in order to establish residence in the city where birth occurred. "

Section 14162, R. S. Mo. 1929, provides that the Cape Girardeau Court of common pleas and all circuit courts in counties with less than a population of 50,000 shall have original jurisdiction in all cases coming within the terms of the article under which said section appears.

Section 14161, R. S. Mo. 1929, defines the term "neglected child" and provides to whom the law, as in said article contained, shall be applicable.

In the Laws of 1931, p. 167, the statutory provision relating to treatment and correction of delinquent minors was amended by repealing certain specified sections and enacting new sections.

Section 14188 of this act provides, among other things, that,

"the court shall proceed to hear the case in a summary manner and may conduct the examination of the witnesses without the assistance of counsel, and may take testimony and inquire into the habits, surroundings, condition and tendencies of said child, to enable the court to render such order of judgment as shall best conserve the welfare of said child and carry out the objects of this article; and the court, if satisfied that the child is in need of the care or discipline and protection of the state, may so adjudicate, and may in addition find said child to be delinquent or neglected, or in need of more suitable guardianship, as the case may be. The hearings may be conducted in the judge's chambers or in such other room or apartment as may be provided for such cases, and as far as practicable such cases shall not be heard in conjunction with the other business of the court."

From this provision you will observe that the court is granted the authority to hold hearings upon this subject in the chambers of his court, and, therefore, privacy of hearings could be obtained in the commitment of illegitimate children to your department.

Section 14101, R. S. No. 1929, provides,

"All commitments to said home shall be made by the juvenile court of the county of such child's bona fide residence. *****"

The residence of the parent would, of course, be the residence of the child. What is, and what is not residence, is dependent upon the intention of the parent and the facts connected with such person in the establishment of residence. "Bona fide" is defined in Corpus Juris as "good faith, without fraud or deception". "Residence" is defined in R. S. No. 1929, Section 655, clause 17, as follows:

"The place where the family of any person shall permanently reside in this state, and the place where any person having no family shall generally lodge, shall be deemed the place of residence of such person or persons respectively;"

Bouv' Law Dictionary, Vol. 1, p. 915, defines "domicile" or "legal residence" as follows,

"Proof of domicile or legal residence does not depend

upon any particular fact, but upon whether all the facts and circumstances taken together tend to establish the fact. Engaging in business and voting at a particular place are evidence of domicile there, though not conclusive. To constitute a change of domicile three things are essential: (1) Residence in another place; (2) an intention to abandon the old domicile, and (3) an intention of acquiring a new one. *****

"A person can have but one domicile, which, when once established, continues until he renounces it and takes up another in its stead. It is not lost by temporary absence. The question is one of fact which is often difficult to determine. *****"

The Kansas City Court of Appeals in the case of *In re Osias' Estate*, 39 SW (2d) 1. c. 243, in defining "residence" and "domicile" has the following to say,

"Residence and domicile are used interchangeably, and, in so far as they apply to the situation here presented are synonymous.

"Domicil. That place where a man has his true, fixed and permanent home and principal establishment, and to which whenever he is absent he has the intention of returning."

From the above you will observe that residence to a considerable extent is dependent upon intention of the person to establish a given county or city as such residence. No particular time is required to establish residence for the purpose of this law.

Under your inquiry it is our opinion that the petition should be filed and the summons issued from the office of the clerk of the court in the county of the residence of the mother. Section 14165, R. S. Mo. 1929, provides that,

"... unless the parties shall voluntarily appear or be in court, a summons shall issue in the name of the state of Missouri, requiring the child and the person having custody or control of the child or with whom the child may be, to appear with the child at the place and at the time set in the summons,***** The parents of the child, if living, and their residence known, or its legal guardian, or if his or her residence is unknown, then some relative, if there be one, and his or her residence known, shall be notified of the proceedings, and in any case the court may appoint some suitable person or association to act in behalf of

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the child. ***** If it shall appear to the satisfaction of the court that there is no person in charge or care of the child, the court may order the sheriff to take control of the child and bring him into court."

If the residence of the child cannot be established by that of the mother, because unknown, then, for the purposes of the act relating to neglected children, the residence would be in the county where such neglected child was found.

If the above and foregoing does not completely answer the questions which you had in mind, we shall be glad to supplement same by your request.

Yours very truly,

CARL C. ABINGTON
Assistant Attorney-General.

APPROVED: _____
ROY McKITTRICK
Attorney-General.

CCA:EG