

CHILDREN: Duties of State Home relative to returning and committing children. Guardianship.

8-23
RS No 1977-
August 8, 1933.



Mrs. W. W. Henderson
Director
State Home for Children
Carrollton, Missouri

Dear Mrs. Henderson:

This is to acknowledge your letter of August 3rd, 1933, which is as follows:

"I am writing for an opinion concerning the Children's Home at Carrollton:

Sec. 14104, Chap. 125, under which we now operate following the repeal of Chapter 90, says:

'A child admitted to said home shall remain therein and be subject to the guardianship of the board until a proper home is procured for the child. The board shall return or discharge such child when satisfied that it is unsound in mind or diseased or for other cause is not a proper inmate of said home. Upon such return or discharge, the guardianship of the board shall cease and the child shall again be under the custody of his or her parent, guardian or custodian. #####'

Q.1. Who is the guardian or custodian to whom a child can be returned after having been committed by a juvenile court under Sec. 14101? A parent? or the County Court?

Q. 2. What constitutes 'bona fide residence'?
Sec. 14101 says: 'All commitments to said home shall be made by the juvenile court of the county of such child's bona fide residence?'

Q. 3. If a county has erred and has accepted jurisdiction over a child that is not actually a bona fide resident, does that county, by its commitment of the child to this home thereby accept the position of custodian of the child?

Q. 4. Can a county refuse to accept the return of a child it has committed to the Home, if the child is shown, under Sec. 14104, not to be a proper inmate of the Home?"

Must the juvenile judge give consent for the return of the child to his county and the dissolution of the state guardianship, according to Sec. 14104 and 14103?

Thank you for an early decision."

Section 14095 R. S. 1929, creates and establishes an institution so as to provide neglected and dependent children a temporary home pending placement in permanent family homes, proper care and instructions. Neglected and dependent children, under seventeen years of age, only may be admitted to the State Home. (Secs. 14100 and 14101 R. S. 1929).

"Neglected" and "dependent" children are those defined by Section 14101, we quote in part:

"(a) Dependent upon the public for support, or (b) in a state of habitual vagrancy or mendicancy, or is (c) ill-treated, and that his or her life, health or morals are endangered by continued cruel treatment, neglect, immorality, or gross misconduct of its parents, guardians or custodians."

Such children (neglected and dependent) are given to the guardianship of the State Home by formal commitment after citation and hearing.

Section 14101 R. S. 1929, provides in part:

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

Section 14102 R. S. 1929, provides in part as follows:

"The judge shall thereupon cite the parents, guardians or custodians of such child, if within the county, to show cause before the court, at a time and place named, why such child should not be committed."

Section 14103 R. S. 1929, provides in part:

"Said judge shall examine into the facts alleged, and if he finds the allegations of the complaint to be true, etc * * * *, the judge shall enter an order committing the child to the guardianship of said board."

What is the relationship of the State Home to such child after their commitment? Section 14103, supra, also provides:

"* * * *, whereupon all rights of the parents, guardian or custodian to the custody, control, service or earnings of the child shall be suspended."

Section 14104 provides in part:

"A child admitted to said home shall remain therein and be subject to the guardianship of the board until a proper home is procured for the child. Etc. * * * * *"

Thus, the statute places an exclusive guardianship in the State Home over children committed to them. After the State Home acquires guardianship over children, how may (or does) it divest itself therefrom, if possible? We again quote from Section 14102, supra:

"* * * * until such child is returned to their (parents, guardians, or custodian) custody by order of said board; ** **"

We quote also from Section 14104, supra, namely:

"* * * * The board shall return or discharge each child when satisfied that it is un-sound in mind or diseased or for other cause is not a proper inmate of said home. Upon such return or discharge the guardianship

of the board shall cease and the child shall again be under the custody of his or her parent, guardian, or custodian.
* * * * "

We quote from Section 14107 R. S. 1929, which provides as follows:

"Whenever any such child has become self-supporting or his parents, guardian or custodian have become able to provide for him and are otherwise suitable, the board may discharge him; whereupon the guardianship of the board shall cease, and he shall be entitled to his earnings, with power to contract for his services, or shall be returned to the custody of his parents, guardian or custodian as the board may direct."

The statute provides in no uncertain language that the board shall return or discharge such child (1) when it (State Home) is satisfied the child is unsound in mind or diseased; (2) or for other cause is not a proper inmate of said home; (3) when the child, or children, have become self-supporting; (4) When the parents, guardians, or custodian of such child become able to provide for them; (5) by operation of law, (a) adoption by other parties, (b) becoming of age, (c) and perhaps, if such children are adjudged delinquent by juvenile court and sentenced to reformatory.

Thus, the guardianship of the State Home continues until such contingency occurs. The statute gives some latitude to the State Home when it provides said home may return or discharge such children for other cause but this does not permit "wholesale" returning or discharging, but must be for substantial cause depending upon the facts in each case.

This brings us to your first question. The statutes hereinbefore quoted from provide in each instance when the child is returned: that it shall be to the parents, guardian, or custodian whence taken from. (Sections 14103, 14104 and 14107)

It is our opinion that when the guardianship of the board ceases, for the reasons hereinbefore given, that the children shall be returned to the custody of the person, or persons, they were taken from by the juvenile court. If it be the parents, then such child shall be returned to them, and, if it be the guardian or custodian, then such returning shall be to them.

However, assume that the parents, guardian, or custodian, prior to the State Home's guardianship, become afterwards insane or die or cannot be located when the State Home desires to return the child - then to whom shall they be returned? The answer to this question disposes of your fourth and fifth inquiries.

Bearing ⁱⁿ mind the premises established above, relative to a child's commitment and guardianship to and by the State Home, we quote from Section 14101, to-wit:

"* * * * Any two citizens of the county
may make complaint in writing to the
judge of said juvenile court stating
that in their opinion such a child is;
* * * * *"

In this manner the juvenile courts acquire jurisdiction. And, pending disposition of the matter, the child would be under the direction of the judge of the juvenile court. After citation and hearing the court makes its order committing the guardianship of the child to the State Home or dismisses the matter, which action restores the custody to the parent, guardian, or custodian. Thus, the child is under the court's direction only until the matter is determined. When the juvenile court awards the State Home guardianship of a child the court's direction, authority and jurisdiction over the matter ceases. Of course, juvenile courts may acquire jurisdiction in cases of delinquency. We are of the opinion that because a child is awarded to the State Home by the juvenile court that fact does not give the court the right to dissolve the guardianship, neither is the court's consent necessary when the State Home returns or discharges the child. This disposes of your fifth question.

In answer to your fourth question it is our opinion that the county from which the child is committed could refuse in some instances to accept the return of the child. For example, the statute says the board shall return the child to his parents, guardian, or custodian, and if the county is not such why return said child to it. But if the county was the custodian of the child before his commitment, then such child should be returned to the county. We believe the question that is bothering the board is when the child has no parents and the county was providing for the child and such committed to the State Home at the instigation of the county.

Section 14100 provides in part:

"* * * *, and the children received shall be
divided among the several counties as justly

as possible, taking into consideration the number of such children in each county and its population. * * * * *

After a child is a charge of the county and was committed by request of such, then, in our opinion, the child should be returned to the county. If the parents, guardian, or custodian are dead, insane, or cannot be found, then the child should in our opinion be returned to the county where committed from. If the county will not accept the child or children returned, then they should be delivered to the custody of the juvenile court or juvenile officer of the county whence committed.

Section 14101, supra, in part provides:

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

You desire to know what is meant by "bona fide residence". C. J., Vol. 8, page 1145, defines "bona fide" as follows:

"In good faith, without fraud or deception."

Residence is a matter of intention, in Trigg v. Trigg, 41 S. W. (2d) 583 1. c. 589, the Kansas City Court of Appeals in its opinion held:

"We hold in accord with the general expression of the law that residence is largely a matter of intention evidenced by some act or acts in conformity with such intention, etc. * * *"

The residence of a child is determined by the domicile of his parents. We quote from Lacy v. Williams, 27 Mo. 280:

"Regularly, the domicile of the parents is that of their children. * * * * *"

Also quoting from Smith v. Young, 136 Mo. App. 65 1. c.

77:

"Now under the circumstances of this case, the father having died without revoking his promise as to the future of the child, and it residing at the time with the grandparents, next of kin, we believe that instantly upon the death of the father, the grandfather assumed the position of parent and that his domicile became the domicile of the child."

We therefore draw the conclusion that as a general proposition when the child is under the custody of a guardian or custodian that the domicile of such is the domicile of the child. This answers your second question.

The statutes require the judge of the juvenile court to examine into the facts, and one fact being whether or not the child is a bona fide resident. Therefore, before the court may commit a child the court by its judgment finds such child a bona fide resident of the county from whence committed. We are of the opinion the judgment (of the facts) by the court precludes the county from taking an opposite position. This answers your third inquiry.

You have asked hypothetical questions and we have devoted as much space to the answers thereof we thought sufficient. However, such answers may not cover a particular case (our answers dealing in the main on general conclusions), so we request that if we have not answered to your satisfaction a particular question please state facts and we will render our opinion upon them. Opinions should be predicated on the facts and the law applying thereto and not deal in generalities or as abstract propositions of law. If we may serve you further we will be pleased to do so.

Yours very truly,

James L. HornBostel
Assistant Attorney-General.

APPROVED: _____

ROY McKITTRICK
Attorney-General.

JLH:EG