NEGLECTED CHILD:
STATE SCHOOL: An illegitimate child, born to a woman inmate of the state school at Marshall, which inmate was committed from Marion County, is a legal resident of Marion County. If such child is found to be a "neglected child", Marion County is liable for its support, if such child has not been admitted to guardianship, and the Division of Welfare may assist the county with child welfare funds. The juvenile court of Marion County having acquired jurisdiction of such child may commit such child to the guardianship of the Division of Welfare of the Department of Public Health and Welfare for the purpose of procuring foster or boarding-home care for such child.

May 10, 1954

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Honorable Harry J. Mitchell
Prosecuting Attorney
Marion County
Hannibal, Missouri

Dear Sir:

Your recent request for an official opinion reads as follows:

"I would appreciate your opinion in regard to the following matter:

"On the 9th day of February, 1924, one _____, a female of the age of eight (8) years was by order of the Marion County Court admitted to the Missouri State School at Marshall as a neglected and homeless child. The said _____ was paroled to Missouri State Sanitarium 5-10-41, discharged from the Sanitarium 9-29-43, and readmitted to the school by order of the Marion County Court 9-22-44; the said _____ is at the present time at the Missouri State School at Marshall, and she is now pregnant.

"It is my understanding that officials at the school claim that the father is an inmate of the State School of Marshall, at the cost of Bates County, and by order of the Bates County Court entered 12-14-35. The school officials have demanded that Marion County pay the medical expenses incident to the birth of the child, and accept responsibility for paying for the support of the child. The Court contends that it has no responsibility in this regard.

"Would you please advise us as to whether or not Marion County has any responsibility in this regard; whether or not Marion County is liable for payment of the hospital and medical bills, whether Marion County is liable for the support of the child,

whether the child will be entitled to ADC, other State aid, or other aid of any kind, what the responsibility of the State Institution, Saline County, and Bates County are in regard to support?"

We direct attention to Section 202.590 RSMo 1949, which reads:

"There is hereby established in this state a colony for feeble-minded and epileptics, to be known as 'The Missouri State School,' which shall consist of the Missouri State School at Marshall, the Missouri State School at Carrollton, the St. Louis Training School, and such other schools in temporary or permanent camps as the division of mental diseases may establish in other places in this state."

Also to Section 202.610 RSMo 1949, which reads:

"1. There shall be received and gratuitously supported in the Missouri state schools, feeble-minded and epileptics residing in the state who, if of age, are unable, or if under age, whose parents or guardians are unable to provide for their support therein, and who shall be designated as state patients. Such additional number of feeble-minded and epileptics, whether of age or under age, as can be conveniently accommodated, shall be received into the school by the division of mental diseases on such terms as shall be just; and shall be designated as private patients.

"2. Feeble-minded and epileptics shall be received into the school only upon the written request of the persons desiring to send them, stating the age, place of nativity, if known, Christian and surname, the town, city or county in which such persons respectively reside, and the ability of the respective parents or guardians or others to provide for their support in whole or in part, and if in part only, stating what part; and stating also the degree of relationship or other circumstances of connection between the patients and the persons requesting their admission; which statement, in all

> cases of state patients, must be verified by the affidavit of the petitioners and of two disinterested persons, and accompanied by the opinion of two qualified physicians, all residents of the same county with the patient, and acquainted with the facts and circumstances stated, and who must be certified to be credible by the county court of that county, or, in the case of the city of St. Louis, by the hospital commissioner or the assistant hospital commissioner of said city; and such county court, or, in the case of the city of St. Louis, the comptroller of said city, must also certify, in each case, that such patient is an eligible and proper candidate for admission to the colony.
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> "3. State patients, whether of age or under age, may also be received into the colony upon the official application of any judge of a court of record; provided, that the county in which such state patients as are now inmates of said school, resided when they were admitted, and the county wherein such state patients herein admitted may reside at the time of such admission, shall be liable for and shall pay into the treasury of said school the sum of five dollars per month for each of such state patients."

Under the facts stated by you, we assume that this pregnant woman was committed as a state patient under paragraph 3 above, and that Marion county has paid to the state school at Marshall the sum of $5.00 per month for her care during the time of her commitment there. We do not believe that Marion County can be required to make other payments, and we therefore believe that Marion county cannot be held liable for the expenses incident to the birth of this child.

The next question is whether Marion county can be held liable for the support of this child? The only theory upon which Marion county could be held liable would be that this child, at birth, will be a homeless, neglected and dependent child, and a legal resident of Marion county. We will consider this matter of residence first. We will begin by observing that it is our belief that the mother of this child is, and at all times since her commitment to the state school in 1924 has been, as she was prior to 1924, a legal resident of Marion county.

In the case of Barth v. Barth, 189 S.W.(2d) 451, at l.c. 454, the court stated:

> "To create a residence in a particular place two fundamental elements are essential. These are actual bodily presence in the place, combined with a freely exercised intention of remaining there permanently, or for an indefinite time. Whenever these two elements combine a residence is created. Neither bodily presence alone nor intention alone will suffice to create a residence. Both must concur, and at the very moment they do concur a residence is created. The length of the period of bodily presence, however short, is of no consequence, provided the concurring intention is established by other evidence. Otherwise it may become an important fact for consideration in determining the existence or not of the intention.* * *"

In the instant case, these two elements necessary to create residence in Saline county, where the state school is located, are not present. One of these elements, a long period of bodily presence in Saline county, is present, but it cannot be inferred that there is present an intention on the part of this woman to become a resident of Saline county. At the age of eight years she was forceably removed from Marion county to Saline county, and has been forceably kept there since. Furthermore, it is to be doubted that she has sufficient intellect to form an intention as to residence. We think this conclusion is supported by paragraph 1 of Section 202.630, RSMo 1949, which reads:

> "1. The superintendent of the school, with the approval of the division of mental diseases, shall have the power to refuse to discharge any patient who, in his judgment, has not sufficiently recovered to warrant their discharge and shall have the power to discharge any patient who, in his judgment, has fully recovered, and if a state patient, said patient shall be returned to the county from whence admitted, the expense thereof to be paid by said county."

It will be noted that upon recovery a state patient shall be returned to the county from which admitted, at the expense of that county, which would certainly indicate that the county from which the patient was admitted continued to be the county of the legal residence of the patient. The $5.00 per month payment by the county from which the patient is admitted, in the case of a state patient, would indicate the same thing, and constitutes an admission on the part of the sending county of a continuing obligation which could only be present in the case of a legal resident of the sending county.

We conclude, therefore, that this expectant mother is a legal resident of Marion county. Her child will be born in Saline county. What, then, will be the legal residence of the child? We believe that the legal residence of the child will be Marion county, on the theory that the legal residence of a new born child is the same as that of the mother, in a case, such as this, of an illegitimate child, whose father is not definitely known. In this regard we direct attention to the case of Smith v. Young, 136 Mo. App. 65, At l.c. 73 et seq. of its opinion, the court stated:

> "The jurisdiction of the probate court to appoint a guardian or curator for a minor is fixed by the domicile of the minor. (Lacey v. Williams, 27 Mo. 280; DeJarnet v. Harper, 45 Mo. App. 415.) And as a general proposition, the domicile of the parent is the domicile of the minor. (Marheineke v. Grothaus, 72 Mo. 204; Garrison v. Lyle, 38 Mo. App.558.) The domicile of the minor is a matter in pais which the probate court must find as a fact to support its jurisdiction in proceedings of this character. (Cox v. Boyce, 152 Mo. 576; Johnson v. Beasley, 65 Mo. 250.) It seems, however, that the domicile of the parent may not necessarily always be the domicile of the minor for the purpose of determining the jurisdiction of the probate court, as in cases where both parents are dead and the child is domiciled with the grand parents, who are next of kin, and stand in loco parentis to the minor. Or where the parents have wholly abandoned the child to the grandparents. In the case of Cox v. Boyce, 152 Mo. 576, it appears the mother of the minor was dead and the father had surrendered and committed the child to its grandfather in Lincoln county. In that case, both father and grandfather resided in the same county. After the child was committed to his care, the grandfather was duly appointed curator of its estate by the probate court of Lincoln county. The grandfather afterwards removed to Howell county. He was never discharged as guardian and curator by the probate court of Lincoln county. After having resided several years in Howell county, the grandfather applied to and was appointed by the probate court of Howell county as guardian of the child and curator of the estate, although the child's father continued to reside in Lincoln county. In a collateral attack upon the judgment of the Howell county probate court, by which the grandfather was appointed curator, the Supreme Court expressed the opinion that in view of the fact that the child's father had surrendered the minor to her grandfather, the latter stood in loco parentis toward her and therefore his residence in Howell county was the domicile of the child, and thus served to confer jurisdiction upon the probate court of that county to appoint a curator.

We conclude, therefore, that this child, when born, will be a legal resident of Marion county. We also believe that such child will be a "neglected child", within the meaning of paragraphs 1 and 2 of Section 211.310 RSMo 1949, which reads:

> "1. Sections 211.310 to 211.510 shall apply to children under the age of seventeen years, in counties of the third and fourth classes, who are not now or hereafter inmates of any state institution or any institution incorporated under the laws of the state for the care and correction of delinquent children. When jurisdiction has been acquired under the provisions hereof over the person of a child, such jurisdiction shall continue, for the purpose of sections 211.310 to 211.510, until the child shall have attained the age of twenty-one years.
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> "2. For the purpose of sections 211.310 to 211.510, the words 'neglected child' shall mean any child under the age of seventeen years, who is homeless or abandoned, or who habitually begs or receives alms, is found living in any house of ill fame; or with any vicious or disreputable person, or who is suffering from depravity of its parents, or other person in whose care it may be."

This child will not be an "inmate of any state institution", within the meaning of paragraph 1 of Section 211.310, supra, not having been committed there by due process of law. This being so, there is no obligation on the part of the state school to support or keep the child; its mother is without a home and is mentally incompetent, as is the supposed father. We believe, therefore, that the child will be "homeless" within the meaning of paragraph 2 of Section 211.310, supra.

All of the above leads us to the conclusion that this child, when born, will be a legal resident of Marion county, and will be a "neglected child" as that word is used in the Missouri statutes. In that situation we believe that the position of Marion county is set forth in an opinion (a copy of which is enclosed) rendered by this department March 21, 1951, to Honorable Elton A. Skinner, Prosecuting Attorney of Howard county. That opinion holds that "the county in which a neglected child is so declared by the court, is liable for support if the child has not been committed to guardianship. The division of welfare may assist the county with child welfare funds."

We would also direct attention to Section 210.120 RSMo 1949, which reads:

"The juvenile court of the county of a homeless, dependent, neglected or ill-treated child's residence may commit such child to the guardianship of the division of welfare of the department of public health and welfare for the purpose of procuring foster or boarding home care for said child.

"Any citizen may make a verified complaint in writing to the juvenile court stating that in his opinion such a child is dependent upon the public for support, or in a state of habitual vagrancy or mendicity or is 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; also giving sufficient information to locate and identify such child and praying for appropriate action by the court in conformity with the provisions of sections 210.110 to 210.190.

"Upon the filing of such petition the judge shall have summons issued requiring the child and the parent or parents, guardian or other persons having control of the child, to appear in court at a time and place named to show cause why such child should not be dealt with according to the provisions of sections 210.110 to 210.190.

"If the child has no parent, guardian or custodian within the county or if after reasonable effort personal service shall not have been made such substitute service, by publication or otherwise, as the judge may order shall be sufficient. Any person may appear upon behalf of the child and upon order of the judge the person or persons filing the complaint shall appear. Upon like order the county or prosecuting attorney shall appear in support of the complaint."

CONCLUSION

It is the opinion of this department that an illegitimate child, born to a woman inmate of the state school at Marshall, which inmate was committed from Marion county, is a legal resident of Marion county.

Honorable Harry J. Mitchell

It is our further opinion, if such child is found to be a "neglected child", that Marion county is liable for its support, if such child has not been admitted to guardianship, and that the division of welfare may assist the county with child welfare funds.

It is our further opinion that the juvenile court of Marion county, having acquired jurisdiction of such child, may commit such child to the guardianship of the division of welfare of the department of public health and welfare, for the purpose of procuring foster or boarding-home care for such child.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Hugh P. Williamson.

Very truly yours,

JOHN M. DALTON
Attorney General

HPW/ld

enc. Opn. Elton A. Skinner, 3-21-51