

**OPINION  
66-24**

October 25, 1966 (OPINION)

Mr. Leslie O. Ovre

Executive Director

Public Welfare Board

RE: Children - Termination of Parental Rights - Duty of Support

Re: Child Welfare

This opinion is in answer to your request dated September 30, 1966. You request an opinion on the following questions:

1. Must a parent have North Dakota residence to make use of the Juvenile Court of this State for the voluntary termination of her parental rights? If so, what term or particular qualifications of residence are required?
2. If residence is not a prerequisite to termination of parental rights and the parental rights are terminated with care, control, and custody given to (1) the Division of Child Welfare of the Public Welfare Board, (2) to a licensed child-placing agency, or (3) to some suitable adult person as provided by statute, who is then responsible for the child's support? Does the duty of support follow the Court's award of care, control, and custody? Is there any difference in the duties of support if the child is given to the Division of Child Welfare, to a child-placing agency, or to some adult person?
3. Can a Juvenile Court by its Order terminating parental rights relieve any particular county or the State of North Dakota of financial responsibility for such a dependent child?"

A parent does not have to be a North Dakota resident to make use of the juvenile court for the voluntary termination of parental rights. Section 27-16-36 of the 1965 Supplement to the North Dakota Century Code provides that: "\* \* \* \* The parent of any child, whether natural or adoptive, may petition the juvenile court of the county in which the parent resides or in which the child is born or is found, for the termination of all parental rights with reference to the child. \* \* \* \*."

It is only necessary to fulfill one of these requirements for a parent to place himself before the Court. Therefore, the parent may petition the Court of the County either in which the parent resides, or in which the child was born, or in which the child is found to have his parental rights voluntarily terminated.

When parental rights are involuntarily terminated as provided by Section 27-16-34 with care, control and custody given to a state or

charitable agency or some adult person, the natural parents are not relieved of their reciprocal duty to support as set out in Section 14-09-10 of the North Dakota Century Code. Unless the agency, board or person in whose care the child is placed has agreed to the contrary, there may be an implied contract by such agency, board or person to supply the necessities of life to that child.

If such agency or person refused to accept care, control and custody of such child without a support agreement, the natural parents still remain primarily liable for the child's support. But, if the natural parents are unable to provide such support, the burden of the child's support must fall upon the county of the child's domicile. In practically all cases this will be the county of the legal residence of the parent at the time of termination of parental rights because an infant of its own volition cannot change its domicile nor is it changed when the child is transported to a different county.

The duty of support does not follow the Court's award of care, control and custody but remains primarily with the child's natural parents and secondarily with the county of the child's domicile (legal residence of the parent at the time of the termination of parental rights), unless there is a mutual agreement to the contrary. The duty of support remains with those who were originally liable unless changed by Court order or other mutual agreement, and it is not altered by the fact that the Division of Child Welfare, a child placing agency, or some adult person may have care, control and custody of such child.

When such child who is in the care, custody and control of the Division of Child Welfare, a child placing agency, or an adult person is legally adopted, the natural parents of such adopted child and the county of the child's domicile (legal residence of the parent at the time of termination of parental rights) will be free of any further duties of support, but they are still liable for previous support costs which remain unpaid. Upon adoption, the adoptive parents become primarily liable for all costs of the child's support.

In answer to your final question, there is nothing to prevent a juvenile court by its order terminating parental rights to relieve a particular county or the State of North Dakota of financial responsibility for a dependent child. A county relieved of such liability is not required to do anything but is excused from spending money. Therefore, the county so relieved would not resist such an order but someone must assume financial responsibility for such child. If a party assuming the care, custody and control of such child agrees to be financially responsible for him, there is no problem, but if the party taking care, custody and control of such child does not desire to bear this financial burden, they may pursue that claim against the child's natural parents or the county of the child's residence at the time the parental rights were terminated and at this time the question of duty to support would be a specific issue for the court to determine. The judgment of the court determining the specific issue and would prevail over the order terminating parental rights and incidentally relieving financial responsibility.

HELGI JOHANNESON

Attorney General