

**OPINION
75-118**

November 6, 1975 (OPINION)

Honorable Myron H. Atkinson
District 32
P.O. Box 1176
Bismarck, ND 58501

Dear Representative Atkinson:

This is in response to your letter of 22 October 1975 asking our opinion as to the interpretation of subsection 1 of Section 14-15-04 of the North Dakota Century Code stating:

- "1. Proceedings for adoption must be brought in the court for the place in which, at the time of filing or granting the petition, the petitioner, or the individual to be adopted resides or is in military service or in which the agency having the care, custody, or control of the minor is located."

As you indicate, the language is not particularly clear as to whether such proceeding must be brought within the county in which the parties reside, or whether it is sufficient to bring the action in the judicial district of residence.

You give, by way of example, a situation where residents of Burleigh County, fourth judicial district, would wish to bring proceedings in Kidder County, also in the fourth judicial district.

We would tend to agree with you that the language of the statute is not particularly clear with regard to the point of your question. We would note that the source of the act appears to be one of the so-called "uniform" acts recommended for adoption in all states. Possibly the text of the recommended act should have been changed in this respect at the time of adoption of same in this state.

We normally do not issue our opinions on matters that will necessarily be decided by a court, so as not to interfere with the judicial process. On such basis we might comment that it is possible that the judge of a particular district in which the parties to an adoption proceeding resided, acting in a particular county of such district in which the parties did not reside, would decide that the action was properly venued before the court. We note that in this respect, many judicial definitions of the term "court" define same as practically synonymous with the term "judge." See in this regard "Words and Phrases", Permanent Edition, Volume 10, pages 346-397, the current supplement thereto and the cases there cited.

Insofar as your question is concerned, our view is that the question turns on the words "court" and "place" as set forth in subsection 1 of Section 14-15-04. To the extent that the "place" of the "court" is the judicial district, a proceeding may properly be brought in any of the counties that comprise a judicial district and jurisdiction would be conferred.

We reiterate that this is simply our observations regarding the question and cannot be construed as controlling on the judiciary.

Sincerely,

ALLEN I. OLSON

Attorney General