

OPINION
43-86

September 3, 1943 (OPINION)

RESIDENCE

RE: Incompetents from other States

A few days ago when you were in the Attorney General's office, you asked us to check into the question of residence of a minor who, as I recall, is in an institution in another state.

As I recall our conversation, the parents of this inmate moved to Benson County, North Dakota, several years ago, and are now legal residents thereof. The minor child is still in the institution in another state. The authorities of that state are now about to transport this party to North Dakota. The theory is, that the residence of the minor child follows that of his parents.

Ordinarily, and under the laws of this state, the residence of a minor follows that of his parents. The question then arises whether the fact that such inmate who is in a state institution in a foreign state follows that of his parents upon their removal to another state.

We have a statute, section 1715 of the Compiled Laws for 1913, which provides that:

"Whenever it shall be found by the board of trustees of the institution for feeble-minded that the parent or guardian of any inmate, if legally chargeable with the support of such inmate, shall have removed from the state, and become a resident of another state or county, such board shall have authority to send such inmate, at the expense of the state, to the place where such inmate belongs in every case where the place of residence of his parent or guardian can be ascertained."

It is quite probable that the state where the minor in question is confined has a similar statute, and if such is the case, I do not know just how we can successfully resist his transportation into this state.

The general law seems to be that "infants non sui juris, but under the control of their parents and deriving their settlement from them, have, as a general rule, and in the absence of any statute to the contrary, been held incapable of acquiring a settlement in their own right prior to emancipation."

48 C. J. section 48, page 453.

I know of no other way than to abide events and to await action by the other state; that is, the state where the infant is confined. If an attempt is made by that state to transport the

infant into this state, the question may then be up for judicial determination, although I have serious doubts that we can prevent them from transporting him into this state, if, as a matter of fact, he is an infant and his parents are legal residents of this state.

ALVIN C. STRUTZ
Attorney General