

**OPINION**  
**45-143**

March 6, 1945            (OPINION)

HUSBAND AND WIFE

RE: Abandonment - Situs of Offense

Your letter of February addressed to the Attorney General has been referred to the undersigned for attention and reply.

You enclose copy of my letter to Mr. Meldahl and you state that you feel this opinion was given without complete facts concerning the case. As I read your letter, your statement of facts is substantially the same as the facts stated in Mr. Meldahl's letter, and which I set out in my letter to him on February seventh.

There is no doubt that Mr. Sidener abandoned his wife and children. The question is where did the abandonment take place; in other words, where were he and his family residing at the time he actually abandoned them. From the facts stated both in your letter and Mr. Meldahl's letter, Mr. Sidener and his family were residing in Grand Forks at the time he left them and he has not returned since. He may have contributed small sums after the time of his abandonment, but according to the facts as they appear in your letter and in Mr. Meldahl's letter, the amount or amounts furnished have not been sufficient to support and maintain his family.

In my letter to Mr. Meldahl I referred to the statutes which are applicable in such cases and I referred to the statutes which are applicable in such cases and I particularly referred to the question of jurisdiction of the offense.

There is no dispute as to the following facts: He did not abandon his family at Sharon in Steele County; and he did not abandon the family at Fargo in Cass County. He did abandon his family while he and they were residing in Grand Forks County and since that time has not returned.

In a Nebraska case, under a similar statute, it was held that the prosecution for such a crime must take place in the county where the parties resided at the time of their separation, and where the wife was still residing when the unlawful neglect or refusal of the husband to maintain and provide for her occurred. (Cuthberton v. State, 101 N.W. 1031).

Likewise in an Iowa case decided in March, 1935, under a similar statute, and reported in 259 N.W. 208, it was held that a father indicted in demanding state for child's non-support but not physically present therein except at time long before commission of crime charged held not "fugitive from justice," precluding extradition as against contention involving constructive presence based on act of father in sending expectant mother into demanding state.

In this case the Court discussed the leading cases bearing upon the

question and said, "In the case at bar, we reach our decision reluctantly, because the facts of this case are such that we cannot escape the conclusion that the plaintiff has been guilty of most reprehensible conduct in his failure to support his child. We are, however, under the undisputed facts of the case, compelled to hold that he was not a fugitive from the justice of the state of Wisconsin. All the authority which we have been able to find, without a single exception, is to the effect that, in order to be a fugitive from justice from a state in which an accused is alleged to have committed a crime, he must have been in that state bodily at the time of the commission of the crime."

In view of the law and decisions cited herein, we must adhere to the opinion written by the undersigned to State's Attorney Meldahl under date of February 7, 1945.

I wish to state that Mr. Johnson, the Attorney General, and the other members of the staff are in agreement with the views herein expressed.

See also State v. Justus (Minn.) 88 N.W. 415.

NELS G. JOHNSON

Attorney General