

**OPINION**  
**56-155**

August 20, 1956           (OPINION)

RESIDENCE

RE: Illegitimate Child

We are in receipt of your letter of August 13, 1956, in which you ask this office for an opinion on the place of residence of an illegitimate minor child who is evidently a fit subject for admittance to the state school at Grafton. The facts as you state them are as follows:

The illegitimate's mother was a resident of Emmons County when the child was born in 1951. Some time later she married a resident of South Dakota and has ever since lived in that state. It is apparently conceded that she and her husband are both residents of South Dakota. The child however, has always remained in this state with its grandparents in Emmons County, but the mother has not formally surrendered custody of the child. The husband of the mother has never attempted to adopt the child and he has contributed nothing toward its support.

It would seem under these facts the child is a resident of South Dakota and that this is so whether the rules for determining residence as defined in Chapter 50-02 (the poor relief statutes) or the rules for determining residence as defined in section 54-0126 are applied.

Under the former statutes, the residence of an illegitimate minor child follows that of its mother if at the time of birth she had any residence within the state (50-0203). Since it is conceded that the mother's residence is now in South Dakota, it would of course mean that the child is also a resident of that state.

if section 54-0126 is used for determining the child's residence, the same result is reached, for our court has held that "residence" as defined in section 54-0126 is synonymous with "domicil". *City of Enderlin v. Pontiac TP., Cass County, 242 N.W. 117 (N.D. 1932)*. And it is very generally held that "the domicil of an illegitimate child is determined by that of its mother, the domicil of the father and place of birth being immaterial." 17 Am. Jur. 628. Since this is so, the conclusion would again be reached that the child's residence is in South Dakota.

Even if it is assumed that the mother has abandoned the child, a different result would not be reached, for as was said in *Los Angeles County v. Superior Court in and for Alameda County, 18 P.2d. 112, 115 (Cal. 1933)*: ". . . the residence of an illegitimate unmarried minor is the residence of the mother; that this residence cannot be changed by simple abandonment; and that such a minor so abandoned, and for whom no guardian has been appointed, is a resident of the county wherein the mother resides and continues to be such until another residence is gained by some legal means beyond the mere abandonment

on the part of the mother." See also: In re Guardianship of Sharp,  
106 P.2d. (Cal. 1940).

Therefore, as has already been said, it would seem that the child is  
a resident of South Dakota.

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