

**OPINION**  
**58-9**

March 31, 1958 (OPINION)

ADOPTION

RE: Residence Requirements

We have your letter of March 26, 1958, and we have noted its request for an opinion of whether a man who moved into North Dakota from Wisconsin in October of 1957, and who subsequently in December of 1957, brought his family and a child to be adopted to live with him in North Dakota, is now qualified under North Dakota law as a resident for the purpose of petitioning the court for adoption of the child. We assume from your letter that the individual referred to is married and that his wife has been living with him since he brought her to North Dakota, that he does not have a residence elsewhere, that he in good faith without intent to avoid any law intends North Dakota to be his residence, and that he has had that intent since coming to the state in October.

Section 14-1108 of the 1957 Supplement to the N.D.R.C. of 1943 provides:

WHO MAY PETITION FOR ADOPTION. Any adult may petition the district court in any county in the judicial district of his residence for leave to adopt a person of any age at least ten years younger than himself, and if he so desired for a change of such person's name, and any nonresident of the state who is related to the person to be adopted may petition the district court in any county in the judicial district in which such person to be adopted resides for such adoption. Such petition for adoption shall be filed in the office of the clerk of court before any hearing is had or any order made."

There are no North Dakota Supreme Court cases construing section 14-1108. Since there appears to be no statutory definition of residence for adoption purposes, it appears that the applicable guide is section 54-0126 of the N.D.R.C. of 1943 which provides:

RESIDENCE; RULES FOR DETERMINING. Every person has a law a residence. In determining the place of residence the following rules shall be observed:

1. It is the place where one remains when not called elsewhere for labor or other special or temporary purposes, and to which he returns in seasons of repose;
2. There can be only one residence;
3. A residence cannot be lost until another is gained;
4. The residence of the father during his life, and after his death, the residence of the mother, while she remains unmarried, is the residence of the unmarried minor children;

5. The residence of the husband is presumptively the residence of the wife;
6. The residence of an unmarried minor who has a parent living cannot be changed by either his own act or that of his guardian; and
7. The residence can be changed only by the union of act and intent."

In *Burke County v. Oakland*, 56 N.D. 343, 347, 217 N.W. 643 (1928) the court announced the dictum on rehearing that "The moving from one place of residence to another with the intent to abandon the old residence and establish a residence at the new place, is in law a change of residence which may be accomplished in one day. . . ." In *Schillerstrom v. Schillerstrom*, 75 N.D. 667, 686, 32 N.W. 2d. 106 (1948), a case in which residence and domicile were considered synonymous, language was approved which said, "The fact of physical presence at a dwelling-place and the intention to make it a home must concur; if they do so, even for a moment, the change of domicil takes place." And, in *Enderlin v. Pontiac Township*, 65 N.D. 105, 114, 242 N.W. 117 (1932) it was said that, "No particular length of time is required to enable a person to become a resident of the state. . . ."

It is, therefore, the opinion of the Attorney General that the individual in the fact situation disclosed by you is not disqualified from making application for the adoption of the child by reason of his failing to establish a North Dakota Residence.

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Attorney General