

on digest

CHILDREN:
MISSOURI STATE HOSPITAL:

Illegitimate child born to inmate of Missouri State Hospital is resident of county from which mother was committed.

FILED
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July 14, 1954

Honorable John C. Kibbe
Prosecuting Attorney
Moniteau County
California, Missouri

Dear Sir:

Reference is made to your request for an official opinion of this department reading as follows:

"An infant child was born in the State Hospital at Fulton on April 28, 1954. I would like to request your opinion as to the responsibility for the care of this child.

"The mother of the child is, who was fifteen years of age at the time of the infant's birth. The parents of lived in Moniteau County, but in February of 1953 the mother moved to Cooper County, taking and the other children with her, and instituted a divorce proceeding against Mr., who remained at the home in Moniteau County.

"On September 17, 1953, was sent from Cooper County to the State Hospital at Fulton, where she has since remained, at the expense of Cooper County.

"In January of 1954, was granted a divorce on his cross bill in the Circuit Court of Cooper County, and was awarded custody of the children, including who was still in the State Hospital.

"On April 28, 1954,, unmarried, gave birth to a baby boy, and mother and infant are both still in the State Hospital.

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"Dr. Gremer asks that either Moniteau or Cooper County take this infant. Cooper County officials contend that the infant is the responsibility of Moniteau County, by virtue of the divorce decree awarding the custody of to her father, a resident of Moniteau County. We contend, in line with a recent opinion by your office, that the residence of remains the same while she is in the State Hospital, and that the residence of the infant must be that of the mother; in other words that the residence of cannot be affected by the divorce decree while she is in the State Hospital. Since Cooper County has never questioned its responsibility for, we feel that the same should be true as to the infant child. I might add that the father of is not able to take care of the infant, so that the expense of its care must ultimately devolve upon the state.

"Who is responsible for the care of this infant child? The identity of the infant's father is unknown.

"The county court of this county would appreciate your opinion on this matter at your convenience."

It is our thought that the question which you have proposed is answered by a prior opinion of this department delivered under date of May 10, 1954 to the Honorable Harry J. Mitchell, Prosecuting Attorney, Marion County. A copy of that opinion is enclosed as we feel that the reasoning contained therein should serve to answer the problems arising out of the birth of the child in the circumstances outlined in your letter.

One further matter should perhaps be discussed in view of the divorce proceedings had in the Circuit Court for Cooper County, by virtue of which the custody of the minor child who is the mother of the illegitimate son was transferred by that court to her father, a resident of Moniteau County. It might be thought that such action would have the effect of imposing liability for the support of the illegitimate child upon Moniteau County. In this regard we direct your attention to the provisions of Section 202.100 RSMo 1949, reading as follows:

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"No person shall be entitled to the benefit of the provisions of this chapter as a county patient, except persons whose insanity has occurred during the time such person may have resided in the state, and except the insane poor under sentence as criminals, as provided in sections 546.510 to 546.540, RSMo 1949. Every patient in a state hospital shall be deemed to be the county patient of the county first sending him until one year after his regular discharge from the hospital." (Underscoring ours.)

Following the reasoning in the prior opinion attached hereto with respect to the residence of a minor child following that of the parent, we believe that this statute continues the residence of the mother of the illegitimate son in Cooper County from whence she was first committed for a period extending at least until one year after her regular discharge from the State Hospital. Such county is therefore liable for the support of the infant, if required by law.

CONCLUSION

In the premises we are of the opinion that an illegitimate child born to an inmate of a Missouri State Hospital is a resident of the county from which such inmate was first committed. It is our further opinion that proceedings having for their purpose the supervision and control of the custody of such illegitimate child should properly be initiated in the county from which the mother was originally committed.

It is our further opinion that if such child is a "pauper" within the meaning of the law, to whom public assistance is to be given, such county is liable therefor.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Will F. Berry, Jr.

Yours very truly,

John M. Dalton
Attorney General

WFB/vtl

Enclosure: 5-10-54 to Harry J. Mitchell