

## OFFICIAL OPINION NO. 61

October 6, 1947.

Mr. Luther T. Hurley, Superintendent,  
Fort Wayne State School,  
Fort Wayne, Indiana.

Dear Sir:

I have received your letter wherein you request an official opinion regarding the legal residence of your patient, John Sheehan, Jr. (now John Santos), and if you are justified in releasing this patient to his adopted parents who are now residing in the State of Illinois.

In your letter you set out the following facts:

“John Sheehan, Jr. was born August 15, 1932; in 1939 John Sheehan, Jr. and his siblings were made wards of the Lake County Department of Public Welfare; on September 18, 1940 John Sheehan, Jr. was committed to your institution by the Lake Circuit Court; subsequent to 1940 his parents were divorced while the father was serving time at the Indiana State Prison for a felony; July 30, 1945 the Lake County Juvenile Court set aside the wardship to the Lake County Department of Public Welfare and restored John Sheehan, Jr. and his siblings to the custody of their mother who had on August 19, 1944, been married to and was living with a Mr. Felix Santos at Chicago, Illinois.

“In January, 1946, the County Court of Cook County, Illinois, appointed a guardian ad litem for John Sheehan, Jr. and his siblings. In the absence of their natural father and after no objection was entered by said guardian ad litem, the Cook County Court adjudged and decreed John Sheehan, Jr. and his siblings should, in all-legal purposes, be the children of Felix Santos and his wife (their mother), Josephine Santos, and ordered their surnames changed to ‘Santos’.”

Chapter 119 of the Acts of 1939 found in Burns' Indiana Statutes Annotated at 22-1740, 1945 Pocket Supplement, provides:

"All feeble-minded persons who have had a legal settlement in this state and have not lost the same or who have lived continuously in this state for one (1) year immediately preceding an application for admission, shall be considered admissible as inmates of the Fort Wayne State School or the Muscatatuck State School. The feeble-minded person shall be admissible from the county in which such person resides at the time application is made for such admission and if such person is committed in accordance with the provisions of the statute, such person shall be sent to the school in the district in which such county is situated." (Acts 1939, ch. 119, sec. 1, p. 578; 1943, ch. 41, sec. 1, p. 95.)

The residence or domicile of a husband determines that of a wife until they separate with the intention of not living together in the marital relation. (*Petty v. Petty* (1908), 42 Ind. App. 443).

Section 4b of Chapter 116, Acts of 1935 as amended by Chapter 44, Section 1, Acts of 1939, provides:

"Legitimate children shall follow and have the settlement of their father, if he have any within the state, until they shall gain a settlement of their own; but if the father have no settlement, they shall, in like manner, follow and have the settlement of their mother, if she have any."

The facts show that the parents of this child were divorced and the custody given to the mother, therefore, the legal settlement of the child would be determined by the legal settlement of the mother and when the mother changed her residence by moving from Indiana to Illinois and acquired a legal settlement in Illinois, the legal settlement of the minor child would follow that of the mother and the child would have a legal settlement in Illinois.

When the custody of a minor is taken away from the father and given to the mother, the father can not regain such custody even after the death of the mother, without an order of court giving him such right. (Bryan v. Lyon, (1885) 104 Ind. 227, 235, 236).

A minor child, of tender years, could not of his own volition change his domicile from Indiana to Illinois. The legal effect of the adoption of the child was to transfer the domicile of the child to that of the adoptive parent, so long as it did not conflict with the custody of the mother and in this case it was in the same home. Accordingly, when this child, John Sheehan, Jr. was adopted by Felix Santos and his surname changed to Santos, his legal settlement became that of the adoptive parent, which was in Illinois, and as his mother already was a resident of that state, being the wife of said Felix Santos, and having the sole custody of the child under the order of court granting such custody, which was subject to the commitment of the child to the Fort Wayne State School, the legal settlement of the child was clearly in the State of Illinois. (Miller v. Bode, Admr., (1923), 80 Ind. App. 338, 345).

The foregoing case announces the rule that where a child was adopted by parents living in another state, "the legal effect was to transfer the domicile of the child to that of the adoptive parents."

It is well settled that an infant, not being *sui juris*, is incapable of fixing or changing its domicile. (Johnson v. Smith (1932), 94 Ind. App. 619, 623).

It was held in an opinion from this office that where a parent of a feeble-minded minor child who is in an institution in one state comes to Indiana and lives in Indiana long enough to establish a legal settlement, that such legal settlement becomes the legal settlement of the minor child although the child has never been in the State of Indiana, basing it upon the ground that the settlement of the father is that of the minor child; that the minor child could not change its legal settlement of its own free will and that when the father changed his legal settlement during the minority of the feeble-minded child and attained a new legal settlement in the State of Indiana, that such settlement *eo instanti* became the legal settlement of the feeble-minded minor child

(Opin. Atty. Gen. 1933, pp. 167-169). This statement has not changed either by statute or by judicial interpretation since the same was adopted and in my opinion, is still the law.

I therefore conclude that John Sheehan, Jr. has a legal settlement in the State of Illinois with his mother and adopted father, Josephine and Felix Santos, and that they are entitled to his custody when released by your institution.

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OFFICIAL OPINION NO. 62

October 8, 1947.

Hon. C. E. Ruston,  
State Board of Accounts,  
State House,  
Indianapolis, Indiana.

Dear Mr. Ruston:

Your letter of September 10, 1947 has been received requesting an official opinion on the following questions:

“1. Is the Department of Sanitation of the City of Indianapolis, managed by the Board of Sanitary Commissioners created by Chapter 157 of the Acts of 1947 a department of the civil city or is it a separate and independent unit of government?

“2. In either case do the provisions of Chapter 150, Acts of 1935 as amended by Chapter 275, Acts of 1947 and Chapter 119, Acts of 1937 as amended by Chapter 41, Acts of 1947 apply

“(a) relative to preparing, advertising and submitting an annual budget?

“(b) relative to emergency appropriations?”

The Department of Sanitation in cities of the first class was created by Chapter 157 of the Acts of 1917 same being Section 48-4201 et seq. Burns' 1933. Section 1 of said Act, same being Section 48-4201 Burns' 1933, provides in part as follows:

“In addition to the existing executive departments of cities of the first class, as such cities are defined