

OFFICIAL OPINION NO. 34

April 21, 1945.

Hon. L. A. Cortner, Superintendent,
Indiana Soldiers' and Sailors' Children's Home,
Knightstown, Indiana.

Dear Sir:

Your letter of March 7, 1945, received requesting an opinion as to whether or not certain dependent children are entitled to admission to the Indiana Soldiers' and Sailors' Children's Home. The facts presented in your letter of March 7, 1945, and your supplemental letter of April 6, 1945, may be summarized as follows:

The father of these dependent children enlisted in the Navy eight (8) years ago. Upon his first enlistment in the Navy he gave his address as San Diego, California, but four (4) years later when he re-enlisted he gave his address as his mother's home in Richmond, Indiana. The mother and father of these children are divorced and she is living in California, the father having been granted custody of the children. Since re-enlisting in the Navy the father has visited his mother's home in Richmond, Indiana, and the children have lived in the grandmother's home in Richmond, Indiana, since November, 1944.

Section 22-2310, Burns' 1933, same being Section 9, Chapter 14, Acts 1887, as amended, is a general statute authorizing the admission of children to said Home and provides in part as follows:

*"The trustees, under regulations and form of application which they shall prescribe, and after investigation, and the superintendent, are authorized and required to receive as pupils into said home, orphans and children of honorably discharged soldiers, sailors, marines and nurses of the United States, of the Civil War, or the war with Spain, or the war in the Philippine Islands, the China relief expedition, or the World War, or in the regular service of the United States, residing in this state, under the age of sixteen (16) years, who may be destitute of means of support and education in the following order: * * *"* (Our emphasis.)

The remainder of such section of the statute has to do with certain classifications and the order of admission of children to said Home.

In a previous official opinion of this office directed to you under date of July 22, 1943, same appearing in 1943 Indiana O. A. G. 451, it was held the above statute authorized the trustees of your institution to prescribe all reasonable rules and regulations and forms of applications for admission of children to said institution in carrying out the intents and purposes of said Act. Said opinion further states that under the above quoted provision of the statute construed with Section 1, Chapter 254 of the Act of 1943, same being Section 59-1007a, Burns' 1943 Replacement, said statute would apply to children of present members of the armed forces of the United States.

It is therefore necessary to determine whether or not the father of these dependent children by designating his mother's home in Richmond, Indiana, as his address upon his re-enlisting in the Navy some four (4) years ago, and thereafter moving his children, who evidently at that time constituted his entire family, to his mother's home in Richmond, when viewed in the light of his physical presence at his mother's home following such re-enlistment, thereby was "residing" in the State of Indiana within the meaning of the above statute.

In *McCormick v. Wall* (1929), 201 Ind. 439, 442, it was held "residing" means to take up one's abode; to dwell permanently or for a considerable time; to have a settled abode for a time.

In *Beale on The Conflict of Laws*, Volume 1, Section 15.2, Pages 133 and 134 the following rule is announced:

"* * * In other words, as has been said above, in order to acquire a domicile of choice, there must exist both the fact of personal presence in the new place and the intention to make that new place a home. Both these elements must concur before any change of domicile can be effected. Thus, in spite of the presence of a man at what is claimed to be a new place of residence, there will be no domicile there unless he has formed a definite intention of making his home there. Conversely, though a man may have formed a definite intention of making a certain place his permanent resi-

dence, this does not effect a change of domicil without his personal presence there, and he is therefore not domiciled there before he reaches the actual spot, though he has left his old domicil.

“If the fact and the intention concur, even for a moment, the change of domicil takes place; no lapse of time is necessary to complete the change.”

In American Jurisprudence, Volume 17, Page 599, Section 16, it is stated:

“It is universally held that in order to acquire a domicil by choice these essentials must concur: (1) Residence (bodily presence) in the new locality, and (2) an intention there to remain. In other words, there must be a concurrence of the fact and the intent, the *factum* and *animus*. Act and intent must, therefore, concur, and the absence of either of these thwarts the change. * * *.”

Also see: Croop v. Walton (1927), 199 Ind. 262, 269 to 271.

I am therefore of the opinion that under the above authorities, and under such facts stated, the “domicile” of the father of these children was the grandmother’s address at Richmond, Indiana, and that he was “residing” within the State of Indiana within the meaning of the above statute.

It is a well recognized rule of law that ordinarily the domicile of the father is the domicile of his minor children.

Beale on The Conflict of Laws, Volume 1, Page 210, Section 30.1.

An examination of the entire section of the statute under consideration reveals that in certain instances the statute requires the father to be “residing” within the State, and in certain instances applies to children “residing within the State.”

Since these children acquire the domicile of their father and since these children are in fact physically present and have been living at such grandmother’s home in the City of Richmond, Indiana, it is my opinion these children are “residing” in the State of Indiana within the meaning of the above statute.

I am therefore of the opinion these children are entitled to admission to the Indiana Soldiers' and Sailors' Children's Home.

OFFICIAL OPINION NO. 35

April 27, 1945.

Hon. Raymond L. Pike, Director,
Indiana Economic Council,
609-612 Board of Trade Building,
Indianapolis 4, Indiana.

Dear Sir:

Your letter of March 24, 1945, addressed to the Attorney General has been received requesting an opinion as to whether or not it is necessary for the City of Greencastle, Indiana, to repeal a previous ordinance establishing an airport or landing field enacted under the provisions of Chapter 57, Acts 1945, as amended by Chapter 89 of the Acts of 1943, before the enactment of a new ordinance by the common council of such city so that such airport may be established, maintained, or operated within the provisions of Chapter 190 of the Acts of 1945.

Chapter 190 of the Acts of 1945 is the Airport Act of 1945. Section 2 of said statute provides in part as follows:

“That whenever the governing body of any municipality as now or hereafter defined by Act of the General Assembly of the State of Indiana shall after the taking effect of this Act adopt an ordinance, an act or a resolution in favor of the acquisition, improvement, operation or maintenance of an airport or landing field for such political subdivision under the provisions of this Act, and declaring a necessity for the same, then on the date of the taking effect of such ordinance, act or resolution, there shall be hereby established as one of the executive departments of such municipality a department of aviation, which shall be under the control of a board of four members, to be known as the Board of Aviation Commissioners. * * *”