

Finding said bond to have been properly executed in accordance with the foregoing statutory provisions, I have accordingly approved the same as to form, and return it herewith.

Respectfully,
 JOHN W. BRICKER,
Attorney General.

3260.

LEGAL SETTLEMENT—WHERE MINOR CHILD IN SOLE CUSTODY
 OF MOTHER FOLLOWING DIVORCE OF PARENTS.

SYLLABUS:

Legal settlement of a minor child where the parents are divorced and the decree gives to the mother the sole and exclusive custody of the child, discussed.

COLUMBUS, OHIO, September 28, 1934.

HON. FRANK T. CULLITAN, *Prosecuting Attorney, Cleveland, Ohio.*

DEAR SIR:—I am in receipt of your recent communication which reads as follows:

“The Juvenile Court of the County of Cuyahoga has requested this office to obtain an opinion from the Attorney General regarding the legal settlement of one M. S., a minor.

Mr. and Mrs. W. S., the parents of M. S., were married and living in Lake County, having legal residence there for all purposes. In January of 1920 Mrs. W. S. obtained a divorce from her husband and was given custody of their two minor children, one of whom was M. S.

In April of 1923 Mrs. W. S. married W. P. and continued to live in Lake County until October of 1931, when they moved to Youngstown, Mahoning County, where they continued to live until February 16th, 1933, when they moved to Cleveland and have resided in Cleveland ever since.

In August, 1928, M. S. left her mother's home in Lake County and went to live with her father, W. S., and remained with her father in Lake County until September of 1933, at which time she was taken by her mother to Cleveland for the reason that M. S. was pregnant. One A. R., a boarder in the home of W. S., was responsible for her condition and pleaded guilty to statutory rape in Lake County and was placed on parole.

In February of 1934 M. S. gave birth to a child in Cleveland.

The question is whether Lake County or Cuyahoga County is responsible for the expense and care of M. S. This office and the Juvenile Court would appreciate your opinion in this matter.”

It appears from the facts stated in your inquiry that M. S. is still a minor and that by divorce decree in Lake County Mrs. W. S. (now Mrs. W. P.) was given the sole custody of the daughter, M. S.

It further appears that Mrs. W. S. (now Mrs. W. P.) has a "legal settlement" in Cleveland, Cuyahoga County, and that the minor, M. S., has been living with her mother in Cleveland since September, 1933.

You inquire as to the "legal settlement" of M. S. and as to what county should give poor relief to this girl.

The case of *Board of Commrs. of Summit County vs. Board of Commrs. of Trumbull County*, 116 O. S. 663 (1927) is relevant to your inquiry. The syllabus of this case states:

"When the parents of minor children are divorced, and the decree gives to the mother the sole and exclusive care, custody and control of the minor children, the legal settlement of the mother thereby becomes the legal settlement of the minor children; and when the mother thereafter, acting in good faith, moves to another county, taking the minor children with her, and intending to make the latter county the permanent home of herself and her minor children as well, and, pursuant thereto, the mother acquires a legal settlement in the county to which she thus moves, the minor children thereby acquire, through their mother, a legal settlement in the same county."

At page 667, the opinion states:

"Manifestly the minors of themselves could not change their legal settlement by going from one county to another without their parents, but it is quite another thing to say that if a parent, having the exclusive control and custody of the children by a decree of court, changes legal settlement, that does not change the legal settlement of the children who have accompanied such parent into the new legal settlement territory."

In the above cited case it is apparent from a study of the facts involved that the mother acquired the legal settlement of her second husband and the children also obtained the same legal settlement as their mother.

The first part of the syllabus would seem to indicate that the legal settlement of the mother becomes the legal settlement of the children, irrespective of where the children are actually residing, although it can be argued with some plausibility that the latter part of the syllabus modifies such conclusion. In other words, the latter part of the syllabus would seem to indicate that the conclusion of the court as a whole is based upon the mother taking the children with her with the intention of making her permanent home in the county to which she has migrated. However, I do not think it can plausibly be argued that the minor children must immediately accompany the mother into her new legal settlement territory, and in the instant case the minor child did join the mother, who has the sole and exclusive custody of the child, and was there supported from September, 1933, to the present time.

It is my opinion, therefore, that the principle laid down in the "Trumbull and Summit County Case" is broad enough to cover the fact set-up you present.

Specifically answering your inquiry it is my opinion that the legal settlement of M. S., the minor in question, is in Cuyahoga County and that consequently Cuyahoga County is responsible for the care of the minor in question.

Respectfully,

JOHN W. BRICKER,

Attorney General.