

## Opinion No. 49-5195

February 7, 1949

**BY:** JOE L. MARTINEZ, Attorney General

**TO:** Murray A. Hintz State Director Department of Public Welfare Santa Fe, New Mexico

{\*16} I have your letter of February 2, 1949, wherein you request the opinion of this office as to whether or not residents of Los Alamos, living on land owned by the United States and acquired by purchase or condemnation, are eligible to file petitions for adoption in this state.

Section 25-201 of the 1941 Compilation reads as follows:

"District courts are hereby given exclusive jurisdiction of all applications for the adoption of minor children. Any **resident of the state** may petition the district court for the county in which he **resides** for permission to adopt any minor child not his own, using for said application a form furnished the district court by the state board of public welfare."

The underlined (bold) portions of the above quoted statute impose a jurisdictional prerequisite to the filing of any petition for adoption. If the person so filing it not a resident of this state he has no right to adopt any child in New Mexico. Adoption of children is a statutory proceeding unknown to the common law, and the right to adopt is no greater than that given by the statute creating it (2 C.J.S., Adoption of Children, Sec. 1b). In *Foster v. Waterman*, 124 Mass. 592, the Court held that a statute providing that a petitioner may have leave to adopt by a decree of adoption "in the county where the petitioner or the child resides" was intended to be limited to cases where all parties had their domicile in that state.

Therefore, the right of petitioners living upon the above described type of land to adopt is dependent upon their residence in New Mexico.

The question of the legal status of citizens of Los Alamos living on condemned land has been before the Supreme Court of New Mexico twice in recent months. In *Arledge v. Mabry*, 52 N.M. 303, 197 P. 2d 884, it was held that residence on such land was insufficient to establish residence for {\*17} voting purposes, and in *Chaney v. Chaney*, 53 N.M. 66, 201 P.2d 782, decided on January 6, 1949, it was held that such residence was insufficient to establish residence for divorce purposes.

During the course of its opinion in *Chaney v. Chaney*, supra, the Court stated:

"The United States having acquired the land in question through condemnation proceedings, it thus obtained exclusive jurisdiction over the same, except to serve therein civil and criminal process of the courts of this State as to offenses and transactions originating outside the condemned area, and **such land is not deemed a**

**part of the State of New Mexico. Accordingly, persons living thereon do not thereby acquire legal residence in New Mexico.** Arledge v. Mabry, supra." (Emphasis Ours.)

Based upon the foregoing it is the opinion of this office that only residents of New Mexico may adopt children in this state, and that residents on land at Los Alamos acquired by the United States through condemnation proceedings is insufficient to establish the required residence.

However, it should be borne in mind that any person who has once acquired residence in New Mexico does not lose the same by moving to the condemned area at Los Alamos, for residence once established cannot be lost until a new residence is gained.

Measures have now been introduced in the Congress of the United States and in the Legislature of New Mexico which will, upon passage and approval, eliminate this unfortunate situation through retrocession by the United States of its exclusive jurisdiction over such land, and the acceptance thereof by the State of New Mexico.