

Opinion No. 36-1429

September 18, 1936

BY: FRANK H. PATTON, Attorney General

TO: Mr. P. M. Baldwin, Dean School of General Science, New Mexico College of Agriculture & Mechanic Arts, State College, New Mexico.

{*138} This is in reply to your letter of September 16, 1936, with reference to the residence of certain minor students of your institution.

I do not believe that parents, merely by executing certain papers, can transfer guardianship of their minor children to some other person. However, I do not think that the fact of guardianship is in all cases determinative of the domicile of the minor. In other words, there are some cases where a minor may have a different residence from that of his living parents even though no guardian has been appointed.

For instance, the case that you cite in your letter may be such a {*139} case although the facts are not sufficiently stated for me to give a definite opinion. You give the following facts:

"For example, in one case a boy is living with his grandmother who owns a farm in this valley. The boy's mother is a widow with seven minor children residing in California. To my personal knowledge she does not contribute to her son's support. He is partly selfsupporting and partly maintained by his grandmother."

If the mother of this boy has relinquished custody of him to his grandmother and does not attempt to exercise any control whatever over the boy either now or in the future, then I believe the boy's domicile would be the same as that of his grandmother. On the other hand, if the boy is merely residing temporarily with his grandmother while he is going to school and intends to return to his mother at some future time and remain under her custody and control, then I believe the boy's domicile would be that of his mother. See 19 C.J. 412, 35 Am. Rep. 118 (Note).

The following general rule as stated in Kennan on Residence and Domicile, page 284, seems to fit the case mentioned in your letter:

"It happens not infrequently that upon the death of the mother the father places the infant child in the care of a grandparent. If this arrangement is only temporary the child retains the domicile of the father but if the arrangement is intended to be permanent the prevailing opinion seems to be that the grandparent or grandparents may be considered in loco parentis and can change the domicile of the child by changing their own."

Trusting that the above answers your questions in a satisfactory manner, I am

By QUINCY D. ADAMS,

Asst. Atty. General