

MAINE STATE LEGISLATURE

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November 21, 1924

To Charles A. Snow, Superintendent of Schools, Fryeburg
Re: Pupils from House divided by Town Line.

I have your inquiry with reference to the interesting problem presented as between the towns of Brownfield and Denmark by the fact that certain children live in a house which is divided by the town line between Brownfield and Denmark, which house is occupied by their grandmother who claims residence in Denmark. Their mother is working in Brownfield and claiming residence and voting there. As I understand it, the mother has the legal custody of the children by decree of court but is boarding them with the children's grandmother.

Under the law it would not be proper to give you an official opinion, but unofficially I am glad to be of whatever help I can in this interesting problem.

The first general question presented is whether the residence of the mother or of the grandmother controls the school residence of the children. On this point the decision of our Law Court in the case of Shaw v. Small, 124 Me. 36 (July 22, 1924) is significant. In that case the court held that the word "guardian" in Revised Statutes, Chapter 16, Section 30, with reference to the school residence of children has a very broad meaning. The court extended the word to cover a person in whose custody wards of the State had been placed by the Board of Children's Guardians. In the present case, therefore, if the legal custody of the children were in the State Board of Children's Guardians, the actual residence of the children with their grandmother would seem to fix their school residence in the grandmother's town. A logical deduction of the decision of the Law Court would perhaps be that it extended to the case here, so that the grandmother's town would be the school residence of the children, notwithstanding the fact that they are in the legal custody of their own mother who lives in a different town.

Until the Law Court has ruled on this point, however, I should hardly venture to extend the decision in the case of Shaw v. Small to such a case as yours. Where there is an actual individual resident of the State with full legal custody of the children and where that individual happens also to be the parent and therefore the natural guardian of the children, I should hesitate to forecast a Law Court decision permitting that parent to transfer the school residence of the children to another town in the State. This department may be called on to rule on the question officially at some time in the future; and a more careful collation of the authorities at that time might lead us to a different opinion, but certainly at the present time I am inclined unofficially to state that the residence of the mother in your case would be the school residence of the children.

The other general question presented is as to the effect on the residence of the grandmother of the fact that the town line passes through her house. If my opinion on the first general question above is right, this question does not come up in your case, because it is

the residence of the mother which controls. The question of the grandmother's residence may, however, be of importance in this or other cases, and, therefore, I will answer your questions above.

Our Law Court a great many years ago, in the case of Judkins vs. Reed, 48 Me. 386 (1860) had the question presented to it of the validity of the action of the Collector of Taxes who took property under a tax warrant running against a person who lived in a house on the line between Mexico and Roxbury. The court found that only a small part of the house was in Mexico, the most necessary and indispensable part being in Roxbury as well as the other buildings and conveniences, and on this basis the court held that the person was a resident of Roxbury.

I cannot find that this case has ever been overruled in our decisions and I find no statutory provisions on the point.

The facts in your case may bring it within this decision. If, however, your facts are not so plain as they were in this old case, then we must look into the general principles of law for an answer. In 9 Ruling Case Law, page 552, the point is discussed as a result of examining all the authorities and the author states that the place where a person sleeps is an important indication of his residence in connection with the other facts, but goes on to say that where all the facts leave the matter in doubt, the person can then select his residence as between the two towns.

I have now answered the first three of your questions with which the letter ends. The last three questions which you ask with reference to the duty of the parent to board the children at a distance from school and compel the town to convey them to school, and with reference to one town's paying tuition to another for their education, are questions more of administrative detail than of law and if those questions are still important in view of my suggestions on the general law in the case, I suggest your writing to the State Superintendent of Public Schools, who will, I am sure, advise you in detail.

Clement F. Robinson
Deputy Attorney General