

OPINION
44-85

February 9, 1944 (OPINION)

RESIDENCE

RE: Desertion

Your letter of February fifth addressed to the Attorney General has been referred to the undersigned for attention and reply.

You state that a husband and wife and their children were living in the state of Minnesota. They decided to go their own way. I presume that they decided to separate. The wife came to Grand Forks with the children with the knowledge and consent of the husband. She has been living in Grand Forks about two years. The husband went to Nebraska and is employed in a position with good pay. He has not provided the family with any support whatsoever since they left Minnesota.

The question is whether or not the courts of North Dakota would have jurisdiction over the husband so that a charge of failure to provide for his family could be entertained and whether under the circumstances this man could be extradited.

These parties were residing in Minnesota when the husband left. He has not been in North Dakota. If he deserted the family, the desertion took place in Minnesota. I do not believe that a charge of desertion could be maintained in North Dakota, even though the wife and children may be living here at this time. As I have pointed out, both parties were living in Minnesota when they separated and if he deserted the family, he did so in Minnesota.

By way of illustration, supposing "A" steals from "B" in Minnesota, and then moves to Nebraska. "B" moves to North Dakota. "A" could not be extradited to North Dakota, because the crime was not committed here. While this analogy may not be exact, nevertheless, it occurs to me that the crime was committed in Minnesota, and therefore, that any action to be taken should be taken in Minnesota.

Of course, the wife could go to Nebraska and bring proceedings in the Nebraska courts, and undoubtedly, could get relief in that way.

But, assuming for the purpose of argument that an application for extradition would be granted in this state, the husband could undoubtedly, claim that his residence is in Nebraska and that his wife has refused to live with him, in which case, the proceedings would fall.

However, it is our opinion, in any event, that the courts of North Dakota would not have jurisdiction and that under the facts in this case, the Governor would refuse to honor an application for extradition.

ALVIN C. STRUTZ
Attorney General