

Opinion No. 47-4986

February 11, 1947

BY: C. C. McCULLOH, Attorney General

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

{*13} We wish to acknowledge receipt of your inquiry of the 15th of January, pertaining to whether or not a father is legally responsible in New Mexico for the support of his children when he is financially able to support them but the children have been removed by District Court action from the parent's custody because of cruelty, dependency or neglect and committed to the custody of the Department of Public Welfare or a child-caring institution.

The father of a minor child is, in most jurisdictions, not relieved of his legal duty to support it by the mere fact that he does not have its actual or legal custody; his duty continues whether the child remains in his custody or not, unless the court in some proceeding in which the question was involved and determined, has made express provision for its support of such a nature as to relieve him from further liability. It has been said that the duty of a father to provide for his minor child, which is in another's custody, is restricted to necessities. (See 39 Am. Jur. at p. 648).

There is some difference of opinion as to what constitutes necessities but under most authorities such things as food, shelter, clothing, medical attendance, and an education are deemed to constitute necessities. As to the amount of education that should be considered necessary, courts have never laid down a hard and fast rule.

I might point out that there are authorities which hold that the duty of a father to support a minor child and the right to custody and earnings of the child are reciprocal; that once custody of the child is taken away from him, the legal liability to support, even as to necessities, is extinguished.

However, the weight of authority is to the contrary, and it is my opinion that the Department of Public Welfare could successfully maintain a suit against the father and recover for necessities furnished a minor child in those cases where the Department had been given custody of a minor child by action of the District Court due to the parent's cruelty, neglect, etc.

Trusting the aforementioned satisfies your inquiry, I am,

By ROBT. V. WOLLARD,

Asst. Atty. General