

**Opinion No. 47-5061**

August 8, 1947

**BY:** C. C. McCULLOH, Attorney General

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

{\*76} We wish to acknowledge receipt of your inquiry of August 6, 1947 pertaining to whether or not the District Court has the power to enter a Final Order of Adoption in a case where it is conclusively shown that the child has not lived for a period of three months or more in the proposed foster home.

Section 1 of Chapter 33, Laws of 1947, provides, in part, as follows:

"No petition shall be finally granted until the child shall have lived three (3) months in the proposed foster home. \* \* \*"

It is my opinion this requirement goes to the jurisdiction of the Court in such cases, and that the Court could not enter a Final Order of Adoption until this requirement has been complied with.

However, the act also authorizes the Court to place the child directly in the proposed foster home for temporary care, pending investigation by the Board of Public Welfare, and prior to the final granting of the petition for adoption.

In accordance with the facts set forth in your inquiry, it is my opinion that the District Court would more than likely enter an interlocutory order directing that the child be placed in the proposed foster home; that a final order of adoption would then be entered upon the completion of this three months' period, provided the Court was satisfied with the recommendation filed by the State Board of Public Welfare or from other evidence.

Trusting the aforementioned satisfies your inquiry, I am

By: ROBERT V. WOLLARD

Asst. Atty. General