

Opinion No. 52-5528

April 4, 1952

BY: JOE L. MARTINEZ, Attorney General

TO: Mr. Alva A. Simpson, Jr. State Director Department of Public Welfare Santa Fe, New Mexico

{*238} This is in reply to your letter of April 3, 1952, in which you request a legal interpretation of Section 25-424, New Mexico Statutes, Annotated, 1941, which reads as follows:

"Limitation of Actions. -- Proceedings to enforce the obligation of the father shall not be brought after the lapse of more than two (2) years from the birth of the child, unless paternity has been judicially established, or has been acknowledged by the father in writing or by the furnishing of support. (Laws 1923, Ch. 32, § 24, P. 48; C.S. 1929, § 22-224.)"

This statute is mandatory and strictly a limitation statute and the intent of the Legislature is clear, certain and unambiguous that they intended to put a restriction on any kind of proceedings to enforce the obligation of the father to support his illegitimate child within the period of two years unless paternity has been judicially established or has been acknowledged by the father in writing or by the furnishing of support.

You state that your problem is whether paternity proceedings may be instituted only within two years from the birth of the child, or may be brought even after the expiration of two years and until such time as the child has attained the age of sixteen years, or if the child is physically or mentally incapable of working, or until the child arrives at full age.

As above stated, it is our opinion that Section 25-424, New Mexico Statutes, Annotated, 1941, is a mandatory statute and also a limitation statute restricting of the bringing of any proceedings by any one against a father for the support of his child after two years from the birth of said child.

Trusting that this fully answers your inquiry, I remain,