

Opinion No. 21-2893

April 2, 1921

BY: HARRY S. BOWMAN, Attorney General

TO: Miss Montana Hastings, Care Public Health Department, Santa Fe, N. Mex.

Procedure to Compel Delinquent Parents to Care For and Educate Children.

OPINION

{*41} I have before me two letters from Miss Harriett Elliot, principal of the Presbyterian Day School at Truchas addressed to you and submitted by you to me, together with an oral request for an opinion regarding the procedure to be adopted in the case of a man at Truchas who has three minor children and who has been, and still is, neglecting the physical, mental, moral and spiritual development of the children for the past several years.

The 1917 Session of the legislature passed a law intended to cover just such cases as the one suggested in the two letters. Chapter 85 of the Laws of 1917 prescribes the methods to be used in coping with such a situation.

{*42} Sec. 2 of the Act provides that an information be filed with the clerk of the District Court, either by the District Attorney or by any person resident of the state over the age of 21 years, which shall set forth the name of the child or children, the names of the parents, if any, or persons with whom such child is living or stopping, and shall contain a statement of the facts bringing such child within the provisions of the act.

Jurisdiction is given to the district courts of the State in all matters relating to the care, treatment, control and disposition of such children, if they come within the definition of "dependent and neglected children."

The words dependent and neglected are defined as meaning any child of either sex, under the age of 16 years, who is destitute, homeless, or abandoned, or dependent upon the public for support, or has no proper parental care or guardianship, or is found taking or soliciting or receiving alms, or is found in any house of prostitution, or living with any vicious or disreputable person, or who has no responsible parent or guardian, or who has a home, which by reason of neglect, abuse, mistreatment, cruelty or depravity on the part of its parents, guardians, or the person in whose care it may be, is an unfit place for such child.

The Act further provides that it shall be the duty of every district attorney in the state to prepare and file the information provided for therein, and in the name of the State to prosecute such proceeding and to further prosecute persons violating the provisions of

the Act, whenever there shall be presented to him the affidavit of one or more citizens of the state setting forth facts sufficient to justify such proceeding or prosecution.

The court, pending final disposition of the matter, may direct that the child be left with the parents, or that it be placed in some institution or place provided by the State or County, or that it be placed in charge of an association having for its object the care of orphans or dependent and neglected children. There is also a provision for the appointment of a Referee to take the testimony and report to the court upon the merits of the case.

Upon final hearing, the court may adjudge such child to be a ward of the court and direct that the child be placed under the care and control of some individual or some association organized for, or including in its purposes, the care and control or disposition of orphans or dependent and neglected children.

The Act is quite long, but I believe the foregoing outlines its purposes and objects, and the procedure to be followed in invoking its provisions in the case mentioned in the two letters submitted by you.

If I can be of any further assistance in the matter you may command me.

I am returning herewith the two letters submitted with your request for an opinion.