

**Opinion No. 37-1550**

March 9, 1937

**BY:** FRANK H. PATTON, Attorney General

**TO:** Bureau of Revenue Income Tax Department Santa Fe, New Mexico

{\*57} This is to acknowledge receipt of your letter of recent date in which you make the following inquiry:

"Will you kindly advise this Division whether or not in your opinion minor children who reside with one of the divorced parents exclusively are to be considered as legal dependents by the other parent where he has re-married or otherwise, even though he contributes certain financial support to the upkeep of the children or his exwife and children."

The pertinent parts of Section 1, Chapter 29 of the Laws of 1934, {\*58} providing for exemptions for dependents, read as follows:

"In the case of a husband and wife, living together, and in the case of a widow or widower with a dependent minor child or dependent minor children, the personal exemption shall be twenty-five hundred dollars, plus two hundred dollars for each such dependent minor child;

"In the case of any person dependent upon, residing with, and entirely supported by any individual taxpayer during the taxable year, there shall be allowed to such taxpayer an exemption of two hundred dollars;"

Under the first paragraph, a widow or widower is given an exemption for dependent minor children. In such a case, we do not believe that the right to exemption would be affected by the residence of the children; that such an exemption could be claimed if the fact of dependency actually existed. However, as this section reads, only the widow or widower is given an exemption for dependent children and, giving the section literal interpretation, a husband and wife must claim an exemption under the second paragraph. It was held by this office in Opinion No. 1337 that a divorced person for the purposes of this act is to be classified as a single person. Such person, therefore, would be compelled to claim the exemption for dependency under the second paragraph above quoted. In such a case not only is dependency necessary, but also the dependent must actually reside with and be entirely supported by the person claiming the exemption. See Attorney General's Opinion No. 1360. This exemption provision is unusual and makes for inequities. However, in interpreting the same, we are bound by the language used in the act.

By: RICHARD E. MANSON,

Asst. Atty. Gen.