

**Opinion No. 41-3869**

August 15, 1941

**BY:** EDWARD P. CHASE, Attorney General

**TO:** Mrs. Jennie M. Kirby Director, Department of Public Welfare Santa Fe, New Mexico

{\*89} In your letter of August 12 you desire to know whether or not it is necessary in our opinion to procure the father's consent in adoption proceedings where no legal adjudication of the custody of the child has been determined and where the parents are divorced.

In the discussion of this case with you, it is my understanding that at the time the mother of the child procured a divorce from the father of the child she was unaware of the fact that she was pregnant at the time. Subsequent, however, to the time that the divorce was granted, the woman became aware of her condition and a child was thereafter born. It is my further understanding of the facts that the father of the child has never been notified of its existence.

Basing my opinion on the above facts, I conclude that there has been no abandonment of the child by the father for the reason that he has never had any notification of the birth of the child. To constitute such an abandonment by a parent as will deprive him of the right to prevent the adoption of his child and dispense with the necessity of his consent, there must be some conduct on his part which evinces a settled purpose {\*90} to forego all parental duties. I C.J., Section 76, p. 1387.

How can it be said that the father of the child in question has so conducted himself when he has never had any knowledge of the birth of the child? In further connection with this question, see Section 2-104, New Mexico Statutes, Annotated, 1929 Compilation, which requires the consent of a child's parents in certain instances before he may be adopted.

Trusting that the foregoing sufficiently answers your inquiry, I am,

By HOWARD F. HOUK,

Asst. Atty. General