

Opinion No. 43-4354

August 5, 1943

BY: EDWARD P. CHASE, Attorney General

TO: Miss Lois S. McVey, Supervisor, Child Welfare Services, Department of Public Welfare, Santa Fe, New Mexico

We have your letter of July 9, 1943, wherein you present a fact situation concerning a girl fourteen years of age who is the mother of a child. You also state in your letter of August 5, 1943, in response to my request for additional information, that the child is an illegitimate child. You state that an adoption proceeding is pending and inquire whether or not the mother, who is a minor, may give consent to the adoption without having a guardianship proceeding.

Section 25-208 of the New Mexico 1941 Compilation provides:

"An illegitimate child cannot be adopted without the consent of its mother, if known, or capable of consent."

2 C. J. S., Adoption of Children, Section 21 (4) (c) provides:

"Ordinarily, under the adoption statutes, the adoption of an illegitimate child requires the consent of the mother only; nor is consent of the mother rendered unnecessary by the father's recognition of the child, **nor the adoption invalidated by the fact that her consent was given when she was a minor.**"

1 Am. Jur., Adoption of Children, Section 37 provides:

"The fact that the mother is a minor does not invalidate her consent."

American Annotated Cases, 1914 A. 224, also provides:

"The fact that the mother of an illegitimate child is a minor does not invalidate her consent."

It is interesting to note that the source of the statements in the above text are all derived from the case of *In re Bush*, 47 Kans. 264, 27 P. 1003. Therefore, under our statute, it is my opinion that in accord with the rule recognized by the leading legal textbooks, that the consent of the mother alone will be sufficient, regardless of the fact that the mother is a minor. It is further noted that under a statute providing for the consent of a natural parent, that a guardian's consent will not be sufficient.

1 Am. Jur., Section 36 provides:

"The written consent of the State Board, or of any guardian cannot be deemed a legal and sufficient substitute for the written consent of the natural parents."

Hoping that the foregoing is of some benefit to you, I remain

By HARRY L. BIGBEE

Asst. Atty. Gen.