

Opinion No. 44-4524

June 1, 1944

BY: EDWARD P. CHASE, Attorney General

TO: Mr. G. Herkenhoff, State Director, Department of Public Welfare, Santa Fe, New Mexico

I have your letter of May 17, 1944 wherein you request an opinion of this office concerning the following four questions:

"Is an incapacitated son or daughter over 21 a legal dependent of the parent under New Mexico law?

Are children legal dependents until they are 21?

Are grandchildren under 21 legal dependents of their grandparents?

What are conditions under which sisters or brothers are considered legal dependents?"

In answer to your first question, I quote from 46 Corpus Juris, Parent and Child, section 3, page 1220 which provides:

"The rights and obligations growing out of the relation of parent and child do not necessarily continue until, or terminate upon, the child's attainment of majority, but by the consent of the parties may be terminated before, or continue in full force after, such time. **But ordinarily the legal rights and duties existing between parent and child terminate when the child attains his majority, unless a statute creates some specific legal duty.**"

We have been unable to find any statutes in this state which could be construed as creating some specific duty on the part of a parent to support a child that is more than 21 years of age. It is, therefore my opinion that a son or daughter over 21 cannot be a legal dependent of the parent under New Mexico law for the purposes which your department contemplates.

In answer to your second question, I also call your attention to the above underlined portion of the quotation from Corpus Juris and, basing my opinion upon the absence of any statutory authority in New Mexico and, therefore, upon the general law, it would appear that children are legal dependents in New Mexico until they are 21 years of age unless this relationship is terminated by consent of the parties.

In answer to your third question, I quote from 46 Corpus Juris, Parent and Child, section 1, page 1220:

"The term 'parent and child' is used to indicate the relation existing between husband and wife, or either of them, on the one hand, and their legitimate offspring on the other. The existence of the relation is a question of fact, and is established prima facie where it is shown that the parties lived together, and recognized by their acts the existence of that relation. **Where a step-parent, grandparent, or other person assumes the obligations of the natural parent, the legal rights, duties, and liabilities incident to the parental relation obtain.**"

The answer to your third question would, therefore, appear to be determined under each particular case according to whether or not the grandparent or other persons have assumed the obligations of the natural parent.

If this is found to be the fact, grandchildren under 21 may be the legal dependents of their grandparents in New Mexico.

The answer to your fourth question is based upon the same rule as the answer to your third question and is determined, as stated above, according to the particular facts of each case.

Hoping that the above fully answers your questions, I remain

By HARRY L. BIGBEE,

Asst. Atty. General