

**Opinion No. 44-4626**

December 20, 1944

**BY:** C. C. McCULLOH, Attorney General

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

I have your letter of December 13, 1944 wherein you request an opinion concerning whether the fact that a parent of a legitimate child is an inmate of our state hospital for the insane does away with the necessity of obtaining the consent of that parent to the adoption of her children.

Section 25-207 of the New Mexico 1941 Compilation provides in part as follows:

"A legitimate child can not be adopted without the consent of its parents, if living together; and if legally separated, the consent of the parent having legal custody of the child must be obtained."

The section continues by setting out certain exceptions that are not involved in your question. It is therefore noted that our statutes requires the consent of the natural parents, which must be obtained before an adoption is valid unless either the father or mother has been deprived of civil rights or adjudged guilty of adultery or cruelty, and for such cause divorced and deprived of the custody of the child, or adjudged to be an habitual drunkard, or who has been judicially deprived of the custody of the child on account of cruelty to, abandonment and neglect of, the child or of infamous conduct.

The rule as stated in 2 C. J. S. at page 384 is as follows:

"Where a parent is insane and can neither give consent to the adoption nor be guilty of such conduct as to dispense with the necessity of consent, in the absence of a statute to the contrary, an adoption may not be had."

In view of the foregoing, it is my opinion that the necessity for the consent of a natural parent is not dispensed with because of the insanity of such parent.

By HARRY L. BIGBEE,

Asst. Atty. General