

OPINION
65-223

June 22, 1965 (OPINION)

Mr. Leslie O. Ovre

Executive Director

Public Welfare Board

RE: Parents - Support of Stepchildren - Responsibility

This is in reply to your letter of June 3, 1965, which we received June 19, 1965, relative to the above matter. You state the following facts and question:

"Enclosed is a copy of Senate Bill No. 47, which was passed by the Thirty-ninth Legislative Assembly and which becomes law, effective July 1, 1965.

"We would appreciate your opinion regarding section 2, lines 27 through the end of the sentence on line 30. Specifically, we would like to know whether this provision will be retroactive, since it may have considerable effect on the Aid to Dependent Children program.

"We have interpreted section 14-09-09 of the North Dakota Century Code to mean that a stepfather is liable for the support of his stepchildren, unless he declares an intention not to support at the time of his marriage to the mother. Will Senate Bill No. 47 nullify such declarations and make all stepfathers liable for the support of their stepchildren to the extent of their ability?"

Line 27 through the end of the sentence on line 30 of Senate Bill 47 reads as follows: "In the case of a needy dependent child as defined in section 50-09-01 who lives with his mother and stepfather, the amount of aid granted pursuant to this chapter shall be computed after consideration is given to the income of the stepfather.

* * *."

We would necessarily note the provisions of section 1 of the bill (enacted as section 50-09-08.1 of the North Dakota Century Code): "STEPFATHER'S LIABILITY FOR DEPENDENT CHILD.) Notwithstanding the provisions of section 14-09-09 a stepfather is bound to support his wife's children for the duration of the marriage if without support from such stepfather they would be needy dependent children eligible for aid under the provisions of this chapter. A natural father is not relieved of any legal obligation to support his children by the liability for their support imposed upon their stepfather by this section."

Section 14-09-09 of the North Dakota Century Code, which was apparently not amended by the 1965 Legislative Assembly, provides:

"SUPPORT OF STEPCHILDREN. A husband is not bound to maintain his wife's children by a former husband, but if he receives them into his family and supports them, it is presumed that he does so as a parent and when such is the case, they are not liable to him for their support, nor he to them for their services."

Since Senate Bill 47 provides that notwithstanding the provisions of section 14-09-09 a stepfather is bound to support his wife's children for the duration of the marriage if without support from such stepfather they would be needy dependent children eligible for aid, it would appear such provision would supersede the provisions of section 14-09-09.

Senate Bill 47 was recommended by the Legislative Research Committee. In examining the discussion of the Committee on the Bill (Page 123 of the L.R.C. Report), we find no exemptions made relative to stepfathers which have declared an intention not to support at the time of marriage to the mother.

Section 14-09-09 is, of course, a legislative enactment. If the Legislature had the power to enact such a statute they obviously have the power to enact exceptions to the statute. The matter of legal support and public welfare payments is a matter which we believe is within the province of the Legislature. In researching the statutory provisions we have been unable to find any statutory authority for the so-called declaration of intent not to support stepchildren, (although same is referred to in the L.R.C. Report also). Presumably such a declaration is made to clarify the situation under section 14-09-09. In any event it would not appear such a declaration is binding upon the Legislature, particularly insofar as the disbursement of Aid to Dependent Children is concerned.

We recognize, of course, that the liability of the stepfather for the support of his stepchildren under Senate Bill 47 is not absolute. It arises only in the event the children would be eligible for aid under the Aid to Dependent Children provisions. The natural father is not relieved of any legal obligation to support his children. The county welfare board, in granting aid to dependent children, must consider the stepfather's income, the conditions existing in the individual case and the dependent child's requirements.

It is, however, our opinion that Senate Bill No. 47 would supersede any declaration of an intention not to support stepchildren heretofore made by the stepfather and all stepfathers will be liable for the support of their stepchildren to the extent of their liability as discussed above.

HELGI JOHANNESON

Attorney General