

**OPINION  
76-74**

May 17, 1976 (OPINION)

Mr. James N. Purdy  
Dickey County States Attorney  
Box 697  
Ellendale, ND 58436

Dear Mr. Purdy:

We are in receipt of your letter of April 28, 1976, in which you inquire if a states attorney is obligated, upon the request of the county Social Service Office to bring an action to establish paternity.

This office has consistently held that while a states attorney must furnish, without fee, his legal opinions to county officers on matters pertaining to their duties, he has no obligation to prosecute or defend law suits except as set forth by Section 11-16-01 of the North Dakota Century Code. You are correct in your observation that nothing in Section 11-16-01 specifically sets out any obligation of a states attorney to commence an action to establish paternity.

Prior to July 1, 1975, Chapter 32-36, N.D.C.C., generally set out the obligations of a states attorney regarding paternity. The provisions of that chapter, which were repealed by the 1975 Legislative Assembly, were quasi-criminal in nature. For example, a complaint to a magistrate was set out in Section 32-36-11, a warrant for the defendant's arrest was discussed in Section 32-36-12, a preliminary hearing was required by the magistrate in Section 32-36-13, jail or bail pending trial was set out in Section 32-36-14, and so forth. It is my understanding that both states attorneys and this office did prosecute such paternity actions under this chapter.

However, with the repeal of Section 32-36 (see Chapter 130 of the 1975 Session Laws, Section 28) and the simultaneous adoption of Chapter 14-17 in that same chapter of the 1975 Session Laws, the same now becomes totally a civil action and it would appear that there is no longer any duty of the states attorney, as a public prosecutor under Section 11-16-01, to prosecute such paternity actions.

The county Social Service Office, or others, may retain you to bring any action on their behalf concerning the establishment of paternity, inasmuch as you are not prohibited from engaging in private practice. However, for the reasons set out above, I can find no statutory requirement that this be accomplished by virtue of your public prosecutorial duties.

I hope this answers your inquiry.

Sincerely,

ALLEN I. OLSON

Attorney General