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April 3, 1954
Letter Opinion
No. 54-94-L

Mr. Preble E. Pettit, Commissioner
Department of Public Welfare
State Office Building
Phoenix, Arizona

Re: Responsibility of a stepfather for the
support of his stepchild.

Dear Mr. Pettit:

This is in reply to your letter of March 26, 1954, in which you ask the opinion of this office as to the financial responsibility of a stepfather for support of his stepchildren.

The general rule with regard to the responsibility of stepparent to stepchild is set forth in 39 Am. Jur., Parent and Child, Section 62, p. 699, which reads:

"Stepparents.--It is practically the universal rule that a stepfather, as such, is under no obligation to support the children of his wife by a former husband, but that if he takes the children into his family or under his care in such a way that he places himself in loco parentis, he assumes an obligation to support them, and acquires a correlative right to their services. It is said that the relation of stepfather and stepchild does not, of itself, impose any duty upon one to the other or create any right assertible by one against the other."

The foregoing proposition of law is amplified and supplemented in 67 C.J.S., Parent and Child, Section 79, p. 807, which reads in part:

§ 79. The Relation in General.--A stepparent does not stand in loco parentis to his stepchild merely by reason of such relationship, but may do so where he receives the child into his home and treats it as his own.

A stepparent does not, merely by reason of the relation, stand in loco parentis to the stepchild, although it has been held that a stepmother owes the duty of nurture and maternal advice to her stepchildren, so that rights cannot be predicated on an agreement to perform such duty. However, a stepparent who voluntarily receives the stepchild into the family and treats it as a member thereof stands in the place of the natural parent, and the reciprocal rights, duties and obligations of parent and child subsist, and continue as long as such relation continues. * * *

The test for determination of the stepfather's responsibility is set forth in the same section as follows:

"Intention of stepparent. Whether a stepparent has admitted a stepchild into his family and treated it as a member thereof, so as to create the reciprocal rights and obligations of natural parent and child, is to a great extent a question of intention, which should not lightly or hastily be inferred.* * *

The question of the termination of the stepfather's obligation to support his stepchildren is treated in 67 C.J.S., Parent and Child, Section 80b (1), p. 808, which reads in pertinent part as follows:

"Termination of obligation. The obligation assumed by a stepparent to support a stepchild is not a continuing one, but may be abandoned at any time, and ordinarily ceases with the divorce of the stepparent; and it seems that the obligation ceases with the death of the mother, where the child has property of its own." (Italics underscored)

The Arizona Supreme Court has followed and applied the above quoted general rules of law in three cases dealing with relationship of stepfather and stepchildren. The first of these cases was the ESTATE OF HARRIS, (1914) 16 Ariz. 1, 140 P. 825, in which the Court stated at page 4:

"As is said in the note to National Valley Bank v. Hancock, 57-L.R.A. 729 (100 Va. 101, 93 Am. St. Rep. 933, 40 S.E. 611): 'The universal rule is that a stepfather, as such, is not under obligation to support the

children of his wife by a former husband, but that, if he takes the children into his family or under his care in such a way that he places himself in loco parentis, he assumes an obligation to support them, and acquires a correlative right to their services.'

In Sharp v. Cropsey, 11 Barb. (N.Y.) 224, it is said: 'The stepfather is not bound to support his stepchildren, nor the latter to render him any services; but if he maintains them, or they labor for him, they will be deemed to have dealt with each other in the character of parent and child, and not as strangers, without obligation on the part of the father to pay for his children's services, or on the part of the children to remunerate their father for their support.' See National Valley Bank v. Hancock, *supra*, and Bartley v. Richtmyer, 53 Am. Dec. 338 (4 N.Y. 38), for collection of cases on this point." (Italics underscored)

The principal of the HARRIS case was applied in the case of MAGMA COPPER CO. v. ALDRETE (1950) 70 Ariz. 48, 216 P.2d 392, wherein the Court restated that a stepfather has no legal duty to support a stepchild.

The final case in Arizona dealing with the instant question was FRANKLIN v. FRANKLIN (1953) 75 Ariz. 151, 253 P.2d 337. The Court in this case discussed the obligation of a stepfather to support his stepchild as follows, at page 340:

"With regard to the duty of a grandparent to support a grandchild where the former stands in loco parentis to the latter, the law is well settled that the grandparent is obligated to provide support for the grandchild. 67 C.J.S., Parent and Child, § 73(b), page 806. This same rule applies where a stepfather has received a child into his home and treats it as his own. 67 C.J.S., Parent and Child, § 79 page 807; Estate of Harris, 16 Ariz. 1, 140 P. 825. However, in the case of State ex rel. Hardesty v. Sparks, 28 Tenn. App. 329, 190 S.W. 2d 302, the Tennessee Court held that a stepfather's obligations could be 'cast off at any time.' See also Wood v. Wood, 166 Ga. 519, 143 S.E. 770; Magma Copper Co. v. Aldrete, 70 Ariz. 48, 216 P. 2d 392."

A summary of the foregoing textbook in case law reveals the following principles with regard to the obligation of a stepparent to support a stepchild.

1. A stepfather is under no legal or natural duty to support his stepchildren.

2. A stepfather may, by taking a stepchild in as a member of his family, assume the relationship of loco parentis with the concomitant rights and duties thereof.

3. Whether a stepfather has assumed the relationship of loco parentis is largely a matter of intention which should not lightly be inferred.

4. A stepfather's assumption of the relationship of loco parentis may be abandoned at any time.

The precise question raised in your letter is whether an affidavit by a prospective stepfather that he is unwilling and unable to assume financial responsibility for his prospective stepchildren, relieves him of the obligation of their support. It is the opinion of the Department of Law, after an application of the above four principals, that such an affidavit would definitely indicate an intention not to assume the relationship of loco parentis. In view of this manifestation of intent, it follows that the prospective stepfather, after his marriage, will be under no obligation to support the children of his prospective wife.

If we may be of any further assistance to you, please do not hesitate to call upon us.

Very truly yours,

R. DEAN BURCH
Special Assistant to
The Attorney General

RDB:bhh