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STATE CAPITOL
PHOENIX, ARIZONA

June 13, 1966

DEPARTMENT OF LAW OPINION NO. 66-16 (R-81)

REQUESTED BY: Mr. John O. Graham, Commissioner
Arizona State Department of Welfare

- QUESTIONS:
1. Must the State Department of Welfare pay or submit a claim for payment of per diem costs of children in county shelter care facilities pursuant to A.R.S. § 8-227(B), as amended in 1966, when no money is appropriated by the Legislature for this purpose?
 2. How should the per diem costs contemplated by A.R.S. § 8-227(B) be computed?
 3. In A.R.S. § 8-227(B), does the phrase "in the absence of parents or legal guardian" mean physical absence from the home, county or state, or does it mean the non-existence of a parent or legal guardian?

- ANSWERS:
1. No, payment is subject to the availability of appropriated funds.
 2. See body of opinion.
 3. Either.

QUESTION NO. 1: A.R.S. § 8-226 and § 8-227 were amended by Chapter 31, Laws of 1966, in order to provide for separate

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shelter care facilities for dependent and neglected children in counties of more than 200,000 inhabitants. Heretofore, dependent and neglected children were sometimes housed with delinquent children in the county detention home pending a determination by the court as to the care and custody of the dependent and neglected children. Prior to the enactment of Chapter 31, the full financial burden of temporary care of these children pending the court's hearing and order has fallen on the various counties.

Chapter 31 amends A.R.S. § 8-226 by adding subsection C which reads as follows:

"C. In counties of the first class, having a population of more than two hundred thousand, the board of supervisors shall maintain, lease or contract for shelter care facilities separate and apart from its detention home to house the neglected and dependent child prior to hearing."

A.R.S. § 8-227 is amended by adding subsection B which reads as follows:

"B. The juvenile court shall supervise the shelter care facilities and shall appoint persons necessary to staff such facilities. The court shall appoint a visiting board of three members to serve without pay to inspect the shelter care facilities not less than once every ninety days. The visiting board shall make a report to the court of the conditions and operation of the shelter care facilities, with such recommendations as it deems advisable. The shelter care facilities shall be licensed by the state department of health. In the absence of

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parents or legal guardian, per diem costs shall be assumed by the state department of public welfare."

The first question to be answered then is whether there is a legislative appropriation covering the per diem expenses to be imposed on the State Department of Public Welfare by virtue of A.R.S. § 8-227(B). No special appropriation was made for the purpose of implementing A.R.S. § 8-227(B). The Department of Public Welfare, in preparing its budget request prior to the 1966 legislative session, did not take into account expenditures for the per diem payments to counties for shelter care facilities.

One of the duties of the Department of Public Welfare is to "Administer child welfare activities, including. . .care of dependent, neglected and delinquent children in foster family homes or in institutions, especially children placed for adoption." (A.R.S. § 46-134[3]).

The regular Department of Public Welfare line item for foster home care in the general appropriation bill has been used in the past by the Department to pay for the care of dependent, neglected and delinquent children in private homes or institutions, pursuant to order of the juvenile court under A.R.S. § 8-231, or in a few instances, without a court order of commitment to the Department of Public Welfare.

An appropriation for a stated purpose or object may be used for any matter reasonably included within that purpose or object. (O'Neil v. Goldenetz, 53 Ariz. 51, 85 P.2d 705 [1939]). The term "foster home care," as used in the general appropriation bill, has been interpreted in years past by the Department of Public Welfare as including any "child welfare agency or foster home" receiving payments from the Department for care and maintenance. This interpretation is in spite of the fact that "foster home" has a more restrictive meaning in the licensing and certification provisions of A.R.S. § 8-501, et seq. Using the custom-

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any meaning of the appropriation line item applied heretofore by the Department, it is our opinion that per diem payments to counties for temporary care of children in county shelter care facilities may be made out of the general appropriation item for foster home care. At such time as the foster home care appropriation is exhausted, no additional payments for either per diem or other foster home payments may be made. A.R.S. § 46-138 provides in part as follows:

"The total amount which may be expended in any fiscal year by the state department for each of the objects and purposes provided by this title shall in no event exceed the amount appropriated in the general appropriation bill for each such object or purpose and any funds granted by the federal government for such object or purpose, together with additional amounts appropriated therefor by any special legislative appropriation bill other than § 42-1341. . . ."

QUESTION NO. 2: The second question is how should the per diem costs specified in A.R.S. § 8-227(B) be computed. The provision gives no guide lines as to what items may properly be included by the counties in arriving at a per diem cost. The language employed is merely, "In the absence of parents or legal guardian, per diem costs shall be assumed by the state department of public welfare."

"Per diem" is defined in Webster's New International Dictionary, 2d Ed., as "By the day; substantively, chiefly U.S., an allowance or amount of so much by the day."

The Legislature established no guide lines for use in computing the per diem. There are no Arizona cases defining the phrase. We can only conclude that any reasonable method of computing a per diem per capita cost for care and maintenance of the

children in the shelter care homes would be acceptable, if it is in accordance with sound accounting principles.

QUESTION NO. 3: The third question is:

"Does the phrase 'in the absence of parents or legal guardian' mean physical absence from the home, county or state, or does it mean the non-existence of a parent or legal guardian?"

The word "absent" or "absence" has been defined by the courts in many different ways, depending on the context within which the word is employed. As used in the question before us, absence is used in connection with the assumption of costs by the state for care and maintenance of dependent and neglected children.

"Absence" is defined in Webster's New International Dictionary, 2d Ed., as:

"State of being absent or withdrawn from a place or from companionship; failure to be present; want; lack; withdrawal; as, the absence of witnesses. . ."

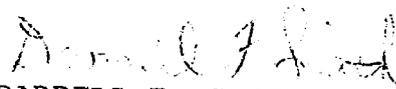
In the context of the statute in question, it is our opinion that absence of parents or legal guardian means either the non-existence or lack of parents or legal guardian or the physical absence of either the parents or the guardian to such distance as to prevent communication or contact for purposes of determining financial ability to pay the costs. On the other hand, the statute does not purport to make the State Department of Public Welfare liable for shelter care per diem costs for children who have parents or a guardian present and available

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even though such parents or guardian are financially unable to pay the costs themselves.

Respectfully submitted,


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