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BRUCE E. BABBITT  
ATTORNEY GENERAL

April 1, 1975

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ARIZONA ATTORNEY GENERAL

James L. Schamadan, M.D.  
Acting Director  
Arizona Department of Economic Security  
1717 West Jefferson  
Phoenix, Arizona 85007

Re: Licensing of Pima County Group Homes

Dear Dr. Schamadan:

We have reviewed Mr. Mayo's letter of March 5, 1975, concerning the licensing and funding of group foster homes to be constructed and operated by the Pima County Superior Court. Further, we have reviewed the legal memos mentioned in his letter dated September 16, 1974 and December 27, 1974. We find both memos to be in order and not in conflict with the other since they discuss the application of law to two different factual situations. Accordingly, we do not agree with your concluding paragraph for the reasons contained in the legal memo of Assistant Attorney General Harold J. Merkow dated September 16, 1974, which is set forth in Haec Verba:

QUESTIONS:

1. May the Department of Economic Security license group foster homes owned and operated by the Pima County Juvenile Court Center?
2. May the Department of Economic Security make payment to such a licensed home for the cost of care of children?

The Pima County Board of Supervisors is planning to construct three cottages adjacent to the Pima County Juvenile Court Center for use as a detention facility and for use as a foster home facility. The Board has indicated that the three cottages will accommodate a total of twenty-eight children.

The questions presented request an answer as to whether these cottages will constitute a state operated facility or a detention facility so as to remove them from the scope of ARS 8-501 (1) which states that a child welfare agency does not include detention centers or state operated facilities.

April 1, 1975

From the factual situation presented it appears that one of the planned cottages will be utilized for detention of children awaiting a hearing on charges of delinquency or incorrigibility. The other two cottages presumably will be utilized as a foster home situation for children already adjudicated delinquent or incorrigible. Parenthetically, this situation excludes from consideration the element of dependent children or temporary shelter care for children believed to be dependent or incorrigible children.

It is unknown from the information provided whether it is possible to consider the detention cottage separately from the foster cottages. If it is not possible to sever the detention cottage, then the entire project must be considered a detention facility and would fall outside of ARS 8-501(1).

Assuming, however, that a severance is possible, the question becomes whether the two remaining cottages which will be used as foster homes may be licensed as group foster homes or whether they are to be considered a state operated institution.

The elemental criteria used for determining whether an institution is "state operated" are whether the State plays an active role in administering and/or providing personnel for the institution. In the instant problem, the State does neither. The State's obligation extends only so far as providing the cost of care to those who have been adjudicated delinquent or incorrigible.

Since there are no disqualifications from becoming licensed, assuming that the cottages meet the requirements otherwise mandated, the cottages contemplated by Pima County may obtain a license to operate the cottages as group foster homes.

The Department of Economic Security is obligated to pay the cost of care of children adjudicated delinquent or incorrigible, ARS 46-134(2)(c). As the proposed cottages are not considered state institutions, payment of the cost of care would be in order.

Sincerely,

BRUCE E. BABBITT  
The Attorney General

BEB:MSF:DK