

February 24, 1947

Miss Ann M. Bracken
Director, Child Welfare Division
State Dept. Social Security and Welfare
39 North Sixth Avenue
Phoenix, Arizona

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ARIZONA ATTORNEY GENERAL

Dear Miss Bracken:

In your letter of 27 January 1947 you request an opinion as to whether or not the State Department of Social Security and Welfare is "responsible for costs for advertising when this agency files neglect or dependency charges and the parents' address is unknown."

The statutes must be examined to answer this question. Section 34-123, A.C.A. 1939, a law apparently germane, which provides that no court fees are to be charged to the state, its officers, or departments, is not applicable, because this is not a question of paying statutory fees into Court as a condition precedent to suit. Construing this section in *Hammons v. Waite*, 30 Ariz. at page 395, the Court said:

"We think the real purpose of chapter 22 was to prevent such a condition, and the phrase 'court fees and costs' applies only to payments by the specified governmental bodies and officials into the court or to the officers thereof as ordinary litigants make such payments."

The answer, in our opinion, is provided by the spirit and terms of Article 1, Chapter 46, as amended by Chapter 80, Laws of 1941, particularly Section 46-118, which vests broad jurisdiction over juveniles in the Superior Court, and Section 46-122, which deals with the procedure the Superior Court must follow in juvenile cases. Pertinent paragraphs of Section 46-122, *supra*, provide:

"(a) Any person may, and any peace officer or probation officer shall, give to the juvenile court any information in his possession that a child is

delinquent, neglected, or dependent. Thereupon the court shall make preliminary inquiry to determine whether the interest of the public or of the child requires further action. Whenever practicable, the inquiry shall include a preliminary investigation of the home and environment of the child, his previous history, his physical, mental, and moral well-being, and the circumstances of the offense committed, if any. If the court determines that formal jurisdiction should be acquired, it shall authorize a petition to be filed invoking its jurisdiction in such form as it may prescribe. The powers of the court may be exercised upon the filing of a petition by any resident of the county, or any peace officer or probation officer, alleging that a child is neglected, dependent, or delinquent, and needs the care and protection of the court, without alleging the facts.

(c) When the jurisdiction of the juvenile court has attached, the court may make all necessary orders for compelling the production of the child and the attendance of the parent, guardian, and other persons having custody or control of the child. If a person other than the parent or guardian of the child be cited to appear, the parent or guardian, or both, shall be notified of the pendency of the case and of the time and place appointed by personal service, except as otherwise provided in this section.

(d) The clerk of the court shall issue all necessary subpoenas and process to compel the attendance of necessary witnesses at a hearing involving a child. The process may be served by any officer the court, probation officer, or officer authorized to serve process in a civil action. No attendance or mileage fee shall be paid any such witness, unless expressly authorized by the judge, in which event the fees allowed shall be as prescribed in civil actions. If the judge is satisfied that it is impracticable to serve personally a citation or other notice to appear, he may order service by registered mail or by publication, or both, and service in

either manner twenty-four (24) hours prior to the time fixed in the citation for the return thereof, if so ordered by the judge, shall be sufficient."

Thus, complete power over the disposition of the child and manner of providing for its welfare is vested in the court, an historic duty resting in the judiciary. 57 Am. L. Rev. 65. The initial step is information given to the court by an interested party, such as the State Department of Social Security and Welfare. But the formal machinery affecting legal rights is not started until the court, after preliminary examination, authorizes the filing of a petition (paragraph (a), supra). Further, the court makes all necessary orders regarding service of process, attendance of the child and the parents, etc., (paragraph (c)). Lastly, it is provided in paragraph (d) that if personal service is impracticable, the court may order service by publication. Since the Court has not only the initiative in all these matters but final discretion, it follows that an expense ordered under the above power must be satisfied by the county in which the court sits. Otherwise, the court will be hamstrung by a possible lack of interest and financial resources on the part of outside bodies, and could, in the case of service by advertising, find itself unable to gain the necessary jurisdiction of parents or custodian. *Cinquefield v. Valentine*, 159 Miss. 144, 132 So. 91.

We are, therefore, of the opinion that the advertising expense you mention is one to be borne by the county and not the Department of Social Security and Welfare.

Very truly yours,

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Attorney General

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