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ARIZONA ATTORNEY GENERAL

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Op. No. 52-168

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Mr. Robert C. Bohannon, Jr.
Commissioner
Department of Public Welfare
State Office Building
Phoenix, Arizona

N.B.

Dear Mr. Bohannon:

We have your letter of May 19 which reads as follows:

"This Office respectfully requests
your opinion on the following matter:

Title IV, Section 403A, of the Social Security Act, provides a maximum grant under which the Federal Government will participate in the Aid to Dependent Children program, of \$27.00 per month for the first child, \$27.00 per month for the relative with whom the dependent child lives, and \$18.00 per month for each additional child.

ACA 1939, Section 70-404, as amended, simply provides for a maximum of \$54.00 per month for a family containing one dependent child, and \$18.00 per month for each additional child.

In a few cases, it is found necessary to give the Aid to Dependent Children Grant to a relative, within the definition, who is not himself in need, i.e., an aunt who may be taking care of and providing for her niece in the role of foster mother. In such a case, Federal matching stops at \$27.00 a month for the first child.

The question for your determination is whether or not this Department is required to pay State funds, above the \$27.00 per month that the Federal Government will match, up to \$54.00 per month for the first child, according to his budgetary needs, as would appear to be required by the above-cited section of the Arizona Code, or whether the Department is required to limit payment of both Federal and State funds to the \$27.00 per month for the first child, which the Federal Government will match under the Section of the Social Security Act cited supra."

As stated in your letter, Section 70-404 ACA 1939, as amended, is the section of our Code which prescribes the amount of assistance a family receiving grants of Aid to Dependent Children may obtain. This section provides:

"Amount of assistance.--In determining the amount of assistance which a recipient may receive, it shall be the duty of the state and county departments to consider and take into account living conditions and all facts and circumstances surrounding the applicant or recipient, including his earning capacity, income and resources, from whatever source received; the amount of assistance when added to all other income resources, support and maintenance shall provide such person with a reasonable subsistence compatible with the mode of life to which the recipient is accustomed. In each case an assistance plan shall be adopted based upon the foregoing.

In no event, however, shall the total amount of assistance paid under the provisions of this article to any recipient exceed the sum of:

Fifty-four dollars (\$54.00) for a family containing one dependent child, and eighteen dollars (\$18.00) for each additional

dependent child; provided, however, in no event shall any one family receive assistance in excess of one hundred fifty dollars (\$150.00) per month."

The first paragraph of the quoted section directs the state and county offices to adopt a budget for the recipient. The second and third paragraphs limit the amount that can be paid to the recipient irrespective of the budget. If we construe this section alone, without reference to the Federal Social Security Act, it clearly appears that a family could properly receive \$54.00 per month in grants of Aid to Dependent Children if the budget of the dependent child was in that amount. For example, assuming a hypothetical situation wherein a dependent child is living with a self-supporting aunt and the budget for the child, by itself, is determined to be \$54.00 per month, we believe the child, pursuant to this section, would clearly be entitled to the \$54.00.

As you stated in your letter, the Federal Social Security Act breaks down the \$54.00 for a family of one adult and one child, designating \$27.00 for the child and \$27.00 for the relative. If possible, the Arizona statute should be construed together with the Federal Act. In fact, Section 7 of Chapter 70 of the Code provides that the Federal Act shall control should the State Act be inconsistent with the Federal. However, in this instance there is no inconsistency between the Federal and State Acts. The Federal Act merely states that it will not participate in expenditures in excess of \$27.00 for the first child and \$27.00 for the child's relative. It does not purport to prohibit a state from paying in excess of \$27.00 for the first child. If Section 70-404 were ambiguous then the breakdown of the \$54.00 prescribed in the Federal Act would be helpful in determining how much the first child could receive; however, it is our opinion that the language used in this section is clear and unambiguous. Thus, a family containing one dependent child may receive \$54.00 per month if the budgetary needs of such child are as much as \$54.00.

Very truly yours,

FRED O. WILSON
Attorney General

KENT A. BLAKE
Assistant Attorney General

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