

Ted Wright



DEPARTMENT OF LAW
OFFICE OF THE
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BRUCE E. BABBITT
ATTORNEY GENERAL

January 10, 1978

Mr. E. D. Crowley, Acting Director
State Department of Economic Security
P. O. Box 6123
Phoenix, Arizona 85005

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ARIZONA ATTORNEY GENERAL
REV 78 5 (72)

Dear Mr. Crowley:

This letter is in response to your letter to this office dated November 17, 1977, requesting our opinion concerning whether it is proper for the State Department of Economic Security ("DES") to place a person in the home of children who have been temporarily abandoned when the consent of the children's parents has not been obtained. You would prefer to do this, rather than removing the children from their home for placement in a shelter or foster home, to lessen the trauma to the children. For the reason hereafter set forth, it is our opinion that DES may not do so.

There is no statutory authority which authorizes DES to place an adult in the home of the children who have been temporarily abandoned where the parents' consent has not been obtained. Because of this lack of authority, that placement may well be considered a civil trespass, giving rise to liability against the State. Lee v. Johnson, 70 Ariz. 122, 216 P.2d 722 (1950); England v. Ally Ong Hing, 105 Ariz. 65, 74, 459 P.2d 498 (1969). As a consequence, the placement is not permissible.*

Sincerely yours,

BRUCE E. BABBITT
Attorney General

ASK:kld

* More than one state has legislation which authorizes this type of placement. See, for example, Tenn. Code Ann. § 37-229(b); and Ill. Pub. Act 80-565, § 1 (Eff. Sept. 8, 1977), amending Ill. Ann. Stat., Ch. 23, § 5005 (Smith-Hurd). You may wish to obtain similar Arizona legislation. If you do, consideration should be given to including in that legislation a provision authorizing the Department (continued on next page)

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to contract with and pay the persons performing the "caretaker" service for more than 8 hours of work per day. Cf. Ariz. Const., Art. XVIII, § 1; A.R.S. § 23-391; and State v. Boykin, 109 Ariz. 289, 508 P.2d 1151 (1973).