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**ARIZONA ATTORNEY GENERAL**

September 15, 1953  
Letter Opinion No. 53-109-L

Mr. Preble E. Pettit, Commissioner  
Department of Public Welfare  
State Office Building  
Phoenix, Arizona

- Re: (1) Deprivation of parental support  
of Short Creek children;
- (2) Nonsupport action against fathers  
of Short Creek children.

Dear Sir:

In response to your inquiry dated August 31, 1953, we wish to answer the following two questions:

(1) Does the expression "continued absence" found in Section 70-101, A.C.A. 1939, as amended, apply to the fathers of Short Creek children, thereby making them dependent children within the meaning of that statute, if all the other provisions of the law are complied with? ✓

It is the opinion of this office that the answer to that question is in the affirmative, where the father is being criminally prosecuted and the mother and children are living away from their Short Creek home under the supervision of the Welfare Department. When the criminal charges against a father have been disposed of and if one or more of them should be free and capable of providing for his children, the answer to this question might change, but at the present time the situation of the fathers is such that a continued absence can be expected until the courts dispose of the cases.

The absence of the fathers of these children is a continuing one. The absence has already lasted a matter of several weeks and it might easily be a number of months before the parents are in a position to assume a normal place in society and thereby make proper provision for these children.

(2) Will a nonsupport action lie against the fathers of these children? Under Section 70-405, A.C.A. 1939, as amended, ✓

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if a dependent child has a father or mother legally responsible for his support and who is reasonably able to support him, but who fails to provide such support, then action may be brought in the county wherein the aid was granted to recover for the state whatever portion of the assistance granted which the relative is able to pay. The juvenile court hearings concerning the Short Creek children have now been completed and it is our understanding the juvenile courts have passed on the question of the ability of the father to support the children. If the juvenile court has ordered support by the father of the children, the amount so ordered should be considered by the welfare office as a determination by the court as to the amount the father should contribute in each case. If the court has not ordered such support the welfare department should consider that fact sufficient indication of the inability of a father to support his children at this time.

Yours very truly,

RONALD M. BOND  
Special Assistant to  
the Attorney General

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