

**Opinion No. 54-5988**

July 13, 1954

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Richard E. Strahlem, Director Department of Public Welfare Santa Fe, New Mexico

{\*444} In your letter dated July 6, 1954, you enclosed correspondence pertaining to Nestor Padilla, an alleged dependent and neglected child, San Miguel Civil, No. 15164-B.

This child has been awarded to the custody of the Welfare Department and you desire an opinion on the following questions:

1. Does the award of custody of a dependent and neglected child imply authority on the part of the Welfare Department to place the child for adoption?

It is noted that the Assistant District Attorney and the District Judge of San Miguel County are of the opinion that placement for adoption does not have the effect of divesting the Court of its jurisdiction over the neglected and dependent child and before adoption is completed, proceedings must be had in some Court for that purpose. We agree with this conclusion and it is our opinion that you have authority to place for adoption a neglected and dependent child awarded to your custody without any further order of the Court in the dependent and neglected child proceedings.

In your second question you refer to the requirement in § 25-226, 1941 Compilation, p.s., regarding adoption of children under one year of age, in which it is provided as follows:

"No final decree of adoption shall be entered until the child shall have actually resided in the proposed adoptive home six (6) months or more preceding the entry of such decree and if the child is under one (1) year of age, until it shall have obtained the age of one (1) year; except that upon motion and for {\*445} good cause shown, or where petitioner is a non-resident, the Court may make such other provision as to residence as may be most convenient and proper."

You are wondering whether the provision regarding residence until the child reaches one (1) year of age is mandatory?

Under the language of the statute, this residence requirement is mandatory except where upon a motion and good cause shown, or where the petitioner is a non-resident, in which event the Court, pursuant to the exception, may make some other provision as to the residence requirement until a child reaches one (1) year of age.

By: C. C. McCulloh

Assist. Attorney General