Opinion No. 57-174

July 19, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Robert F. Pyatt, Assistant Attorney General

TO: Mr. Manuel A. Armijo, Director, New Mexico Veterans' Service Commission, Post Office Box 1723, Santa Fe, New Mexico

QUESTIONS

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Is the attached application for compensation, executed by an individual, a sufficient instrument of recognition as contemplated by § 29-1-18, N.M.S.A., 1953 Compilation?

CONCLUSION

Yes.

OPINION

ANALYSIS

Section 29-1-18, New Mexico Statutes Annotated, 1953 Compilation, reads as follows:

"Illegitimate children shall inherit from the mother and the mother from the children; they shall inherit from the father whenever they have been recognized by him as his children, in writing, by an instrument signed by the reputed father and must be such as to show upon its face that it was so signed with the intent of recognizing such children as heirs; Provided, that in event of loss or destruction of such an instrument, declarations of deceased persons shall be admissable to prove such loss or destruction as well as the existence and contents thereof and, whether or not lost or destroyed, and the genuineness of such an instrument, but such declarations shall be corroborated by proof of general and notorious recognition of such children by the father."

Attached to this opinion is an application for compensation by a veteran who executed the application on December 13, 1955, and who died, a legal resident of New Mexico, August 25, 1956, leaving surviving seven children, whom you state had been conclusively determined to be illegitimate.

The pertinent part of the application beneath which the names of the seven children are listed reads as follows:

"List each living child of the veteran who is under 18 years old and unmarried, or over 18 and under 21 and attending school, or any child of any age who is insane, idiotic, or otherwise permanently helpless."

This raises the question as to whether such is a sufficient instrument, showing upon its face that it was signed with the intention of recognizing such children as heirs.

We believe that it is impossible to give the Statute a literal interpretation according to its precise terms, inasmuch as the phrase "children as heirs" does not mean exactly what it says for the reason that no living person can have heirs. Giving the Statute a practical application, we believe that it simply requires an instrument which recognizes the illegitimate children to be those of the party executing the instrument. One legal result of recognizing persons to be children is that they may possibly be heirs in the future. Our reasoning is further strengthened by the case of State vs. Chavez, 42 N.M. 469, 82 P.2d 900, holding that what is now § 29-1-18, supra, is a remedial statute, and is thus to be liberally construed. While the precise problem involved in State vs. Chavez, supra, is different than that presented here, we believe the holding of that case is equally applicable to the instant problem.

Giving the statute a liberal construction, and reading it in a practical sense, it is our view that the attached instrument executed by the father is a sufficient instrument of recognition within the purview of § 29-1-18, supra.