

Opinion No. 41-3760

April 4, 1941

BY: EDWARD P. CHASE, Attorney General

TO: Mrs. Jennie M. Kirby Director, Department of Public Welfare Santa Fe, New Mexico

{*55} This will acknowledge receipt of your letter of the 2nd wherein you inquire first if there is any legislation in New Mexico making it {*56} unlawful for a physician to collect a fee from adopting parents for the placement of an illegitimate child for adoption.

We find no statutory prohibition to such a practice. In that there is no such statutory prohibition, such a practice is one which the conscience of the doctor and perhaps the conscience and frugality of the adopting parents must govern.

You further inquire, in your letter of the 2nd, if in such a situation the doctor is not acting as an agency providing services for dependent children and can therefore be required to file with the Department of Public Welfare a report concerning such action on his part.

Chapter 18, Section 4, paragraph 1, New Mexico Session Laws of 1937, reads as follows to-wit:

"The State Department shall * * * (1) Inspect and inquire reports from all private institutions, boarding homes and agencies, providing assistance, care or other direct services to children who are crippled, neglected, delinquent or dependent, the aged, blind, feeble-minded and other dependent persons."

If the doctor can be required to file any report it must be by virtue of the above statute.

We do not believe it was the intention of the Legislature to compel physicians to make any such report when they, either in good or bad faith, are instrumental in finding foster parents for illegitimate children. We must not lose sight of the fact also that no illegitimate child can be legally adopted without the consent of the mother as provided by Section 2-105, New Mexico Statutes, Annotated, 1929 Compilation, much less taken from her without her consent.

In addition, an illegitimate as well as a legitimate child is "dependent" insofar as their physical prowess is concerned, but it cannot be assumed that only the poor will bring forth illegitimate children. Hence, under the above statute, you could no sooner compel a physician to file a report thereunder, who might find foster parents for an illegitimate child, than you could compel any other individual to file such a report who might find foster parents for a legitimate child.

The law assumes that either real or foster parents will take proper care of children, legitimate or illegitimate. If they do not, the child or children can be made wards of the

court and proper surroundings found for them. This assumption and remedy is apparently the only legal redress afforded under the laws of New Mexico in such a case as you state at the present time.

Trusting that the foregoing sufficiently answers your inquiries, I remain,

By HOWARD F. HOUK,

Asst. Atty. General