WELFARE, DEPARTMENT OF PUBLIC: Responsibility for support of wife by husband; of husband by wife; of child by parents; of parents by child, including stepchild and foster child.

May 13, 1936.

Honorable Wayne Coy,
Acting Administrator,
State Department of
Public Welfare,
Indianapolis, Indiana.

Dear Sir:

I have before me your request for an official opinion in answer to the following questions:

"1. Is the husband responsible for his wife's aged parents?

"2. Is the wife responsible for her husband's support?

"3. Is a stepchild responsible for the support of his aged foster parents?

"4. Is a foster child, who is no relation but who was taken into the home and raised, responsible for the support of foster parents?

"5. Is an adopted child responsible for the support of parents?

"6. Is the wife responsible for the support of her husband's aged parents?

"7. If a wife performs the duties of a housewife for her husband and is without income, is there any obligation for her husband to give her sufficient money to support her aged parents?"

Your questions, doubtless, are intended to refer to legal liability rather than simply moral obligations, and in answering them it will be so assumed. Your first question is, "Is the husband responsible for his wife's aged parents?" This question may be considered along with your sixth question, which is, "Is the wife responsible for the support of her husband's aged parents?" In the absence of a statute on the subject I think it must be clear that there is no common law liability in either of the above cases. In this connection I desire to refer to two Indiana cases which go directly to your sixth
question but which by analogy would also apply to your first question. In the case of Hamilton v. Estate of Hamilton, 26 Ind. App. at page 114, the question was whether a wife could recover from the estate of her husband's father for services rendered to said husband's father in the home and while said husband's father was suffering from a broken leg. After quoting from the case of Arnold vs. Rifner, 16 Ind. App. 442, the court said on page 121, "So in the case before us appellant did not owe to decedent on account of her marital relations any family or legal duty." In that case the court had under consideration the effect of the provisions of Section 38-103 of Burns Indiana Statutes Annotated, 1933, which provides that "A married woman may carry on any trade or business and perform any labor or service on her sole and separate account," and that "the earnings and profits of any married woman accruing from her trade, business, services or labor, other than labor for her husband or family, shall be her sole and separate property." The same was held in the recent case of Offenbacker v. Offenbacker, 98 Ind. App. 689, where the court said on page 694, referring to a similar set of facts, "such services as were rendered by the appellee to the decedent in the instant case did not grow out of any legal duty she owed to the decedent. The decedent was a stranger to the appellee under the law." I do not find any statute applicable to the cases presented in the above questions one and six which changes the common law rule. The use of the term parent in Section 10-1410 of Burns Indiana Statutes Annotated, 1933, I think clearly refers to blood parents except as hereinafter stated in answer to your question number five. Your questions number one and six are both answered in the negative.

Your third and fourth questions are also answered in the negative. There is no common law liability of a stepchild or a foster child to support the foster parent separate and apart from contract, which, of course, would change the situation. So far as the statute on the subject is concerned, Section 10-1410 Burns Indiana Statutes Annotated, 1933, it is in derogation of the common law and under well recognized rules would be strictly construed. I think, therefore, as stated in another connection, that the relationship referred to is a blood relationship. There is just one exception to the last statement above which goes to the fifth question, namely, "Is an adopted
child responsible for the support of parents?” An adopted child, under the adoption statute, assumes the same relationship to the adopting parent and is entitled to the same benefits from the adopted parent as a natural child. Because of the correlative responsibilities and duties growing out of the adoption statutes I think an adopted child would be responsible for the support of his adopting parents under section 10-1410 supra. Accordingly your fifth question is answered in the affirmative.

There remains for consideration your second question, which is, “Is the wife responsible for her husband’s support?” This question cannot be answered fully with a categorical answer. Prior to the enactment of Section 38-103 supra the husband was entitled to all of the earnings of the wife, and that probably accounts for the fact that there was no legal liability at common law for the wife to support the husband, and in my opinion the enactment of the above statute did not change the rule so as to require the wife to support her husband out of her earnings or property. The duty of the wife in the marital relation to perform the ordinary household duties for the husband for which she receives no particular compensation, in the absence of a contract other than her own support is still in effect.

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INSURANCE DIVISION: Theater bank night guarantee constitutes insurance.  

May 13, 1936.

Honorable Harry E. McClain,  
Insurance Commissioner,  
Indianapolis, Indiana.

Dear Sir:

I have at hand your letter of April 18, 1936, which reads in part as follows:

“We attach hereto a theater bank night guarantee certificate which purports to reimburse the holder thereof should they be absent from the theater on the date of the certificate, and therefore, by such absence fail to receive the award made by the theater.

“Will you please advise us as to whether this con-