

1961 O. A. G.

OFFICIAL OPINION NO. 41

August 23, 1961

Honorable James S. Hunter  
State Representative  
3910 Carey Street  
East Chicago, Indiana

Dear Representative Hunter:

This is in response to your letter requesting my Official Opinion in answer to the problem therein stated, which reads, in part, as follows:

“I would appreciate receiving from you an official opinion concerning the possibility of the State Department of Public Welfare participating in the extended aid to dependent children program without a need for change in legislation. I am of the opinion that the State Department of Public Welfare can participate in the 1961 amendment to Title IV of the Social Security Act (extension of ADC to needy children of unemployed parents) by rule and regulation. \* \* \*”

The 1961 amendment to Title IV of the Social Security Act to which your letter refers is Public Law 87-31, approved March 8, 1961, as found in U. S. Code Congressional and Administrative News, 1961, No. 8, p. 1584. The title of this congressional enactment is:

“An Act to amend title IV of the Social Security Act to authorize Federal financial participation in aid to dependent children of unemployed parents, and for other purposes.”

This enactment amends Title IV of the Social Security Act in several particulars, the one to which your letter has reference being the addition of a new section designated Section 407, which provides as follows:

“DEPENDENT CHILDREN OF UNEMPLOYED PARENTS

“Sec. 407. Effective for the period beginning May 1, 1961, and ending with the close of June 30, 1962, the

## OPINION 41

term "dependent child" shall, notwithstanding section 406 (a), include a needy child under the age of eighteen who has been deprived of parental support or care by reason of the unemployment (as defined by the State) of a parent and who is living with any of the relatives specified in section 406 (a) in a place of residence maintained by one or more of such relatives as his (or their) own home, but only with respect to a State whose State plan approved under section 402—

“(1) includes aid for any such child, and

“(2) includes—

“(A) provision for entering into cooperative arrangements with the system of public employment offices in the State looking toward employment of the unemployed parents of such children, including appropriate provision for registration and periodic reregistration of the unemployed parent of any such child and for maximum utilization of the job placement services and other services and facilities of such offices, and

“(B) provisions to assure that aid to dependent children is not provided to any such child or relative if, and for as long as, the unemployed parent refuses without good cause to accept employment, in which he is able to engage, which (i) is offered through such public employment offices, or (ii) is otherwise offered by an employer if the offer is determined by the State or local agency administering the State plan, after notification by such employer, to be a bona fide offer of such employment, and

“(3) includes provision for entering into cooperative arrangements with the State agency responsible for administering or supervising the administration of vocational education in the State, looking toward maximum utilization of available public vocational education services and facilities in the State in order to

encourage the retraining of individuals capable of being retrained.

For purposes of the preceding sentence, a State plan may, at the option of the State, provide for the denial of all (or any part) of the aid under the plan to which any child or relative might otherwise be entitled for any month, if the unemployed parent of such child receives unemployment compensation under an unemployment compensation law of a State or of the United States for any week any part of which is included in such month.’”

Section 406 (a) of Title IV of the Social Security Act, referred to in the foregoing quotation, is found in 42 U. S. C. A. § 606 (a), which provides as follows:

“When used in this subchapter—

“(a) The term ‘dependent child’ means a needy child under the age of eighteen, who has been deprived of parental support or care *by reason of the death, continued absence from the home, or physical or mental incapacity of a parent*, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece, in a place of residence maintained by one or more of such relatives as his or their own home; \* \* \*.” (Our emphasis)

You will note from the emphasis above-supplied that prior to the 1961 amendment the deprivation of parental support or care so as to constitute a child as a “dependent child” was that occasioned by the death, continued absence from the home, or physical or mental incapacity of a parent coupled with the requirement that such child be living in the home of one of the relatives designated in 42 U. S. C. A. § 606 (a), *supra*.

Because Section 407, as added and approved on May 8, 1961, extends the meaning of the term “dependent child” to include not only a child deprived of parental support occasioned by “death, continued absence from the home, or physical or mental incapacity of a parent,” but also to “a needy child

## OPINION 41

under the age of eighteen who has been deprived of parental support or care by reason of the unemployment (as defined by the State) of a parent and who is living with any of the relatives specified in Section 406 (a)" [42 U. S. C. A. § 606 (a)], your question is whether the state plan of Indiana includes aid for any such child and includes the other requirements of the 1961 amendment to Title IV of the Social Security Act so that citizens of Indiana may receive the benefit of the amendment to the federal law without further enabling state legislation. It is to be noted that by the terms of the 1961 amendment to the federal act, such assistance as therein authorized will end as of June 30, 1962 before the next regular session of the Indiana General Assembly.

The "state plan" to which the federal Social Security Act refers is comprised of "The Welfare Act of 1936" being the Acts of 1936 (Spec. Sess.), Ch. 3, as amended, as found in Burns' (1951 Repl.), Section 52-1001 *et seq.*, together with rules and regulations adopted by the Department of Public Welfare of the State of Indiana pursuant to law. This state welfare law is basically an enabling statute, the purpose of which was and is so that Indiana could then and thereafter accept the provisions and benefits of the federal Social Security Act as expressly stated in the Acts of 1936 (Spec. Sess.), Ch. 3, Sec. 14, as found in Burns' (1951 Repl.), Section 52-1113, which provides as follows:

"The state of Indiana hereby accepts all of the provisions and benefits of the federal 'Social Security Act,' enacted by the Congress of the United States and approved on August 14, 1935, which, by the provisions of this act, the state and county departments of public welfare are authorized to administer, and shall observe and comply with all of the requirements of such act *and the several amendments thereto* and the rules and regulations issued thereunder and in conformity therewith." (Our emphasis)

The State Department of Public Welfare was directed expressly to cooperate with the federal government in the enforcement and administration of the federal Social Security Act and any amendments thereto as provided by the Acts of

1936 (Spec. Sess.), Ch. 3, Sec. 17, as found in Burns' (1951 Repl.), Section 52-1116, which provides as follows:

"The state department is hereby designated as the state agency to cooperate with the federal government in the administration of the provisions of title 1, title 4, Part 2 and Part 3 of title 5, and title 10 of the federal 'Social Security Act.' *The state department is hereby authorized and directed to cooperate with the proper departments of the Federal government and with all other departments of the state and local governments in the enforcement and administration of such provisions of the federal 'Social Security Act' and any amendments thereto and the rules and regulations issued thereunder, and in compliance therewith, in the manner prescribed in this act or as otherwise provided by law.*" (Our emphasis)

Although the federal act, prior to the 1961 amendment and as indicated in 42 U. S. C. A. § 606(a), *supra*, confined the definition of "dependent child" to a needy child under the age of eighteen deprived of parental support or care occasioned solely by the death, continued absence from the home, or physical or mental incapacity of a parent, reference to the corresponding definition of "dependent child" within the Indiana statute discloses a variation in the state definition which is both notable and material to the consideration of the problem which you have presented. The definition of "dependent child" as found in the Indiana law in the Acts of 1936 (Spec. Sess.), Ch. 3, Sec. 1(1), as found in Burns' (1951 Repl.), Section 52-1001(1) provides as follows:

"(1) The term 'dependent child' means a needy child, under the age of sixteen [16] years or under the age of eighteen [18] years if found by the county department having jurisdiction of such child under this act to be regularly attending school, who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, *and whose relatives liable under the law for his support are not able to provide adequate care or support for such child without public assistance*, and who is living with his father,

## OPINION 41

mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle or aunt, in a place of residence maintained by one [1] or more of such relatives as his or their own home.” (Our emphasis)

Your attention is invited to the emphasized portion of the state definition of “dependent child” above-quoted because of the fact that such portion is not contained within the federal definition. The emphasized portion of such definition within the state law has been a part of that definition since the enactment of the Public Welfare Act of Indiana in 1936, and indicates an intent to extend the definition of “dependent child” beyond that contained in the federal act to those situations in which a child’s “relatives liable under the law for his support are not able to provide adequate care or support for such child without public assistance \* \* \*.” Certainly parents of a child are liable under the law for his support, and the criminal statute of this state, providing penalty for the abandonment of children, applies to a “parent,” including “the stepfather and stepmother” and to “any person who has assumed the care of a child, or any person with whom a child is living at the time the offense is committed.”

See: Acts of 1945, Ch. 218, Secs. 3 and 4, as found in Burns’ (1956 Repl.), Sections 10-814 and 10-815.

Thus, because a stepfather and stepmother are not relatives of a child, the portion of the definition of “dependent child” within the state law above-emphasized referring to “*relatives* liable under the law for his support” would be meaningless if it were not to apply to parents. Therefore, it seems clear that under the definition of the term “dependent child” in the *state* welfare law, such condition of a child was *not* intended as being occasioned solely by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, but that such condition could also be occasioned by the inability of the parent to provide adequate care or support for such child without public assistance.

Legislation by the Indiana General Assembly subsequent to 1936 further confirms this view. Your attention is invited to the Acts of 1947, Ch. 200, Sec. 2, found in Burns’ (1951 Repl.),

Section 52-1113a, which added Section 14a to the state law, which provides as follows:

“Sec. 14a. Participation *in Changes* in Federal Social Security Act. The state of Indiana hereby accepts the provisions and benefits of the federal ‘Social Security Act’ and related laws pertaining to needy and handicapped persons and general public and child welfare as enacted by the Congress of the United States. *The provisions of this act and related laws shall be construed so as to secure to the state of Indiana and local units of government maximum participation in the benefits of said federal laws.* So far as required, a proportionate share of any refunds, recoveries, and/or repayments of any assistance and/or administration costs shall be repaid to any federal agency on the basis of federal participation in such costs.” (Our emphasis)

Further, Section 16 of the same enactment, being the Acts of 1947, Ch. 200, Sec. 16, found in Burns’ (1951 Repl.), Section 52-1240, amended Section 71 of the basic 1936 state enactment so as to provide as follows:

“Sec. 71. Eligibility for assistance to dependent children. Assistance shall be given under the provisions of this act to any dependent child who:

“(a) Has resided in this state for a period of at least one year immediately preceding the date of the application for such assistance, or was born within the state within one year immediately preceding the date of application, and whose mother has resided in the state for a period of at least one year immediately preceding the birth of such child, or whose mother has resided in the state for a period of at least one year immediately preceding the date of application; and

“(b) Is living in a family home of any relative coming within any of the classes of relatives established by this act or any of the classes of relatives, persons or homes as may be established by rule or regulation of the state board of public welfare; provided, however, that such classes of relatives, persons or homes so established by rule or regulation are included within

## OPINION 41

the classes of relatives, persons or homes *now or hereafter established by the federal social security act as a basis for reimbursement in federal funds.*" (Our emphasis)

The Acts of 1936 (Spec. Sess.), Ch. 3, Sec. 5(f), as amended, as found in Burns' (1951 Repl.), Section 52-1104(f) grants specific authority to the State Department of Public Welfare to make such rules and regulations as may be deemed necessary or desirable to carry out the provisions of that act which are not inconsistent therewith.

It is also particularly noteworthy that the Acts of 1947, Ch. 178, as found in Burns' (1951 Repl.), Section 61-1301 grants broad powers to the state, to the full extent authorized by the Constitution of Indiana and not prohibited by law, to accept the provisions of any federal statute and to cooperate with the federal government so as to receive the benefits of federal legislation for itself or any of its citizens, including the power to make necessary rules and regulations in order to so cooperate and effectuate the purposes of any such federal law. Section 1 of that act, as found in Burns' (1951 Repl.), Section 61-1301, provides as follows:

"The state, or any political subdivision thereof, are each hereby authorized and empowered to the full extent authorized by the Constitution of Indiana and not prohibited by law, to accept the provisions of any law of the Congress of the United States of America, or any rule, regulation, order or finding made pursuant thereto, now or hereafter in force, which, upon acceptance, authorizes the state, or any political subdivision thereof, to cooperate with the federal government, or to receive benefits for itself or any of its citizens; *and the state, or any political subdivision thereof, is hereby authorized and empowered to do any and all acts, and to make any rule, regulation, order, or finding, that may be necessary to cooperate with the federal government or to effectuate the purposes of any such federal law.*" (Our emphasis)

Under either Burns' Sections 52-1104(f) or 61-1301, *supra*, the rules and regulations therein authorized are to be adopted

1961 O. A. G.

and promulgated according to the provisions of the Indiana Acts of 1945, Ch. 120, as found in Burns' (1951 Repl.), Section 60-1501 *et seq.*

Thus, two conclusions follow, viz.: (1) The definition of "dependent child" in the state statute extends beyond the restrictions found in the federal statute, prior to the 1961 amendment to Title IV of the Social Security Act, so that the state law expressly includes a situation in which such a child's parents are not able to provide adequate care or support for such child without public assistance; and (2) There is ample authority vested in the State Department of Public Welfare to adopt such rules and regulations as are necessary to receive the federal funds and participate in the program provided by Section 407 of Title IV of the Social Security Act as added on May 8, 1961.

Therefore, it is my opinion that it is possible for the State Department of Public Welfare to participate in the extended aid to dependent children program, whose dependency is occasioned by reason of the unemployment of their parents as provided by the 1961 amendment to Title IV of the Social Security Act, provided that sufficient state funds as may be necessary are available for this purpose, and further providing that rules and regulations as required are duly adopted and promulgated pursuant to Indiana law and the federal act so as to comply with Section 407(2), (A), (B) and (3) of Title IV of the Social Security Act as provided in the 1961 amendment. My opinion in this respect is not necessarily to be considered as advice on the part of my office that such a rule or regulation should be adopted since the determination of whether to enter into this program is a matter for the exercise of executive and administrative discretion and is not a question of law.