

OFFICIAL OPINION NO. 55

October 6, 1961

Honorable Paul J. Bitz  
State Senator  
514 Lewis Avenue  
Evansville, Indiana

Dear Senator Bitz:

This is in response to your request of September 8, 1961, for an Official Opinion concerning the applicability of Acts of 1961, Ch. 223, Sec. 1, as found in Burns' (1961 Supp.), Section 52-148a, to pregnancy and childbirth. You have stated your question in the following manner:

"It is my desire to know whether this would govern pregnancy and the necessary hospital and doctor's expense incidental thereto, including the birth of the child."

The act about which you inquire is amendatory to Acts of 1957, Ch. 267, which act in turn added a new section to Acts of 1935, Ch. 116, commonly known as The Poor Relief Act. In its broad sense, the purpose of The Poor Relief Act has been to place upon the several township trustees throughout the state the responsibility of furnishing aid to the poor in their respective townships.

Acts of 1957, Ch. 267, added a new Section 5a, which provided an exception to the general rule in the case of an indigent person injured on any public highway in any township. In such a case, costs of such care were shifted from the respective township trustees, and were fixed upon the counties, to be paid out of money appropriated to the several County Departments of Public Welfare.

The 1961 amendment, Burns' 52-148a, *supra*, has broadened the exception to The Poor Relief Act so that in its present form the section reads as follows:

"In the event any indigent person is injured or in the event any indigent person who is a nonresident of this state becomes ill in any township of this state, the overseer of the poor in such township shall immediately

report such matter to the department of public welfare of the county in which such township is located, which department shall promptly provide medical and hospital care for such indigent person. The cost of any such medical and hospital care so furnished shall be borne by the county of the legal residence of the indigent, or if he has no legal residence in any county of this state by the county in which such township is located; and shall be paid out of any money appropriated to the county welfare department. For the purpose of this act the term indigent person shall mean a person without financial resources to pay for such medical and hospital care."

The answer to your question would seem to turn upon whether or not a woman, in process of pregnancy and childbirth "becomes ill" within the meaning of the above-quoted section.

The term "ill" or "illness" has been defined by many authorities, both medical and legal. Blakiston's New Gould Medical Dictionary, 1950, contains the following definitions:

"Ill. Not healthy; sick; indisposed."

"Illness. 1. The state of being ill or sick. 2. A malady; sickness; disease; disorder."

The same authority contains the following additional definitions:

"Malady. Disease or illness."

"Disease. An illness or sickness. A disturbance in function or structure of any organ or part of the body."

Black's Law Dictionary, Fourth Edition, defines "illness" as it relates to insurance law, said definition reading as follows:

"A disease or ailment of such a character as to affect the general soundness and healthfulness of the system seriously, and not a mere temporary indisposition which does not tend to undermine or weaken the constitution of the insured."

The Indiana Appellate Court defines "illness" in the case of Prudential Life Insurance Co. of America v. Sellers (1913), 54 Ind. App. 326, 333, 102 N. E. 894. In that case the Court said:

"\* \* \* 'Illness' as used means 'a disease or ailment of such a character as to affect the general soundness and healthfulness of the system seriously and not a mere temporary indisposition which does not tend to undermine and weaken the constitution of the insured'  
\* \* \*."

This definition was cited with approval by the Federal District Court, Southern District of Florida, in the case of Pacific Mutual Life Ins. Co. v. Cunningham (1932), 54 F. (2d) 927, 931.

The term "pregnancy," on the other hand, denotes a condition completely apart from the one existing where there is an illness. Blakiston's New Gould Medical Dictionary, *supra*, contains these further definitions:

"Pregnant. With child; gravid."

"Pregnancy. Being with child; the state of a woman from conception to childbirth."

Black's Law Dictionary, *supra*, defines the term in the following manner:

"In medical jurisprudence. The state of a female who has within her ovary or womb a fecundated germ.  
\* \* \* The existence of the condition beginning at the moment of conception and terminating with delivery of the child."

Corpus Juris Secundum contains a paragraph on the subject of pregnancy and the following material appears at 72 C. J. S. 480:

"The existence of the condition beginning at the moment of conception, and terminating with the delivery of the child. Being in a state of pregnancy is not necessarily inconsistent with being in sound health,

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since 'pregnancy' is neither a disease nor an injury, but is a natural condition for a married woman."

From the foregoing, it would appear that "illness" and "pregnancy" are separate in idea. While an illness is a malady, pregnancy is a normal process of nature, the purpose of which is reproduction of the race.

There is very little case law on your specific question. However, in the case of *Rasicot v. Royal Neighbors of America* (1910), 18 Idaho 100, 108 Pac. 1048, 29 L. R. A. (N. S.) 433, the Idaho Supreme Court said:

"\* \* \* Childbirth is a physiological fact which occurs in the regular course of nature, and neither signifies nor entails disease or ailment in the usual and ordinary use of those terms \* \* \*."

This case is cited with approval in an annotation found at 63 A. L. R. 846, 851.

It is undoubtedly true that expectant mothers can and do experience conditions which undermine and weaken their constitutions, thus affecting the soundness and healthfulness of their systems. To say that illness cannot occur during pregnancy or cannot result from pregnancy or childbirth would certainly be a misstatement of fact. However, in light of the authorities cited, it cannot be said that pregnancy and childbirth, or the natural indispositions and discomforts relating thereto, constitute illness within the meaning of the statute.

It is by no means my opinion that pregnant poor persons residing in or found within the boundaries of this State are without relief. On the contrary, assistance is available from the overseers of the poor throughout the State. The Acts of 1935, Ch. 116, Sec. 5, as amended by the Acts of 1961, Ch. 223, Sec. 2, and as found in *Burns' (1961 Supp.)*, Section 52-148, reads as follows:

"The overseer of the poor in each township shall have the oversight and care of all poor persons in his township so long as they remain a charge, and shall see that they are properly relieved and taken care of in the manner required by law. He shall, in cases of neces-

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sity, promptly provide medical and surgical attendance for all of the poor in his township who are not provided for in public institutions; and shall also see that such medicines and/or medical supplies and/or special diets and/or nursing as are prescribed by the physician or surgeon in attendance upon the poor are properly furnished.

“He may, in cases of necessity, authorize the payment from township poor relief funds for water, gas and electric services, including the payment of delinquent bills for such services, when necessary to prevent their termination or to restore terminated service.”

It is therefore my opinion that:

1. Normal pregnancy and childbirth cannot be classified as “illness” within the meaning of Burns’ (1961 Supp.), Section 52-148a.
2. A condition of illness may arise out of or in conjunction with pregnancy or childbirth, but the existence of such a condition to come within the recognized definition of the term must be diagnosed, as such, by a person duly licensed to practice medicine in the State of Indiana.
3. Assistance to pregnant poor persons is available from the several township trustees as overseers of the poor.

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OFFICIAL OPINION NO. 56

October 6, 1961

Mr. James H. Berg, Commissioner  
Bureau of Motor Vehicles  
4th Floor State Office Building  
Indianapolis, Indiana

Dear Mr. Berg:

I have received your request of September 6, 1961, for an Official Opinion on the following questions: