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WELFARE, DEPARTMENT OF—CERTIFIED STATEMENT OF PARENTAL SEPARATION WITHOUT PLAN TO REUNITE—FILED IN CONFORMITY WITH DEPARTMENT RULE—§5107.03, RC—SUCH STATEMENT NOT CONCLUSIVE PROOF—PRIMA FACIE SUBJECT TO REBUTTAL BY EVIDENCE.

SYLLABUS:

A certified statement of parental separation without a plan to reunite, filed in conformity with a rule promulgated by the State Department of Public Welfare under authority of Section 5107.03, Revised Code, with respect to child claimed to be eligible for aid to dependent children under that section, is not conclusive proof of such separation but should be deemed *prima facie* proof only and is subject to rebuttal by competent evidence.

Columbus, Ohio, September 6, 1957

Hon. Thomas A. Beil, Prosecuting Attorney
Mahoning County, Youngstown, Ohio

Dear Sir :

Your request for my opinion reads as follows :

“The pertinent part of a letter from the Director of the Mahoning County Welfare Department, in which he requests that this office secure your opinion on the subject therein contained, is as follows :

“The Aid to Dependent Children program is administered under Sections 5107.01 to 5107.99, Revised Code of Ohio, formerly Section 1359-31 to 1359-46, General Code. Section 5107.03 gives the definition of a needy child entitled to aid, if certain conditions are met. Among these conditions, paragraph (E) provides that the child must have been deprived of parental support or care by reason of a parent's continued absence from the home, such absence shall have been for a period to be determined by the Department and defined by regulations relating thereto.

“Administrative regulations of the State Department of Welfare defining ‘absence from home’ lists one of these requirements as ‘there has been an actual separation of the parents for six months or longer and there is no plan for the parents to reunite’. There is disagreement as to the meaning and interpretation of this part of the regulation. The State Department interprets it one way and many Directors over the State are not in agreement with the interpretation. It is determined, by the State, that all “that is needed is ‘for a man or woman to certify to a separation and that there exists no plan to reunite’ which makes sufficient compliance for that part of the eligibility standpoint as ‘absent from home’.

“We feel that an avenue is opened for wide violation of law as well as loading the assistance rolls if the interpretation is to stand in this manner. Years of experience has shown that families agree to separate for the express purpose of making themselves eligible for assistance. It has even occurred that such separation was for a man living on one street, the woman on another street and from a practical standpoint they were not even separated but visited with each other. There seems danger in such procedure and it could be used extensively to prove ‘ineligibles’ eligible.

“We would like you to advise us whether personal statements by applicants of a separation for a period of six months or

longer, and, personal statements that there is no plan for reuniting can be taken as positive proof presented to an agency. Should it be possible for individuals, man and wife, to be permitted to make such decisions by themselves if they are legally married and have legal obligations to each other?

“I would appreciate your interpretation of this matter.”

Section 5107.03, Revised Code, provides in part, as follows:

“Subject to sections 5107.01 to 5107.16, inclusive, of the Revised Code, and to the availability of revenues for the purposes thereof, a needy child residing in the state shall be entitled to aid if the following conditions are fulfilled:

“(A) Such child has been deprived of parental support or care by reason of death, continued absence from the home, or physical or mental incapacity of a parent, * * *

“(E) If the need of such child results from the continued absence of a parent from the home, such absence shall have been for a period to be determined by the department and defined by regulations thereto. * * *”

It is apparent that the language in Section 5107.03, *supra*, requires the Department of Public Welfare to promulgate regulations defining the statutory phrase “continued absence of a parent from the home.” Recognizing the duty imposed by statute, the department duly promulgated the required regulations. The regulation relating to the continued absence of a parent from the home, which was effective July 1, 1956, reads in pertinent part as follows:

“A child shall be considered to be deprived of parental support or care by reason of the absence of a parent under any of the following conditions:

“4. There has been an actual separation of the parents for six months or longer and there is no plan for the parents to reunite.”

The Department of Public Welfare has determined that in order for a person to qualify for aid under the above quoted regulation it is sufficient for such person to submit a certified statement that there is an actual separation and that there is no plan to reunite.

The certified statement referred to above is, in my opinion, in the nature of *prima facie* evidence as to the status of the parents of the proposed dependent child. Thus, the local county welfare department may, if it chooses to do so, designate the person filing such a certified statement as eligible for assistance. However, since the certification is only *prima facie* evidence of the situation of the parent filing it, the local welfare department is free to investigate the status of the parent and to rebut the statements which have been made in the certification.

In specific answer to your inquiry, a certified statement of parental separation without a plan to reunite, filed in conformity with a rule promulgated by the State Department of Public Welfare under authority of Section 5107.03, Revised Code, with respect to child claimed to be eligible for aid to dependent children under that section, is not conclusive proof of such separation but should be deemed *prima facie* proof only and is subject to rebuttal by competent evidence.

Respectfully,
WILLIAM SAXBE
Attorney General