

Subject: *Notice*
Copy to: *Juvenile
Social Welfare Division
Kansas Assistance
Programs*



STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER
Attorney General

September 12, 1974

Opinion No. 74-319

Mr. Charles V. Hamm, General Counsel
Legal Division
State Department of Social & Rehabilitation Services
State Office Building
Topeka, Kansas 66612

Dear Mr. Hamm:

You inquire concerning the necessity of providing notice by publication to unknown putative fathers in proceedings involving children found to be dependent and neglected, and which may lead to the severance of parental rights.

In *Stanley v. Illinois*, 405 U.S. 645, 31 L.Ed.2d 551, 92 S.Ct. 1208 (1972), the Court held that the due process clause of the Fourteenth Amendment to the United States Constitution required that an unwed father be afforded notice and an opportunity for hearing on the question of his parental hearing before the state was entitled to sever parental rights. The Court explicitly held that, as a matter of due process, "all Illinois parents are constitutionally entitled to a hearing on their fitness before their children are removed from their custody." Clearly, then, any procedure leading to the severance of parental rights must afford those affected the requirements of constitutional due process. It is equally clear that an elemental and fundamental requirement of due process is notice and an opportunity to be heard. Without notice, the opportunity to be heard at a proceeding under K.S.A. 38-824 is in practice a meaningless right.

However, you indicate that questions concerning the necessity of publication in certain instances have arisen in several cases pending in courts of the state, juvenile courts being justifiably reluctant to incur additional expenses of publication to provide notice to unknown persons for the purpose of severing parental rights if it is not necessary. Specifically, you indicate that questions have arisen whether it is necessary to provide notice by publication to the unknown putative father (1) when the mother was married at the time of the child's conception and birth, but alleges

Mr. Charles V. Hamm
September 12, 1974
page two

that her husband is not the father, and (2) when the natural mother is unable to state who the natural father is or when for any other reason his identity is unknown.

You state that it has been your position that in cases where there is any doubt as to the identity of the father of a dependent and neglected child that publication notice be made pursuant to K.S.A. 38-810(c) to the unknown putative father, notifying him of the proceedings, of the time and place of the hearing, and that his failure to respond could result in his being deprived of his parental rights. We fully concur in your view. Notice, whether by publication or otherwise, is a fundamental requirement of due process. In the kinds of cases you describe, failure to provide notice by publication would leave the proceeding open to the most serious constitutional objection, that an elemental requirement of due process, that of notice, has not been afforded, and that, accordingly, the court had not effectively terminated the parental rights of those unknown putative fathers to whom notice had not been extended, albeit by publication.

Accordingly, we agree fully with your views on this matter.

Very truly yours,


VERN MILLER
Attorney General

VM:JRM:tp