

**OPINION
47-95**

March 6, 1947 (OPINION)

PARENT AND CHILD

RE: Stepchildren

This is in reply to your recent letter in which you inquire as to what facts are necessary under section 14-0909 of the North Dakota Revised Code of 1943 to constitute voluntary acceptance on the part of a stepfather to accept into his family a stepchild so as to become liable for and support and maintenance.

Section 14-0909 provides as follows: "A husband is not bound to maintain his wife's children by a former husband, but if he receives them into his family and supports them it is presumed that he does so as a parent and when such is the case they are not liable to him for their support nor he to them for their services."

You then submit the following question: "(2) If a man marries a wife with children who are at the time of the marriage receiving Aid to Dependent Children, can he by making a statement before the taking the children into his home that he will not provide for them make it possible for the children to continue receiving Aid to Dependent Children, notwithstanding the fact that he takes them into his home and provides them with shelter as a member of his family?"

Section 14-0909 quoted herein speaks for itself. It provides specifically that a husband is not bound to maintain his wife's children by a former husband, but if he receives them into his family and supports them it is presumed he does so as a parent. You will note that two things are required to hold a stepfather liable for support of stepchildren, namely, he must voluntarily receive them into his family and support them. In other words, the acceptance must be voluntary and in addition he must support them. Unless he does these two things he would not be liable.

Your question cannot be answered by a general formula which can be applied to every case but each case must stand on its own state of facts.

Section 14-0909 does not read as you state it in your letter. Your quotation is from the syllabus in the case of *Druey v. Druey*, 63 N.D. 786, which is an interpretation of the statute. The import thereof is to the effect that I have already stated namely, "that a stepparent who voluntarily receives a stepchild into the family and treats it as a member thereof stands in the place of a natural parent." You will note that two elements are necessary, voluntary acceptance and treatment as a member of the family.

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