

FORMAL OPINION NO. 71*

The opinion of the Committee has been asked upon the following question:

May the Attorney General of the State of Idaho and/or Assistant Attorney General represent a private litigant mother in a paternity proceeding commenced under Title 7, Chapter 11, Idaho Code, where the office of the Attorney General is also representing the State of Idaho Department of Environmental and Community Services as a party plaintiff?

We presume that the Department of Environmental and Community Services has paid aid to an unwed mother for a dependent child and through the Attorney General's Office has initiated a paternity proceeding for the mother against the putative father. It does not appear that there would be a conflict of interest in such a proceeding. The paternity statute provides that only the mother, guardian or other person standing in a paternal relation or being the next of kin of the child may bring the proceeding. As a practical matter, it is necessary for the Attorney General's Office to represent the mother but which is likely more in the interest of the Department of Environmental and Community Services. Whether this is proper we believe, may be more a question of law than of ethics. If it is unethical, then it would appear necessary to challenge the statutes of Idaho because the Reciprocal Support Act of Idaho essentially authorizes and directs the recovery of child support from a parent under proceedings that may be initiated by the prosecuting Attorney or the Attorney General's Office. Chapter 10 of Title 7, Idaho Code (7-1055), provides that if the state or a political subdivision furnishes support to an individual obligee, it has a right to initiate proceedings for reimbursement of support furnished and also provides (§7-1074, Idaho Code) that if paternity is denied, the Court may adjourn such support proceedings until the paternity issue has been adjudicated. The Reciprocal Support Act (§ 7-1080, Idaho Code) provides for inter-county application within the states and provides that the prosecuting attorney or the attorney general (§ 7-1085,

Idaho Code) shall represent the obligee in proceedings to enforce a foreign support order. Whether the support order was from a foreign state or a different county would not affect ethical consideration.

Without attempting to answer questions of law and particularly what is or is not a proper function of the Attorney General's Office under the statutes of Idaho, the committee fails to find any conflict of interest in these matters in which the Attorney General's Office may be interested, whether such proceedings might have been brought under the Reciprocal Support Act or the Paternity Act.

DATED this 18th day of January, 1974.

*Idaho Code § 7-1085 was repealed by S.L. 1977, ch. 94, § 10. Current applicable Code sections are § 7-1059 (Idaho as initiating state) and § 7-1065(b) and (c) (Idaho as responding state).